BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

v.

INLAND REGIONAL CENTER, Service Agency

DDS No. CS0008202

OAH No. 2023070285

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on January 31 and February 21, 2024, in San Bernardino, California.

Jennifer Cummings, Fair Hearings Manager, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

Delia Metoyer, Deputy Public Defender, Riverside County Public Defender, represented claimant, who was present on the second day of hearing.

Oral and documentary evidence was received. The record was closed, and the matter submitted for decision on February 21, 2024.

ISSUE

Is claimant eligible for regional center services under the Lanterman Developmental Disabilities Services Act of 1969 (Lanterman Act) due to intellectual developmental disorder[1] (IDD), or a disabling condition closely related to, or that requires treatment similar to, a person with IDD (fifth category)?

FACTUAL FINDINGS

Background

1. Claimant is a 27-year-old man who lives with his parents.

CRIMINAL COMPLAINT AND COURT REFERRAL TO IRC

2. On September 21, 2022, the Riverside County District Attorney filed a complaint against claimant in the Superior Court of California, County of Riverside, in

[1] The Lanterman Act was amended long ago to eliminate the term "mental retardation" and replace it with "intellectual disability," as reflected in the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5). The more current DSM-5, text revision (DSM-5-TR) no longer uses the term "intellectual disability" and instead refers to the condition as IDD. Many of the regional center forms have not been updated to reflect this change, and during testimony, all of the terms were used interchangeably. Accordingly, for purposes of this decision, as well as all admissible documentary evidence, "mental retardation," "intellectual disability," and "IDD" mean the same thing.

Case Number RIF2204826, alleging three counts as follows: robbery, a felony, in violation of Penal Code section 211; assault with a deadly weapon by means likely to produce great bodily injury, a felony, in violation of Penal Code section 245, subdivision (a)(4); and providing false information to peace officer about his identity, a misdemeanor, in violation of Penal Code section 148.9, subdivision (a). The complaint also alleged claimant's October 9, 2019, conviction for robbery, in the Superior Court of California, County of Orange, in Case Number SWF2007459, as a serious prior offense and a strike pursuant to Penal Code section 667.

3. On December 29, 2022, the judge in claimant's criminal case, following a motion by his attorney, suspended criminal proceedings and appointed Patricia Kirkish, Ph.D., and Stacy Waring, Psy.D., to examine claimant for the sole purpose of determining competency to stand trial.

After interviewing claimant via video, Dr. Kirkish concluded claimant was "unable to rationally participate in judicial proceedings" and based on perceived "cognitive impairment," a referral to IRC was appropriate "in order to evaluate the degree of his disability and capacity for achieving judicial competence."

Dr. Waring, who also interviewed claimant via video, concluded claimant did not have "sufficient rational and factual understanding of the criminal proceedings" and believed claimant might have "unspecified intellectual disability," but further assessment would be required for diagnostic clarification.

Neither Dr. Kirkish nor Dr. Waring conducted any standardized evaluative examinations for the purpose of determining if claimant met the DSM-5-TR criteria for IDD or the fifth category, and neither doctor conducted any standardized adaptive testing to determine whether claimant had a substantial disability in three or more

areas of a major life activity within the meaning of the Lanterman Act and California Code of Regulations, title 22, section 54001. Neither Dr. Kirkish nor Dr. Waring evaluated claimant's eligibility for regional center services.

4. On February 16, 2023, the court ordered IRC to "examine" claimant pursuant to Penal Code section 1369 and provide a written report to the court with "conclusions and recommendations." Penal Code section 1369, subdivision (a)(3), provides:

> If it is suspected the defendant has a developmental disability, the court shall appoint the director of the regional center established under Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code, or the director's designee, to examine the defendant to determine whether the defendant has a developmental disability. The regional center director or their designee shall determine whether the defendant has a developmental disability, as defined in Section 4512 of the Welfare and Institutions Code, and is therefore eligible for regional center services and supports. The regional center director or their designee shall provide the court with a written report informing the court of this determination.

5. IRC referred claimant to C. Sherin Singleton, Psy.D., who conducted an evaluation on May 18, 2023. Dr. Singleton ultimately diagnosed claimant with schizophrenia, childhood-onset fluency disorder (stuttering), language disorder (by history), and specific learning disorder in reading, written expression, and mathematics (by history). Notably, while Dr. Singleton concluded claimant had significant

impairments "that impact his functioning," Dr. Singleton also determined there was "no indication" that claimant's deficits were attributable to IDD. Rather, claimant's functioning worsened over time due to his psychiatric condition, as opposed to any developmental disorder. Dr. Singleton concluded claimant was not eligible for regional center services, subject to a final review by an IRC multidisciplinary team.

6. On May 25, 2023, a multidisciplinary team from IRC comprised of a doctor, psychologist, and program manager, conducted an intake assessment as required by Welfare and Institutions Code section 4642. Following a review of all available documents, the team concluded claimant did not qualify for regional center services under autism spectrum disorder (autism), IDD, cerebral palsy, epilepsy, or the fifth category. Consequently, claimant was not eligible for regional center services. The team noted in the comments, "No evidence of a developmental disability prior to age 18. History of schizophrenia."

7. On May 25, 2023, IRC issued a Notice of Action indicating that after conducting its intake evaluation, the records provided did not show claimant has a substantial disability as a result of autism, IDD, cerebral palsy, epilepsy, or the fifth category.

8. On July 5, 2023, claimant filed an appeal. Under the "reasons for appeal," the form read only "contest denial."

9. The parties held an informal meeting on July 20, 2023, to discuss claimant's eligibility request. Following the informal meeting, IRC adhered to its determination that claimant was not eligible for regional center services under any qualifying condition. In a letter memorializing that meeting dated July 24, 2023, IRC wrote:

The records available . . . do not substantiate that [claimant] is developmentally disabled. He does not have a diagnosis of [IDD, autism], Cerebral Palsy, Epilepsy [or the fifth category].

According to the Individualized Education Program (IEP) dated May 27, 2014, [claimant] qualified for special education services under the primary condition of specific learning disability and the secondary condition of speech or language impairment. The IEP notes "Math, reading and writing are adversely affected by Specific Learning Disability (Auditory Processing delays). Receptive and Expressive Language delays; eligible for speech and Language services. [Claimant] was scheduled to graduate high school in June 2014 with his high school diploma.

On January 10, 2023, [claimant] was assessed by Dr. Kirkish via video. In her report Dr. Kirkish provides information regarding [claimant's] psychiatric history including "[claimant] vaguely said, "I don't know . . . voices even when I was a kid and going to school. Voices tell me to go outside and play or do certain things. They are like my good friends, best friends . . . I see them sometimes. His mother provided some additional vague information but with few details. She reported while in elementary school her son was talking to himself . . . . He had to do speech therapy and was in special ed. A doctor suggested he get SSI . . . .

He had an involuntary hospitalization "for the voices but I don't know how many times, but more than once. They gave me medicine a long time ago . . . ." Dr. Kirkish notes "[Claimant] has significant cognitive impairment. He additionally may experience periods of psychosis, primarily hallucinations . . . ." Dr. Kirkish recommended [claimant] be referred to Regional Center.

On February 7, 2023, [claimant] was assessed by Dr. Waring via video. Dr. Waring notes "[Claimant] reported that he takes medication for "hearing voices" (auditory hallucinations), adding that "my mom makes me take them every day." His mother confirmed that he receives psychiatric services at the Blaine Street clinic and has been prescribed psychotropic medication "for a long time." She read the names of the medications from his pill bottles, which were identified as risperidone (an antipsychotic also used to treat bipolar disorder) and benztropine (which is commonly used to help decrease side effects from antipsychotic medication)." Dr. Waring further notes "Based upon the information obtained from the interview and the available records, the diagnostic impression at this point is consistent with a DSM 5 diagnosis of Unspecified Intellectual Disability. This diagnosis is provided with the caveat that he should be further assessed for diagnostic clarification."

On May 18, 2023, Dr. Singleton, IRC's consulting psychologist, conducted a psychological evaluation. Dr. Singleton notes "[Claimant] was actively responding to internal stimuli. When asked if he hears voices, he said yes, but that it had been "a while" since he heard them. When asked if he had been hearing them since he entered the room, he said that he had. I asked if his voices were telling him not to speak to me. He stated "No, They're not. They think you're nice," and [claimant] smiled a genuine smile. Dr. Singleton further notes, "[Claimant] was unable to interact with this evaluator independently of his caretakers. His speech was limited due to both his stutter and his degree of internal distraction.

Additionally, he demonstrated significant problems with behavioral initiation and impaired ability to sustain attention because he was responding to internal stimuli. He was impaired to the point that no formal psychological tools could be administered, as he would not have been able to fully participate, which would leave the results invalid." Dr. Singleton's diagnostic impression is Schizophrenia; [Childhood]-Onset Fluency Disorder (Stuttering); Language Disorder (receptive and expressive ability), by history; Specific Learning Disorder (reading), by history; Specific Learning Disorder (written expression), by history; and Specific Learning Disorder (mathematics). Dr. Singleton concluded "While [claimant] has significant

impairments that impact his functioning, there is no indication that these deficits are due to Intellectual Developmental Disorder. There is no indication that during the developmental period, he had any deficits consistent with an intellectual disorder. He was diagnosed with specific learning disability when he was a child, in addition to delays in both receptive and expressive speech. In order to be diagnosed with a learning disorder, a significant discrepancy between his ability and his achievement would have been necessary, as opposed to a condition where achievement is consistent with ability. Additionally, there is evidence to suggest that his functioning worsened over time as his psychiatric symptoms increased, which is more consistent of a psychotic spectrum illness such as Schizophrenia, as opposed to IDD or another developmental disorder."

10. No claim was made in either the appeal or at hearing (and no evidence was presented) that claimant should be found eligible for regional center services under the categories of autism, epilepsy, or cerebral palsy. In claimant's position statement filed prior to the hearing, claimant indicated he was pursuing eligibility based only on IDD and the fifth category. Accordingly, the focus of this decision is whether claimant is eligible for regional center services under the Lanterman Act based on IDD or the fifth category.

Diagnostic Criteria for IDD

11. The DSM-5-TR contains the diagnostic criteria used for IDD. The essential features of IDD 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 IDD typically have IQ scores in the 65-75 range (unless an individual is African American, in which case IQ results are not considered).[2] In order to have a DSM-5-TR diagnosis of IDD, three diagnostic criteria must be met. The DSM-5 states in pertinent part as follows:

> [IDD] 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.

[2] Claimant was identified as African American in Dr. Singleton's report and appeared to be African American when he was present on the second day of hearing. Educational records also identified him as African American. As such, IQ results are not considered in rendering a DSM-5-TR diagnosis of IDD.

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.

Diagnostic Criteria for Fifth Category

12. The Lanterman Act states that regional center assistance may be provided to individuals with a disabling condition closely related to IDD or that requires similar treatment to an individual with IDD, 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 turns 18 years old, must continue or be expected to continue indefinitely, and must constitute a substantial disability.

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 IDD, with many of the same, or close to the same, factors required in classifying a person as meeting the criteria for IDD. Another appellate decision has also found that eligibility may not be based solely on a person's adaptive functioning; it must include a cognitive component. (*Samantha C. v. State Department of Developmental Services* (2010) 185 Cal.App.4th 1486.) Further, while a person who suffers from mental health

or other psychological conditions is not per se disqualified from regional center eligibility under the fifth category, the individual's condition must still be similar to IDD or the individual must still require treatment similar to a person with IDD. (*Id.* at p. 1494.) In making those determinations, regional centers refer, in part, to the Association of Regional Center Agencies (ARCA) guidelines, discussed below.

FUNCTIONING SIMILAR TO A PERSON WITH IDD

13. A person functions in a manner similar to a person with IDD 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 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 IDD

14. In determining whether a person requires treatment similar to a person with IDD, 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 IDD; persons requiring rehabilitation 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 IDD need more supports, with modifications across many skill areas).

Diagnostic Criteria for Schizophrenia

15. Schizophrenia is not a qualifying diagnosis for regional center services. However, since many of claimant's records, and the experts in this case, referenced schizophrenia, the DSM-5-TR diagnostic criteria for schizophrenia are mentioned here.

16. Schizophrenia involves a range of cognitive, behavioral, and emotional dysfunction. To be diagnosed with schizophrenia, a person must have two or more of the following symptoms present for a significant portion of time during a one-month period: delusions, hallucinations, disorganized speech, grossly disorganized or

catatonic behavior, and negative symptoms, diminished emotional expression or avolition. For a significant portion of time since the onset of the disturbance, the person will have impaired functioning in areas such as work, interpersonal relations, of self-care, markedly below the level achieved prior to onset, or when the onset is in childhood or adolescence, there is failure to achieve expected level of interpersonal, academic, or occupational functioning. Continuous signs of these disturbances must persist for at least six months. Cognitive deficits in schizophrenia are common and strongly linked to vocational and functional impairments. These deficits include problems with memory, language, and sensory processing. The requisite psychotic features of schizophrenia typically emerge between the late teens and the mid-30s; for men, the peak onset is typically in the early to mid-20s. The process is slow and a person will show gradual deficits in social interactions, emotional changes, and a deterioration in cognition. There are many other disorders that are typically comorbid with schizophrenia; IDD is not one of them.

Substantial Disability

17. In addition to having a qualifying diagnosis (i.e. autism, intellectual disability, epilepsy, cerebral palsy, or the fifth category), a person must also be substantially disabled as a result of that diagnosis in three or more areas of a major life activity, pursuant to California Code of Regulations, title 17, section 54000. These areas are: 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. The ARCA Guidelines also refer to California Code of Regulations, title 17, sections 54000 and 54001, regarding whether a person has a substantial disability.

Claimant's Records

POLICE AND COURT RECORDS

18. Claimant's 2019 conviction was for robbery. According to the felony complaint, claimant utilized a pellet gun to create force or fear in order to induce the victim to part with their personal property.

19. Several years later, in September 2022, claimant again allegedly committed robbery (as well as assault likely to produce great bodily injury and providing false information regarding his identity to a police officer). Claimant and his three accomplices, according to a police report, were discriminant in what they took; only selecting gold jewelry the victim was wearing and a watch. Claimant also, upon contact by police, provided a false name – and when confronted with the fact he provided a false name, became argumentative with officers. Notably, while officers spoke with claimant, he told officers that he did not get involved with the incident and just "watched." However, police were able to obtain video footage of the robbery posted to claimant's Instagram page. Claimant was identified by one of the police officers as the person who filmed the incident. The criminal case regarding these allegations are still pending and gave rise to the request to evaluate claimant pursuant to Penal Code section 1368.

EDUCATIONAL RECORDS

20. The only educational record provided was an Individualized Education Program (IEP) plan from May 27, 2014, when claimant was 17 years old and in the 12th grade. The IEP showed claimant received special education services for specific learning disability and speech and language impairment. There was no indication in the IEP that claimant had IDD or any other qualifying regional center condition.

Specifically, the IEP indicated claimant's math, reading, and writing were "adversely affected" by the specific learning disability, which caused auditory processing delays, and receptive and expressive language delays. The IEP indicated claimant was interested in law enforcement, mechanics, and firefighting as potential jobs and was provided information for career assessment. The IEP indicated claimant made multiple attempts to pass the high school exit exam and could not, so he was provided a waiver to pass with lower scores. The IEP stated he had made some progress in raising his scores on that exam, as well. Claimant did ultimately graduate high school and obtain a driver license.

MEDICAL RECORDS

21. Medical records from 2015 to 2024 were provided. They indicate claimant has been prescribed multiple antipsychotic medications since 2015, including risperidone and haloperidol, as well as benztropine mesylate to counter the effects of the antipsychotics. The medical records further show claimant had diagnoses of psychotic disorder, not otherwise specified; schizophrenia; generalized anxiety disorder; and unspecified psychosis. Although the records indicate a diagnosis of "unspecified intellectual disabilities," the records do not indicate how that diagnosis was reached or whether any testing was completed to reach that diagnosis. Each indication of that diagnosis also appears to have been made on admission to the medical facility, so it is unclear of the diagnoses were by history or new diagnoses based on evaluations. Finally, the records also show that the "unspecified intellectual disability" was secondary to claimants "unspecified schizophrenia and other psychotic disorder."

DR. SINGLETON'S EVALUATION

22. Dr. Singleton did not testify at the hearing but provided a curriculum vitae concerning her experience, and a report of her evaluation, both of which were admitted as evidence. Dr. Singleton obtained a Bachelor of Science degree in behavioral science from the University of La Verne in 2004 and a Master of Science degree in psychology in 2006. Dr. Singleton obtained her Doctor of Psychology in clinical-community psychology from the University of La Verne in 2009. Dr. Singleton is a licensed psychologist in California. Dr. Singleton has held many positions over the years, including psychology clerk, and later a Senior Psychologist Supervisor, at Patton State Hospital. In her current position as a supervisor, she supervises other psychologists and students in their assessments of individuals civilly and criminally committed to the hospital. Dr. Singleton makes recommendations to regional centers and other agencies. Dr. Singleton has served as a qualified medical examiner in the area of worker's compensation and conducts eligibility evaluations specifically for IDD for inmates pursuant to court orders. Dr. Singleton has extensive teaching experience in clinical psychology at many academic institutions and has given many professional presentations in her field. Dr. Singleton is an expert in the field of psychology and in the assessment of individuals for IDD, among other conditions.

23. Dr. Singleton conducted an in-person psychological evaluation of claimant on May 8, 2023, when claimant was 26 years old. IRC referred claimant for an evaluation because it had been ordered to do so by the court. The purpose of the evaluation was to assess claimant for a qualifying condition for regional center services. Dr. Singleton conducted a clinical interview with claimant, reviewed the following records: claimant's May 27, 2014, IEP; the court's referral to IRC; police reports; court documents; and the reports of Dr. Kirkish and Dr. Waring.

24. Dr. Singleton explained the reason for her assessment and asked claimant to come with her to the exam room. Claimant walked slowly. He indicated he understood the reason for the assessment but while Dr. Singleton spoke with him, he was "selectively mute." While claimant's mother and her boyfriend provided claimant's psychosocial history, claimant was reacting to "internal stimuli." Claimant told Dr. Singleton he hears voices, and exhibited "problems with initiation and thought blocking." When responding to questions, claimant would stop speaking in the middle of a sentence and stare in another direction. Dr. Singleton observed claimant was unable to interact with her independently of his caregivers (presumably claimant's mother and her boyfriend). Claimant's speech was limited by his stutter and "internal distraction." Dr. Singleton observed claimant:

> demonstrated significant problems with behavioral initiation and impaired ability to sustain attention because he was responding to internal stimuli. He was impaired to the point that no formal psychological assessment tools could be administered, as he would not have been able to fully participate, which would leave the results invalid.

Claimant also exhibited significant impairment in adaptive functioning, according to claimant 's mother, who said he requires assistance with basic tasks. Claimant's mother told Dr. Singleton claimant receives social security disability (SSI) under the diagnosis of schizophrenia.

Dr. Singleton rendered the following diagnoses: schizophrenia, childhood-onset fluency disorder (stuttering); language disorder (receptive and expressive ability), by history; specific learning disorder (reading), by history; specific learning disorder (written expression), by history; and specific learning disorder (mathematics), by

history. Dr. Singleton noted that claimant has a "long history" of symptoms consistent with schizophrenia, including auditory hallucinations and paranoid ideation. Claimant exhibited disorganized thinking, flat affect, and is often selectively mute. Dr. Singleton correctly recounted the DSM-5-TR criteria for a diagnosis of IDD and concluded that while claimant has "significant impairments" that impact his functioning, there was no indication his deficits were due to IDD, or that during his developmental period he had any deficits consistent with IDD. She found "there is evidence to suggest that his functioning worsened over time as his psychiatric symptoms increased, which is more consistent with the presence of a psychotic spectrum illness such as [s]chizophrenia, as opposed to IDD . . . ."

EVALUATION BY DR. KIRKISH

25. The following factual findings are derived from a report completed by Dr. Kirkish that was admitted into evidence. On January 10, 2023, Dr. Kirkish spoke with claimant via video for a little over an hour. The purpose of the evaluation was to determine claimant's competency for trial, not to assess claimant's eligibility for regional center services. Prior to the examination, Dr. Kirkish reviewed only the police and court records regarding claimant's prior conviction and current charges. Dr. Kirkish noted that claimant's "cognitive impairment" restricted his ability to understand why he was being interviewed. His behavior was "child-like and immature," and his mother was present. During the interview, claimant's mother had to repeatedly be told not to prompt claimant's responses. Claimant's mother also appeared to be "inappropriately over involved" with claimant, leaning over to kiss him and stroke his head when he was asked questions during the mental status examination. Claimant's mother became defensive and told Dr. Kirkish the tasks were "too hard" for claimant, and that claimant "was tired."

26. When asked about his history of psychiatric symptoms, claimant said that he heard voices when he was a child that told him to "go outside and play or do certain things" He said the voices were "like my good friends, best friends" because "nobody else talks to [him]." He also said he sees "them sometimes." Claimant had been hospitalized "for the voices," and claimant's mother reported that claimant "held his head when he was young."

27. Based on the interview and claimant's limited ability to participate, and his answers when she asked him about his legal situation, Dr. Kirkish concluded claimant "has significant cognitive impairment" that is a barrier to "his ability to appreciate his judicial situation." As such, claimant could not rationally assist in his defense. Dr. Kirkish did not, however, diagnose claimant with IDD.

EVALUATION BY DR. WARING

28. The following factual findings are derived from a report completed by Dr. Waring that was admitted into evidence: On February 7, 2023, Dr. Waring interviewed claimant via video for approximately one hour. The purpose of the evaluation was to determine claimant's competency for trial, not to assess claimant's eligibility for regional center services. Prior to the interview, Dr. Waring reviewed police reports and court records, as well as claimant's responses on a questionnaire she provided him to determine his competency to stand trial. Dr. Waring explained the reason for her interview, and claimant "nodded" but did not appear to fully understand. As with Dr. Kirkish's interview, claimant's mother interfered at times, and Dr. Waring had to encourage claimant's mother to let claimant speak independently so Dr. Waring could fully assess claimant's knowledge and understanding.

29. Dr. Waring described claimant as polite, calm, and cooperative. He was receptive to humor and was able to reciprocate. Claimant was observed to blink in a rapid manner, and he had a constant stutter when he spoke. Claimant did not experience any auditory hallucinations during the interview but told Dr. Waring that he had experienced them in the past. He described the voices as his "friends." Claimant's mother told Dr. Waring that claimant had been on psychotropic medications for a long time, and Dr. Waring noted that one of the medications, risperidone, is also used to treat bipolar disorder. Claimant's mother told Dr. Waring claimant started hearing voices "in middle school." Dr. Waring noted that claimant exhibited difficulty with basic concepts relating to the criminal proceedings, but did have a driver license. Claimant could count change, but could not identify the coins. Claimant struggled to provide basic information without his mother's help.

30. Dr. Waring concluded:

> Although there appears to be an underlying psychiatric condition for which [claimant] is currently taking psychotropic medication, there were no overt symptoms that appeared to impair his understanding of the proceedings or his ability to assist counsel. Rather, the impairments relating to his adjudicative competency appear to be related to a developmental disability, which impairs his reasoning, problem solving, and abstract thinking.

Dr. Waring concluded that claimant's presentation was consistent with "unspecified intellectual disability," and he should be "further assessed for diagnostic clarification."

Testimony of IRC Experts

RUTH STACY, PSY.D.

31. Ruth Stacy, Psy.D., testified on behalf of IRC. Dr. Stacy is a staff psychologist at IRC and has devoted virtually her entire career, even prior to obtaining her degree, to individuals who are seeking or already receiving IRC services. She has held multiple positions at IRC, including senior intake counselor, psychological assistant, and consumer services coordinator. Her career at IRC began in 1990, as such, she has been providing services to IRC almost exclusively for over three decades. In addition to her doctorate degree in psychology that she obtained in 2008, she also holds a Master of Arts in Counseling Psychology (2004), a Master of Arts in Sociology (1980), and a Bachelor of Arts in Psychology and Sociology (1978). Dr. Stacy has received training in the administration of the Autism Diagnostic Observation Schedule, Second Edition (ADOS-2), the administration of the Autism Diagnostic Observation Schedule (ADOS), Mental Health Strategies for Individuals with Co-occurring Developmental Disabilities from the Los Angeles County Department of Mental Health, Psychological Tele-Assessments during COVID-19: Ethical and Practical Considerations, and at least 36 qualifying continuing education hours every year since becoming licensed in 2013, as required by the California Board of Psychology. Dr. Stacy qualifies as an expert in the diagnosis of qualifying conditions for regional center services, and in the determination of whether individuals are eligible for regional center services under the Lanterman Act.

32. Dr. Stacy explained that, for purposes of fifth category eligibility, "treatment" and "services" are different. Treatment is something that treats a disability or condition – like medication, breathing exercise, etc. Services are things that are provided to help support a person's developmental disability and include things like

transportation. A person who is not disabled can benefit from services. For example, many people who do not have a developmental disability would benefit from things like job training – but the fact that they benefit from those services does not render them eligible for regional center services under the Lanterman Act.

33. Similarly, a person may have significant functional limitations in three or more areas of a major life activity but still not be eligible for regional center services if those significant functional limitations are not the result of a developmental disability. For example, a person who is blind, a person who has a learning disability, or a person with a brain injury could have significant functional limitations, but despite that, they would not qualify for regional center services.

34. Under the DSM-5-TR criteria, to be eligible for regional center services for IDD or the fifth category, the condition must have arisen during the developmental period, prior to age 18. Based on her review of the records in evidence, claimant does not meet the criteria for IDD or the fifth category. Although he may be significantly impaired, that impairment is caused by his mental health condition (schizophrenia). Claimant takes antipsychotic medication for that mental health condition to help minimize the symptoms.

35. Dr. Stacy did not find claimant's IQ score of 46 (obtained from testing by claimant's expert, to be discussed more below) compelling evidence to show he has IDD; she explained that the educational records, the fact he graduated high school, obtained a driver license, and other factors are indicative of a much higher level of functioning than an IQ of 46. Also, claimant's school records show he received special education for speech and language disorder and specific learning disability; these are not qualifying conditions for regional center services. There was also no mention of adaptive challenges in claimant's educational records, and his academic records

showed low to average cognitive ability; his grades were bad because of missing assignments. Normally, you also would not see a person with IDD interested in career training and on track to graduate high school. Everything suggests claimant's decline occurred after high school.

36. Things like internal distractions and psychosis, thought blocking, and internal stimuli can all make it difficult to conduct formal testing. The observations of Dr. Singleton during her evaluation of claimant are consistent with schizophrenia. While she tried to conduct testing, she could not do so because of claimant's presentation. Dr. Stacy agrees with Dr. Singleton's conclusion that claimant is not eligible for regional center services.

37. Although the reports of Dr. Kirkish and Dr. Waring mention cognitive impairment and unspecified IDD, these are not the same as IDD. "Unspecified" just means an impression; and in fact, the totality of the records does not show claimant meets the criteria for IDD. Nothing in the reports of Dr. Kirkish, Dr. Suiter, or Dr. Waring change her mind that claimant is not eligible for regional center services.

PRAVIN KANSAGRA, M.D.

38. Pravin Kansagra, M.D., also testified on behalf of IRC. Dr. Kansagra has been a licensed psychiatrist since 1988. Dr. Kansagra obtained his medical degree in India and completed residencies in psychiatry in Illinois and Connecticut. Dr. Kansagra has been involved in professional activities for over 30 years relating to psychiatric conditions, which includes providing training seminars for IRC staff. Dr. Kansagra has held many positions over the years in the field of psychiatry, including medical director of psychiatric units in California and Connecticut, where he supervised resident physicians and staff. Dr. Kansagra is an expert in the field of psychiatry.

39. Dr. Kansagra did not meet with claimant but reviewed the exhibits submitted in this case, which he described as 269 pages. This included Dr. Suiter's evaluation. Dr. Kansagra's overall diagnostic impression was claimant has suffered from mental health issues since middle school and continues to have symptoms. He explained that schizophrenia is a mental health condition that attacks people's ability to communicate, causes delusions, created problems with interactions, and interferes with people's thoughts. The effects of schizophrenia affect cognition, and as the person ages, the decline can continue. The prognosis for people who start to exhibit schizophrenia symptoms in childhood is not good, because that means a "lifetime" of impairment in communication, thought processing, expression, and other areas. It can cause isolation and paranoia. Dr. Kansagra noted that Dr. Singleton described "thought blocking," which is consistent with schizophrenia. In essence, people start talking and "lose their place" because the schizophrenia affects cognition. Similarly, Dr. Kirkish mentioned "significant cognitive impairment," however, that is not the same thing as IDD. The treatment for schizophrenia is antipsychotic medications, and the medications claimant is on are, in fact, antipsychotics.

Testimony of Claimant's Expert

40. The following factual findings are derived from the testimony of Robert Suiter, Ph.D., Psy.D., M.S.N., his curriculum vitae, and a report he completed regarding his evaluation of claimant.

EVALUATION COMPLETED BY DR. SUITER

41. Dr. Suiter holds a Bachelor of Science degree in nursing, a Master of Science degree in nursing, a Ph.D. in counseling, and a Doctor of Psychology degree. Dr. Suiter served as a psychiatric nurse in the United States Army for 12 years. He later

entered the United States Air Force and served eight years as a clinical psychologist. Since 1992, Dr. Suiter has been in private practice in the field of forensic psychology, which focuses on the diagnosis and treatment of mental disorders. He has conducted over 5,000 evaluations. Dr. Suiter is an expert in the field of forensic psychology.

42. Dr. Suiter evaluated claimant in person on January 12, 2024, pursuant to a request from claimant's public defender "to complete intellectual testing of [claimant] to potentially assist with his case and for treatment and planning purposes." The purpose of the evaluation was not to assess claimant's eligibility for regional center services.

43. Dr. Suiter noted claimant was "very difficult" to interview because he acted in a "childlike manner," was constantly moving about the exam room, and "touching various objects." Claimant responded poorly to verbal directions, his speech was poor, and he was difficult to understand.

44. Prior to the evaluation, Dr. Suiter reviewed behavioral reports from claimant's high school from 2010 to 2014 (none of which were submitted as evidence in this hearing); Dr. Kirkish's report; Dr. Waring's report; and report cards from claimant from high school.

45. Dr. Suiter administered the Wechsler Adult Intelligence Scale, Fourth Edition, which tests cognitive abilities. Claimant exhibited significant limitations in verbal skills, nonverbal skills, cognitive processing, and memory, and his full-scale IQ score was 46.

46. Dr. Suiter did not render a diagnosis. However, he agreed with Dr. Waring that a referral to IRC was appropriate because the "current intelligence testing indicate[s] his intellectual limitations are significant . . . ."

DR SUITER'S TESTIMONY

47. Dr. Suiter's testimony, which was consistent with his report, is summarized as follows: claimant's testing showed he has significant limitations in his intelligence in all areas tested. His belief is also confirmed by the reports of Dr. Waring and Dr. Kirkish, both of whom found cognitive limitations. Claimant had difficulty in school, a 1:1 aide, and special education. He failed the high school exit exam. The medical records show claimant has a diagnosis of unspecified IDD. Claimant also has a well-documented history of schizophrenia, which includes hallucinations and delusions, and claimant takes antipsychotic medication. Dr. Suiter said in the absence of any history indicative of brain trauma, he does not know of any disorder that would result in a person developing such significant functional limitations after the age of 18. Schizophrenia can "generally" be managed with medications, but some individuals do not respond well to antipsychotic medications. Schizophrenia can coexist with IDD.

48. Regarding claimant's IQ testing, Dr. Suiter said it is difficult to know for certain that the results are indicative of the actual IQ, because a variety of factors can affect it, such as poor rapport, lack of effort, lack of motivation, a person not feeling well, a person not being interested, or even distractions. When he was giving the test to claimant, claimant was very distractable and was not very motivated. Dr. Suiter does not believe claimant thought there was any value to completing the test. Claimant's effort was "less than optimal." Dr. Suiter noted, however, that he never knew a person with an IQ of 46 who would be able to get a driver's license, and he wouldn't have expected claimant to be able to do that. He believes if the IQ test were administered again, it could result in a higher score. But regardless, that would not change his opinion that claimant suffers from an intellectual disability.

Testimony of Claimant's Mother

49. Claimant's mother's testimony is summarized as follows: She noticed something was wrong with claimant as early as the third, fourth, or fifth grade. Claimant needed special education. When claimant was six years old, he stayed home and did not play with other children. Claimant would sit in the corner at home and claimant's teachers said he would sit in the corner. The school told her claimant had a learning disability. Claimant's mother did not understand why claimant would get an "F" in certain classes because she would study with claimant, and he knew the material. But, the next day, he would forget it all. Claimant was able to get a driver license but took the test nine times before he passed it. She does not let him drive or cook without her present and does not trust him to be on his own. Claimant would not be able to live on his own, pay bills, or keep track of finances. He takes three medications for schizophrenia, and she has to keep track of them.

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.)

2. 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.

3. The Department of Developmental Services (department) 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.)

4. 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.

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 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 [intellectual disability],[3] cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to [intellectual disability] or to require treatment

[3] 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 so been amended. Accordingly, the term "mental retardation" was replaced with "intellectual disability" to reflect the proper designation of the disability at issue.

similar to that required for individuals with [intellectual disability].

(b) The Developmental Disability shall:

(1) Originate before age eighteen;

(2) Be likely to continue indefinitely;

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

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

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

(2) Solely learning disabilities. A learning disability is a condition which manifests as a significant discrepancy between estimated cognitive potential and actual level of educational performance and which is not a result of generalized 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.

8. In a proceeding to determine whether an individual is eligible for regional center services, the burden of proof is on the claimant to establish by a preponderance of the evidence that he or she meets the diagnostic criteria for an eligible condition and that he or she is substantially disabled within the meaning of California Code of Regulations, title 22, section 54001. (Evid. Code, §§ 115; 500.)

Discussion

9. Based on the documents provided and testimony at hearing, a preponderance of the evidence did not establish that claimant is eligible for regional center services under the categories IDD or the fifth category.

EVALUATION OF EXPERT TESTIMONY

10. A person is qualified to testify as an expert if he/she has special knowledge, skill, experience, training, or education sufficient to qualify him as an expert on the subject to which his or her testimony relates. (*Chavez v. Glock, Inc.* (2012) 207 Cal.App.4th 1283, 1318-1319.) In resolving any conflict in the testimony of expert witnesses, the opinion of one expert must be weighed against that of another. In doing so, consideration should be given to the qualifications and believability of each witness, the reasons for each opinion, and the matter upon which it is based. California courts have repeatedly underscored that an expert's opinion is only as good as the facts and reason upon which that opinion is based. (*Kennemur v. State of California* (1982) 133 Cal.App.3d 907, 924.) Relying on certain portions of an expert's opinion is entirely appropriate. A trier of fact may "accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted." (*Stevens v. Parke Davis & Co.* (1973) 9 Cal. 3d 51, 67.) The trier of fact may also "reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected material." (*Id.* at pp. 67-68, quoting from *Neverov v. Caldwell* (1958) 161 Cal. App. 2d 762, 767.) The fact finder may also reject the testimony of a witness, even an expert, although it is not contradicted. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal. 3d 875, 890.) Additionally, the testimony of "one credible witness may constitute substantial evidence," including

a single expert witness. (*Kearl v. Board of Medical Quality Assurance* (1986) 189 Cal.App.3d 1040, 1052.)

There were three experts who testified in this case. Dr. Stacy, Dr. Kansagra, and Dr. Suiter. Reports were submitted by Dr. Singleton, Dr. Kirkish, and Dr. Waring. Dr. Stacy, Dr. Kansagra, Dr. Singleton, and Dr. Suiter were all well-qualified in their respective fields, and their credentials – as established by their curricula vitae, were impressive. However, more weight was given to the opinions of Dr. Stacy and Dr. Singleton, whose opinions were also supported by the testimony of Dr. Kansagra, as opposed to the reports and opinions of Dr. Kirkish, Dr. Waring, and Dr. Suiter, as discussed below.

Although Dr. Kirkish and Dr. Waring are qualified in their respective fields as evidenced by the fact that the superior court referred claimant to them for determination regarding trial competency, assessing someone for trial competency is different than assessing someone for regional center services under the Lanterman Act. Further, little is known regarding their qualifications and experience regarding specifically assessing an individual for regional center eligibility for IDD and under the fifth category, as well as whether they are familiar with the "substantial disability" requirement that must accompany a developmental disability for a person to be eligible for regional center services.

Accordingly, the reports and opinions of Dr. Kirkish and Dr. Waring were given some weight, but did not provide sufficient reasons to undermine or contradict Dr. Stacy and Dr. Singleton's opinions that claimant does not qualify for regional center services.

Similarly, Dr. Suiter was well experienced and well qualified to render an opinion, and did conduct some testing of claimant. However, even Dr. Suiter pointed out that claimant's IQ score of 46 was not consistent with someone who could obtain a driver license, and claimant appeared to lack motivation during the test. Although Dr. Suiter said he would still believe claimant is intellectually disabled even if his scores were higher on the IQ test, he appeared to base this more on the opinions of Dr. Waring and Dr. Kirkish that claimant has significant cognitive limitations. Further, the DSM-5-TR criteria specifically says that for individuals who are African Americans, IQ tests are not considered in reaching a diagnosis for IDD, so the result, which is unreliable, is of no significance. Finally, having significant cognitive limitations does not mean someone has IDD or qualifies for regional center services under the fifth category. A person may, in fact, have cognitive limitations as a result of other mental illnesses, such as schizophrenia. Finally, Dr. Suiter did not evaluate claimant for regional center eligibility; thus, Dr. Suiter's opinion was given some weight but not as much as that of Dr. Stacy, Dr. Singleton, and Dr. Kansagra.

ELIGIBILITY DETERMINATION

Dr. Stacy is a clinical psychologist and an expert in the diagnosis of the developmental disabilities at issue in this matter and specifically, in the determination of whether a person qualifies for regional center services. Dr. Stacy has spent in excess of three decades in a regional center working with, diagnosing, assessing, evaluating, and rendering diagnoses and conclusions specifically regarding eligibility for regional center services. Dr. Stacy agreed with Dr. Singleton that claimant does not qualify for regional center services. Dr. Stacy pointed out that claimant has a long history of schizophrenia, and the records did not show claimant suffered from IDD from an early age. Indeed, there was no mention of intellectual disability, and even though claimant

received special education services, his IEP indicated he was served under the categories of specific learning disorder and speech and language impairment. Claimant's cognitive abilities appeared to decline after high school, and consistent with his schizophrenia and the observations of Dr. Singleton during her evaluation, claimant's schizophrenia appears to be impacting his cognitive abilities.

Finally, although Dr. Kansagra does not assess individuals for regional center eligibility under the Lanterman Act, he is extremely well versed in diagnosing schizophrenia and familiar with the DSM-5-TR criteria for IDD. Dr. Kansagra reviewed the records in this case. Dr. Kansagra's overall diagnostic impression was that claimant has suffered from mental health problems from an early age and, over time, his schizophrenia progressed leading to the cognitive difficulties claimant has today. Dr. Kansagra explained that having cognitive difficulties, whether significant or not, is different than having IDD. Multiple studies have shown that the prognosis for children who have schizophrenia is poor, and they will have a lifetime of impairment in communication, cognition, thought processing, and even activities of daily living. Schizophrenia cannot be cured, but is treatable in most individuals with antipsychotic medication. In reviewing Dr. Singleton's report, claimant's presentation as described in that report is also consistent with schizophrenia. Dr. Kansagra's opinion regarding the effect schizophrenia has on a person's cognitive impairment supports Dr. Stacy and Dr. Singleton's conclusions that claimant does not have IDD.

IDD

11. In addition to the opinions of Dr. Stacy and Dr. Singleton, the educational records and medical records do not support a finding that claimant has or should have a diagnosis of IDD. Although the medical records mention "unspecified" IDD, that is not the same thing as an actual IDD diagnosis. Moreover, the medical records do not

provide any information where that diagnosis came from, if any testing was conducted, or if it was reported by claimant or claimant's mother. Further, although Dr. Waring and Dr. Kirkish believe claimant has cognitive limitations, the overwhelming evidence in the record suggests that claimant's cognitive impairments are the result of his schizophrenia. Based on the DSM-5-TR criteria, claimant more than meets that diagnosis, and nobody disputed at hearing that claimant has schizophrenia. Intellectual limitations due to interference with a learning disability or psychiatric disorder like schizophrenia is not the same thing is intellectual limitations due to a developmental disability. Accordingly, claimant does not meet the DSM-5-TR criteria for IDD and is not eligible for regional center services under IDD.

CLAIMANT DOES NOT HAVE A CONDITION CLOSELY RELATED TO IDD

12. Claimant does not qualify for services under the fifth category because a preponderance of the evidence did not establish that he suffers from a condition closely related to IDD.

13. In *Mason, supra,* 89 Cal.App.4th 1119, the appellate court held that "the fifth category condition must be very similar to [IDD], with many of the same, or close to the same, factors required in classifying a person [with IDD]." (*Id*. at p. 1129 [emphasis added].) Further, the presence of adaptive deficits alone, absent cognitive impairment attributable to a developmental disorder, is also not sufficient to establish that a person has a condition closely related to IDD. (*Samantha C., supra,* 185 Cal.App.4th at p. 1486 [IDD "includes both a cognitive element and an adaptive functioning element"].)

14. Schizophrenia is not a condition similar to IDD. The criteria for IDD and schizophrenia are markedly different in the DSM-5-TR. Schizophrenia is characterized

by hallucinations and delusions that interfere with a person's ability to interact functionally with the world; whereas IDD is a developmental disorder that limits a person's ability to interact and learn normally without supports. A person with IDD has global delays that present early in childhood; schizophrenia presents in middle school or beyond and has symptoms that cause a person's normal cognitive abilities to decline as time progresses. Neither schizophrenia or IDD can be cured; however, schizophrenia can be treated with medication by reducing or eliminating the symptoms that interfere with the person's ability to function. There is no medication to treat IDD; the person's global delays will not improve; they can only be managed. In other words, there are no "symptoms" of IDD that can be eliminated with medication that will allow the person to achieve a higher level of cognition.

15. The Lanterman Act and applicable regulations also specifically exclude conditions such as specific learning disability and solely psychiatric disorders, like schizophrenia, where there is impaired intellectual or social functioning that originates as a result of the psychiatric disorder or treatment given for such a disorder. Claimant's schizophrenia and learning disabilities, as well as his speech and language impairment, are all the reasons why claimant has limited cognitive functioning. There is no evidence in the record that supports a DSM-5-TR diagnosis of IDD, and none of the conditions claimant has are conditions similar to IDD.

CLAIMANT DOES NOT HAVE A CONDITION THAT REQUIRES TREATMENT SIMILAR TO A PERSON WITH AN INTELLECTUAL DISABILITY

16. Claimant also does not qualify for services under the fifth category because a preponderance of the evidence did not establish that he suffers from a condition that requires treatment similar to IDD.

17. Determining whether claimant's condition "requires treatment similar to that required" for persons with IDD is not simply an exercise in reviewing the broad array of services provided by regional centers (e.g., counseling, vocational training, living skills training, supervision) and finding merely that a person would benefit from those services. Indeed, the appellate court has been abundantly clear that "services" and "treatment" are two different things:

> That the Legislature intended the term "treatment" to have a different and narrower meaning than "services" is evident in the statutory scheme as a whole. The term "services and supports for persons with developmental disabilities" is broadly defined in subdivision (b) of section 4512 to include those services cited by the court in *Samantha C.*, e.g., cooking, public transportation, money management, and rehabilitative and vocational training, and many others as well. (§ 4512, subd. (b); *Samantha C., supra*, 185 Cal.App.4th at p. 1493, 112 Cal.Rptr.3d 415.) "Treatment" is listed as one of the services available under section 4512, subdivision (b), indicating that it is narrower in meaning and scope than "services and supports for persons with developmental disabilities."
>
> The term "treatment," as distinct from "services" also appears in section 4502, which accords persons with developmental disabilities "[a] right to treatment and habilitation services and supports in the least restrictive environment. Treatment and habilitation services and

> supports should foster the developmental potential of the person and be directed toward the achievement of the most independent, productive, and normal lives possible. Such services shall protect the personal liberty of the individual and shall be provided with the least restrictive conditions necessary to achieve the purposes of the treatment, services, or supports." (§ 4502, subd. (b)(1).) The Lanterman Act thus distinguishes between "treatment" and "services" as two different types of benefits available under the statute. (*Ronald F. v. Dept. of Developmental Services* (2017) 8 Cal.App.5th 84, 98-99.)

18. Thus, claimant must show that he requires "treatment" similar to a person with IDD as opposed to just that he would benefit from "services" that might benefit a person with an intellectual disability. The evidence does not support a finding that claimant "requires treatment" similar to a person with IDD. Rather, claimant requires treatment for his schizophrenia in the form of antipsychotic medications and medications to counteract the effects of the antipsychotic medications. Persons with IDD do not receive such medications; indeed, there are no medications to treat persons with IDD. A person with IDD receives certain supports to help them manage their cognitive limitations and overcome adaptive challenges attributable to that developmental disability. Claimant receives medication to control the symptoms of schizophrenia (i.e. delusions, hallucinations), and not to help him manage his cognitive limitations or overcome adaptive challenges. Instead, claimant's cognitive limitations and adaptive challenges are the direct result of his schizophrenia and medications used to treat that condition. Thus, claimant does not receive "treatment similar to" a person with IDD.

SUBSTANTIAL DISABILITY

19. The "substantial disability" standard is set forth in California Code of Regulations, title 22, section 54001. Eligibility for regional center services requires not only a qualifying condition but also a substantial disability. In order to meet this standard, it is not enough to show that claimant merely has general adaptive challenges, cannot live independently, or requires assistance to meet his full potential. California Code of Regulations, title 17, section 54001, subdivision (a)(1), requires that the qualifying condition result in "major impairment" of cognitive and/or social functioning so as to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential; and the existence of "significant functional limitations" in three or more areas of specified life activities, as appropriate to the person's age. (*Ibid.*)

Because claimant did not meet the criteria for IDD or the fifth category (i.e. does not have a condition similar to IDD or that requires treatment similar to a person with IDD), it is unnecessary to address whether he is substantially disabled in three or more areas of a major life activity because he is not eligible for regional center services unless he has both a qualifying condition and is substantially disabled as a result of that condition.

CONCLUSION

20. There is no doubt that claimant suffers from schizophrenia and has cognitive challenges. Neither the school records nor his medical records indicate he ever met the DSM-5-TR criteria for IDD prior to the age of 18, and claimant's learning disability and speech and language impairment during his developmental years also caused his academic challenges. Dr. Singleton explained it best:

> While [claimant] has significant impairments that impact his functioning, there is no indication that these deficits are due to Intellectual Developmental Disorder. There is no indication that during the developmental period, he had any deficits consistent with an intellectual disorder. He was diagnosed with specific learning disability when he was a child, in addition to delays in both receptive and expressive speech. In order to be diagnosed with learning disorder, a significant discrepancy between his ability and his achievement would have been necessary, as opposed to a condition where achievement is consistent with ability. Additionally, there is evidence to suggest that his functioning worsened over time as his psychiatric symptoms increased, which is more consistent with the presence of a psychotic spectrum illness such as Schizophrenia, as opposed to IDD or another developmental disorder.

21. A preponderance of the evidence did not show the onset of any developmental disorder prior to the age of 18, and the expert testimony of Dr. Stacy, Dr. Kansagra, and report of Dr. Singleton compel the conclusion that claimant is not eligible for regional center services under the category of IDD or the fifth category.

ORDER

Claimant's appeal is denied. Claimant is not eligible for regional center services due to autism, intellectual developmental disorder, cerebral palsy, epilepsy, a condition

similar to intellectual developmental disorder, or a condition that requires treatment similar to a person with intellectual developmental disorder.

DATE: March 6, 2024

KIMBERLY J. BELVEDERE
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Each party is bound by this decision. Either party may request a reconsideration pursuant to Welfare and Institutions Code section 4713, subdivision (b), within 15 days of receiving the decision, or appeal the decision to a court of competent jurisdiction within 180 days of receiving the final decision.