

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

RUBEN R.

Claimant,

vs.

CENTRAL VALLEY REGIONAL
CENTER,

Service Agency.

OAH No. 2012090489

DECISION

This matter was heard before Administrative Law Judge Jonathan Lew, State of California, Office of Administrative Hearings, on January 16, 2013, in Merced, California.

Shelley Celaya, Client Appeals Specialist, represented Central Valley Regional Center (CVRC or the service agency).

Claimant was represented by his mother, Johnnie R. Claimant did not appear.

Documentary evidence and testimony were received, the record was closed and the matter was submitted for decision on January 16, 2013.

ISSUES

1. Was the original determination that claimant was eligible for CVRC services on the basis of mental retardation clearly erroneous?
2. If so, does claimant have a condition that is closely related to mental retardation or that requires treatment similar to that required for individuals with mental retardation?

FACTUAL FINDINGS

PROCEDURAL HISTORY

1. CVRC issued a Notice of Proposed Action (NOPA) to claimant informing him he was no longer eligible to receive regional center services, effective September 22, 2012. The NOPA indicated that CVRC had determined claimant was no longer eligible because he did not have a developmental disability within the Lanterman Act eligibility criteria. (Welf. & Inst. Code, § 4512, subd. (a).) On August 31, 2012, a Fair Hearing Request was submitted on claimant's behalf.

CLAIMANT'S BACKGROUND

2. Claimant is a 17-year-old male who qualified for CVRC services based on a diagnosis of mental retardation. Claimant's mother has had custody of him since he was eight months old, and legally adopted him at age four years. Claimant continues to reside with her and three other siblings in their home.

3. Regarding his birth, claimant's birth mother tested positive for cocaine, opiates and amphetamines. Claimant was also reportedly exposed to syphilis, tuberculosis and hepatitis B. He was born at Lakewood Regional Medical Center in Lakewood, California. His birth weight was four pounds, fifteen ounces, and his Apgar scores were eight and nine. He was released into foster care a few days after his birth.

Developmentally, claimant's milestones were reportedly delayed. For example, he did not sit without support until age 10 months, and he walked at age 21 months. He first used words at 15 months, and he began putting words together at age two years.

4. On September 3, 1998, a psychological evaluation was completed for the San Gabriel/Pomona Regional Center by its staff psychologist, Debra Langenbacher, Ph.D. Claimant was age three years at that time. Based upon Dr. Langenbacher's

evaluation, claimant became eligible for regional center services with a diagnosis of mild mental retardation.

Claimant does not currently receive services or supports from CVRC. He does receive special education services through the Merced Union High School District, where he is currently a high school junior or senior.¹

CVRC'S POSITION

5. CVRC believes that the original determination by the San Gabriel/Pomona Regional Center that claimant was mentally retarded was clearly erroneous. CVRC contends that the initial psychological evaluation upon which claimant was made eligible for regional center services was based more on developmental markers than IQ test scores, and that such markers only suggested a diagnosis of mental retardation at that time. CVRC relies upon subsequent psychological testing which it believes demonstrates that claimant is not mentally retarded. CVRC also believes these same tests demonstrate that claimant is not eligible for CVRC services by reason of having a condition that is closely related to mental retardation or that requires treatment similar to that required for individuals with mental retardation. This condition is sometimes referred to as the "fifth category."

CVRC relies largely on two recent evaluations of claimant that were performed in 2012. One is the Psycho-educational Assessment Report dated May 29, 2012, by Merced

¹ A May 29, 2012 Merced Union High School District Psycho-educational Assessment Report indicated that he was then a high school junior. He had completed 125 credits of 150 attempted. He had passed the California High School Exit Exam in English/Language Arts, but had yet to pass the Mathematics portion. Reference was made in the report to his being in the "class of 2013."

Union High School District school psychologist Kelli Parreira, M.S., LEP. The other is a Psychological Eligibility Evaluation by the Sullivan Center for Children, dated October 18, 2012. It was prepared by Steve Castro, M.A., Psychological Assistant, and his supervisor, Treon Hinmon, Psy.D., a licensed psychologist.

CVRC's staff psychologist, Carol Sharp, Ph.D., testified at hearing. She reviewed these two reports, in addition to other psychological records and evaluations predating the two reports. Dr. Sharp did not otherwise prepare a separate comprehensive report. Dr. Sharp testified to the reasoning behind CVRC's determination that the initial eligibility finding was either unsupported or clearly erroneous. In the following findings and discussion, the main points gleaned from Dr. Sharp's testimony in support of non-eligibility will be summarized, along with certain other matters raised in CVRC's closing argument. CVRC has the burden of establishing that the initial determination of eligibility was clearly erroneous. Claimant's response and a broader discussion of the issues will follow.

INITIAL ASSESSMENTS

6. Deborah Langenbacher, Ph.D. Claimant was age three years at the time of the psychological evaluation performed by Dr. Langenbacher, on September 3, 1998. Her assessment process included a parent interview, play observation, the Bayley Scale of Infant Development – II (BSID-II), and the Vineland Adaptive behavior Scale (VABS). Dr. Langenbacher determined that claimant's developmental milestones were delayed in several areas. Claimant presented with significant delays in cognitive ability, with concurrent delays in communication, self-care, motor skills and socialization. Regarding cognitive skills, Dr. Langenbacher made the following observations:

For this evaluation, Ruben demonstrated overall mental abilities at the 25 month level, representing a significant

delay. In non-verbal tasks he stacked seven blocks, but was not successful on any other block tasks. Ruben completed a nine-piece form-board using a trial and error method. He showed problem solving skills in placing beads in a tube. Ruben matched pictures, and matched three colors. Ruben scribbled with a crayon on paper, but was unable to copy lines or a circle. Ruben could benefit from enrollment in a special education preschool program in order to develop his school readiness skills and to maximize his learning potential.

7. Dr. Langenbacher's diagnostic impression simply noted: "This pattern of delays suggests a diagnosis of mild mental retardation (317.00)." She made specific recommendations focused on his school readiness skills, self-care skills and parent education so that his mother would know about special education services and better advocate for his educational needs. Dr. Langenbacher further recommended that claimant be re-evaluated in kindergarten to monitor his developmental progress and to aid in educational planning.

8. Dr. Sharp reviewed Dr. Langenbacher's evaluation report. Dr. Sharp opined that it relied largely on developmental markers. No IQ test instrument was administered. She noted that Dr. Langenbacher's use of the term "suggests" in making her diagnosis was significant, as was Dr. Sharp's recommendation that claimant be further "re-evaluated" when he was in kindergarten. Dr. Sharp explained that one's IQ generally stabilizes at ages eight to nine years.

9. Frank J. Trankina, Ph.D. Claimant was also assessed two months prior to Dr. Langenbacher's evaluation. On June 29, 1998, he was seen by Frank J. Trankina, Ph.D. for purposes of providing updated determination of level of functioning and eligibility for regional center services. Claimant had been receiving Early Intervention services from a

regional center. Dr. Trankina administered the following tests as part of his psychological evaluation and assessment: Peabody Picture Vocabulary Test; Mecham Verbal Language Development Scale; Beery Developmental Test of Visual Motor Integration; Stanford-binet Intelligence Scale (4th Edition); and the Vineland Adaptive Behavior Scales.

10. On the Stanford-Binet Intelligence Scales, claimant earned a Verbal Reasoning scaled score of 93, a Visual Reasoning scaled score of 100, and composite IQ Estimate of 96, all falling within the average range. On the Vineland assessment, claimant's scores placed him at the age level of one year, eleven months in Communication; one year, eight months in both Daily Living Skills and Socialization; and one year, four months in Motor Skills. Dr. Trankina prepared a report of his June 29, 1998 psychological evaluation. He interpreted the above test results, in part, as follows:

INTELLECTUAL FUNCTIONING. Ruben was able to respond well to the Stanford-Binet Intelligence Scale well. For verbal reasoning he received a scaled score of 93, in the average range. He named 6 of the vocabulary items, including using words such as rabbit, clock, and scissors. Ruben also completed comprehension items. For visual reasoning Ruben received a standard score of 100, which is also in the average range. He did particularly well for pattern analysis items. The composite score and IQ estimate is 96 and in the average range. Overall, Ruben has been making very considerable progress during the past year.

11. Dr. Trankina's diagnostic impression found that claimant's intellectual functioning was "average." He characterized claimant's adaptive functioning as: "fairly significant delays as discussed; some attention/activity difficulty."

12. Dr. Sharp noted that there was no reference to Dr. Trankina's psychological evaluation in the initial assessments by either Dr. Langenbacher, or the San Gabriel/Pomona Regional Center. Whether they were aware of Dr. Trankina's report is not important. What is relevant is that at the time claimant was initially assessed for regional center eligibility, there was mixed evidence, after psychological evaluation, on whether he was mentally retarded at that time. Dr. Langenbacher made a "suggested" diagnosis. Dr. Trankina determined, after psychometric testing, that claimant's intellectual functioning was average.

SUBSEQUENT ASSESSMENTS

13. Preliminarily, it is noted that the Diagnostic and Statistical Manual of Mental Disorders Fourth Edition Text Revision (DSM-IV-TR), discusses mental retardation in pertinent part as follows:

The essential feature of Mental Retardation is significantly subaverage general intellectual functioning (Criterion A) that is accompanied by significant limitations in adaptive functioning in at least two of the following skill areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety (Criterion B). The onset must occur before age 18 years (Criterion C). Mental Retardation has many different etiologies and may be seen as a final common pathway of various pathological

processes that affect the functioning of the central nervous system. "*General intellectual functioning*" is defined by the intelligence quotient (IQ or IQ-equivalent) obtained by assessment with one or more of the standardized, individually administered intelligence tests (e.g., Wechsler Intelligence Scales for Children, 3rd Edition; Stanford-Binet, 4th Edition; Kaufman Assessment Battery for Children). Significantly subaverage intellectual functioning is defined as an IQ of about 70 or below (approximately 2 standard deviations below the mean). It should be noted that there is a measurement of error of approximately 5 points in assessing IQ, although this may vary from instrument to instrument (e.g., a Wechsler IQ of 70 is considered to represent a range of 65-75). Thus, it is possible to diagnose Mental Retardation in individuals with IQs between 70 and 75 who exhibit significant deficits in adaptive behavior. Conversely, Mental Retardation would not be diagnosed in an individual with an IQ lower than 70 if there are no significant deficits or impairments in adaptive functioning.

14. Psychological assessments for claimant were performed on May 9, 2000, and on April 17, 2009. These assessment were not offered at hearing, but were briefly summarized in Dr. Hinmon's October 18, 2012 report. Regarding the May 9, 2000 assessment, Dr. Hinmon noted that it was completed for the Jurupa Unified School District (JUSD) by Lana Clauder, M.A., M.Ed., a district psychologist. She administered the Wechsler Preschool and Primary Scale of Intelligence, Revised. Claimant received all standard scores in the mildly impaired range. That particular report concluded: "Results

of this assessment support the previous diagnosis of Mental Retardation. Significant delays exist in cognitive and adaptive skills which have been present since early development and adversely affect educational performance. Academic delays may be attributed to low cognitive skills."

15. A second psychological assessment was completed for the JUSD on April 17, 2009, by Mina Harake, M.A., M.S., PPS, a school psychologist. Claimant was age 13 at that time. Results of tests administered at that time were summarized by Dr. Hinmon as follows:

On the Comprehensive Test of Nonverbal Intelligence (CTONI), Ruben received a standard score of 83, which fell in the low average range. On the Wide Range Test of Memory and Learning: Second Edition (WRTML-II), Ruben earned a Verbal Memory standard score of 100, a Visual Memory standard score of 88, and an Attention/Concentration standard score of 73, falling in the average, low average, and borderline ranges respectfully [sic]. On the VMI, Ruben earned a standard score of 63, falling within the mildly impaired range. On the Woodcock-Johnson: Third Edition test of Achievement (WJ-III), Ruben earned standard scores ranging from the mildly impaired to average ranges.

RECENT ASSESSMENTS

16. May 29, 2012 Psycho-educational Assessment Report. A triennial psycho-educational evaluation was performed on May 29, 2012, to evaluate claimant's eligibility for continued special education services through the Merced Union High School District (MUSD). School psychologist Kelli Perreira, M.S., LEP, administered the following

assessment tools: Kaufman Brief Intelligence Test – Second Edition (KBIT-2); Wide Range Assessment of Memory and Learning (WRAML-2); Test of Auditory Processing Skills – Third Edition (TAPS-3); Bender Gestalt II; Behavior Assessment System for Children (BASC-2); Comprehensive Receptive and Expressive Vocabulary Test – Second Edition (CREVT-2); and Wechsler Individual Achievement Test, Second Edition (WIAT-II).

Regarding claimant's general intelligence and ability, the KBIT-2 results were summarized as follows:

Ruben's overall performance fell within the Average range for his age (SS=93), a somewhat stronger representation than provided in previous assessment reports. The chances that the range of scores between 86 and 100 contains his true score are 90 out of 100. Ruben demonstrated Average level verbal (SS=93) and nonverbal ability (SS=94). Thus, he appeared equally adept at expressing his intelligence verbally in response to direct questions posed by the examiner and manipulatively in response to nonverbal materials such as pictures and puzzles.

17. The overall evaluation of claimant's current intellectual functioning was that he was in the average range. His memory skills (WRAML-2) were found to lie within the Borderline range with Low Average level attention/concentration skills. His auditory (TAPS-3) cohesion and phonological skills fell in the Low Average range. He demonstrated Low Average range visual-motor abilities (CREVT-2) with receptive vocabulary being somewhat better developed than his expressive skills. His performance on academic testing (WIAT-II) ranged from Average to Extremely Low with his mathematical skills noted to be a significant area of deficit.

Based upon the May 29, 2012 assessment, claimant was determined to qualify for special education services under the criterion "Other Health Impairment" (OHI). This criterion is designated for individuals whose educational performance is adversely affected by a suspected or diagnosed attention deficit disorder or attention deficit hyperactivity disorder (ADHD). Claimant had been diagnosed with ADHD. Specific instructional recommendations were made on the basis of claimant having a learning disability, and not mental retardation. Notably, the assessment indicated: "Current assessment results indicate that Ruben evidences a significant discrepancy between his overall thinking and reasoning skills and his academic achievement in the areas of math computation and reasoning skills due to processing deficits in attention and memory skills."

18. October 18, 2012 Psychological Evaluation. Claimant was evaluated at the request of CVRC by Treon Hinmon, Psy.D. Claimant was age 17, two months at that time. Assessment tests administered included the Wechsler Adult Intelligence Scale, Fourth Edition (WAIS-IV) and the Vineland Adaptive Behavior Scales, Second Edition (Vineland-II). Dr. Hinmon reviewed all the above referenced psychological evaluations and other assessments performed on claimant prior to October 18, 2012.

The WAIS-IV was administered to test claimant's overall intellectual functioning. Claimant received a Full Scale IQ of 77, placing him in the borderline range of intellectual functioning. On the WAIS-IV, claimant received the following scores:

Index	Standard Score	Subtest	Standard Score
Verbal Comprehension	95		
		Similarities	10
		Vocabulary	9
		Information	8
Perceptual Reasoning	69		
		Block Design	5
		Visual Puzzles	6
		Matrix Reasoning	3
Working Memory	77		
		Digit Span	6
		Arithmetic	6
Processing Speed	81		
		Coding	8
		Symbol Search	5
Full Scale IQ	77		

19. Dr. Hinmon noted scatter² between his composite scores, with his Verbal Comprehension (95) falling within the average range, his Perceptual Reasoning (69) falling at the high end of the mildly impaired range, his Working Memory (77) falling

² The DSM-IV-TR discusses scatter in the subtest scores and discrepancies across verbal and performance IQ scores as follows: "When there is significant scatter in the subtest scores, the profile of strengths and weaknesses, rather than the mathematically derived full-scale IQ, will more accurately reflect the person's learning abilities. When there is a marked discrepancy across verbal and performance scores, averaging to obtain a full-scale IQ score can be misleading."

within the borderline range, and his Processing Speed (81) falling within the low average range. Dr. Hinmon noted that this current assessment was consistent with claimant's most recent previous testing, presumably the May 29, 2012 assessment for MUSD. He opined that the deficits measured in current testing "might be the result of inattention and/or fatigue, as his other skills suggest overall low average ability."

20. The Vineland-II was administered to assess claimant's adaptive behaviors. It relied in part on information gathered from claimant's mother, who Dr. Hinmon determined to be an accurate reporter of claimant's capacity to function at home and in the community. The following scores were measured on the Vineland-II:

Subdomain/Subtest	Standard Score	V-Scale Score
Communication	91	
Receptive		15
Expressive		16
Written		11
Daily Living Skills	83	
Personal		14
Domestics		12
Community		11
Socialization	77	
Interpersonal Relationships		10
Play and Leisure Time		13
Adaptive Behavior Composite	80	

21. Claimant's Adaptive Behavior Composite score (80) placed his overall adaptive functioning at the cusp between borderline and low average ranges. The scores evidenced scatter, with his Communication (91) skills falling in the average range,

his Daily Living Skills (83) falling in the low average range, and his Socialization (77) skills falling in the borderline range.

After consideration of claimant's current level of functioning and the two tests administered, Dr. Hinmon opined that claimant did not meet diagnostic criteria for mental retardation. He noted: "Given the history of truancy and other impulsive behaviors, Ruben's deficits might better be accounted for by Attention-Deficit/Hyperactivity Disorder and/or Conduct Disorder. Evaluation and follow-up by a qualified mental health provider is recommended to the family."

ACADEMIC PERFORMANCE

22. CVRC has pointed to claimant's academic performance and school records from the Merced Union High School District in support of its contention that he has a learning disability, and not mental retardation. Claimant has taken and passed the California High School Exit Exam in English/Language Arts. Although he has yet to pass the Mathematics section, Dr. Sharp noted that his previous score (345) approached passing. His 2011 state standardized scores were within the Proficient range for World History and Life Science; and Basic in Biology. Claimant's academic performance and school behaviors have otherwise been poor. In May 2012, his grade point average was 1.85. He had 25 disciplinary referrals for excessive tardiness (12), truancy/excessive absences (7), possession of drugs (1), failure to serve (4), and leaving class without permission (1). He was not making adequate progress toward the 220 credits needed for high school graduation.

23. Dr. Sharp opined that claimant's educational history and academic performance is not consistent with a diagnosis of mild mental retardation. The DSM-IV-TR discusses the elements of mild mental retardation in pertinent part as follows: "As a group, people with this level of Mental Retardation typically develop social and communication skills during the preschool years (ages 0 – 5 years), have minimal

impairment in sensorimotor areas, and often are not distinguishable from children without Mental Retardation until a later age. By their late teens, they can acquire academic skills up to approximately the sixth-grade level...."

In this case, claimant took and passed the English/Language Arts section of the high school exit exam, placing him well above a sixth grade level. He tested in 2011 at a Proficient level in World History and Life Sciences. Such performance is inconsistent with a diagnosis of mild mental retardation.

DISCUSSION

24. The above Factual Findings constitute the primary reasons and information relied upon by CVRC when it made its determination to discontinue regional center services for claimant. Other matters were also raised by the parties, some of which will be briefly summarized here.

Claimant does not currently receive services from CVRC. Claimant's mother believes he will benefit from living skills classes and instruction on certain activities of daily living. She noted that he cannot manage a bank account or take a bus. He cannot ride a bike and he does not drive. He cannot wash his clothes. He is able to ready himself in the morning for school, but motivation is an issue.

Claimant has indicated an interest in attending college in order to pursue a career in the area of video game testing or singing. He enjoys going to movies, working on hobbies and spending time with friends. His mother is concerned with his behavior outside of school, including his experimentation with illegal drugs. Claimant has run away from home several times, and has not returned for weeks or months at a time. When he is away, he will not phone or visit his mother. He has responded to attempts to reach him on Facebook.

25. As earlier noted, the appropriate inquiry in this case requires that any change in claimant's status as a regional center client be supported by evidence that the

original determination of eligibility was “clearly erroneous.” CVRC bears this heavier burden. It has been satisfied in this case. Recent psychological testing in 2012 demonstrated that claimant does not have mental retardation. As noted in the most recent evaluation reports, and as testified to by Dr. Sharp, his observed deficits are better explained by other diagnoses including ADHD, conduct disorder, learning disabilities, anxiety/depression or drug use. Dr. Hinmon opined that claimant may best be served by referral for psychiatric evaluation in order to explore psychopharmacological interventions.

26. Fifth Category Eligibility – Condition Closely Related to Mental Retardation. Consideration was also given to whether claimant should remain eligible for regional center services based upon his condition being closely related to mental retardation, the primary focus being upon his impairments in adaptive functioning. Adaptive functioning refers to how effectively individuals cope with common life demands and how well they meet the standards of personal independence expected of someone in their particular age group, sociocultural background, and community setting.

The well-documented record demonstrated that claimant is not effectively coping with common life demands and that he does not meet standards of personal independence expected of a young man in his community. He was recently administered the Vineland Adaptive Behavior Scales – Second Edition (Vineland-II). The Vineland-II is a standardized interview for quantifying a parent’s observations and information about their child. It provides a comprehensive assessment of adaptive behavior and a systematic basis for preparing individual educational, rehabilitative, or treatment programs. Dr. Hinmon noted that claimant’s overall adaptive functioning was “at the cusp between the borderline and low average ranges.

27. CVRC does not dispute that claimant has deficits in adaptive functioning. Rather, CVRC noted that such deficits may better be explained by a number of other causes, and that such deficits in adaptive behavior may occur in the absence of significant deficits in general cognitive ability. This appears to be the case here. Claimant's other diagnoses have included ADHD, Anxiety/Depression and conduct disorder. Such other factors have no relationship to deficits in his general cognitive ability.

28. Fifth Category Eligibility – Condition Requiring Similar Treatment. Fifth category eligibility may also be based upon a condition requiring treatment similar to that required for individuals with mental retardation. Services for those who are mentally retarded are different in their orientation and approach than for those with ADHD or other learning disorders. Training for individuals with mental retardation may break down skills into discrete components, and then use instruction based upon repetition and reinforcement over a period of time. This is a very different process than that used with students with learning disabilities such as ADHD. Dr. Sharp testified persuasively that claimant does not meet Fifth Category Criteria for regional center eligibility.

For all the above reasons, claimant is not eligible to receive regional center services and supports by reason of a diagnosis of mental retardation; or a condition found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation. His cognitive assessments do not fall within the range for mental retardation, or for one with a condition similar to mental retardation. Claimant has significant deficits in adaptive functioning. However, these deficits likely result from conditions unrelated to deficits in his general cognitive ability. As such, they are not developmental disabilities as defined under the Lanterman Act and claimant does not qualify for continued services through CVRC.

LEGAL CONCLUSIONS

1. Under the Lanterman Developmental Disabilities Services Act, the State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge. (Welf. & Inst. Code, § 4501.) As defined in the Act a developmental disability is a disability that originates before age 18, that continues or is expected to continue indefinitely and that constitutes a substantial disability for the individual. Developmental disabilities include mental retardation, cerebral palsy, epilepsy, autism, and what is commonly known as the "fifth category" – a disabling condition found to be closely related to mental retardation or requiring treatment similar to that required for mentally retarded individuals. (Welf. & Inst. Code, § 4512, subd. (a).)

Handicapping conditions that consist solely of psychiatric disorders, learning disabilities or physical conditions do not qualify as developmental disabilities under the Lanterman Act. (Cal. Code Regs., tit. 17, § 54000, subd. (c).)

2. "Substantial handicap" is defined by regulations to mean "a condition which results in major impairment of cognitive and/or social functioning." (Cal. Code Regs., tit. 17, § 54001, subd. (a).) Because an individual's cognitive and/or social functioning is multifaceted, regulations provide that the existence of a major impairment shall be determined through an assessment that addresses aspects of functioning including, but not limited to: 1) communication skills, 2) learning, 3) self-care, 4) mobility, 5) self-direction, 6) capacity for independent living and 7) economic self-sufficiency. (Cal. Code Regs., tit. 17, § 54001, subd. (b).)

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

An individual who is determined by any regional center to have a developmental disability shall remain eligible for services from regional centers unless a regional center,

following a comprehensive reassessment, concludes that the original determination that the individual has a developmental disability is clearly erroneous.

4. The San Gabriel/Pomona Regional center determined in 1998 that claimant has a developmental disability (mental retardation) that originated before age 18 and that continues, and that constitutes a substantial disability for him. CVRC now believes this earlier determination was clearly erroneous.

5. The matters set forth in Findings 6 through 28 have been considered. CVRC has established that the original determination that claimant has a developmental disability is clearly erroneous. He does not have mental retardation. It was further established that claimant does not have a disabling condition closely related to mental retardation or requiring treatment similar to that required for mentally retarded individuals.

6. For all the above reasons, claimant is not eligible for continued services through Central Valley Regional Center.

ORDER

Claimant's appeal from Central Valley Regional Center's denial of eligibility for continued services is DENIED. Claimant is not eligible for continued regional center services under the Lanterman Act. The determination by Central Valley Regional Center to deny continued eligibility is confirmed.

DATED: January 22, 2013

JONATHAN LEW

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within ninety (90) days of receipt of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)