

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

OAH No. 2014070866

CLAIMANT,

and

INLAND REGIONAL CENTER,

Service Agency.

DECISION

Susan J. Boyle, Administrative Law Judge, Office of Administrative Hearings, State of California heard this matter on October 27, 2014, in San Bernardino, California.

Leigh-Ann Pierce, Consumer Services Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

Claimant's father represented claimant, who was not present during the hearing.

The matter was submitted on October 27, 2014.

ISSUE

Is claimant eligible for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code § 4400 et seq.) based on mental retardation,<sup>1</sup> or a disabling condition closely related to mental

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<sup>1</sup> The Lanterman Act requires regional centers to provide services for individuals who have a developmental disability, including "mental retardation." The term "mental retardation" was recently replaced in the American Psychiatric Association's *Diagnostic*

retardation or that requires treatment similar to that required for individuals with mental retardation?<sup>2</sup>

## FACTUAL FINDINGS

### JURISDICTIONAL MATTERS

1. Claimant is a 23-year-old woman. She received services from IRC under the California Early Intervention Services Act (Govt. Code ¶ 95000 et. seq.) until she turned three years old.

2. In 2014, claimant again sought regional center services based on her claim that she had mild mental retardation and/or was eligible for services under the Fifth Category.

3. By letter dated June 25, 2014, IRC advised claimant that it reviewed her records and determined that she did not have a developmental disability as defined by the Lanterman Act and was not eligible for regional center services.

4. On July 11, 2014, claimant's father signed a Fair Hearing Request appealing IRC's decision and requesting a hearing.

5. On July 25, 2014, the parties met in an informal meeting to attempt to resolve their differences. They were unable to reach an agreement and this hearing ensued.

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*and Statistical Manual of Mental Disorders, Fifth Edition, (DSM-V)*, with the term "intellectual disability." However, in keeping with the language of the Lanterman Act, the term mental retardation will be used in this decision.

<sup>2</sup> A disabling condition closely related to mental retardation or that requires similar treatment is referred to as the "Fifth Category."

## CLAIMANT'S RECORDS

### March 2001 Psychological Assessment Report

6. In February, 2001, when claimant was nine years and nine months old and in the third grade, School Psychologist Cathi O'Connor conducted an assessment of claimant "for a required triennial reevaluation to determine continued eligibility for Special Education and most appropriate educational placement." She administered four tests: Wechsler Intelligence Scale for Children – III (WISC-III); Wechsler Individual Achievement Test (WIAT); Scales of Independent Behavior – Revised (SIB-r); and Developmental Test of Visual-Motor Integration (VMI). Her evaluation and conclusions were contained in a report dated March 5, 2001.

7. Ms. O'Connor noted that claimant lived at home with her natural parents and two brothers. Her older brother received special education services. Claimant was reported to have been born three weeks prematurely and suffered complications including Group B Strep, pneumonia and meningitis. Claimant's mother developed an infection during pregnancy that required she take antibiotics. "Developmental milestones [were] all reported as delayed." No major medical problems were noted.

### RESULTS FROM SCALES OF ADAPTIVE BEHAVIOR - REVISED

8. On February 1, 2001, Ms. O'Conner administered the SIB-r. Claimant's parents provided the responses to the questions in the assessment. As relates to claimant's adaptive and maladaptive behavior, Ms. O'Conner concluded:

[Claimant's] Broad Independence, an overall measure of adaptive behavior, is comparable to that of the average individual at age 9 years 9 months. Her functional independence is age-appropriate.

When presented with age-level tasks, [claimant's] personal living skills are age-appropriate to advanced. Her motor skills, social interactions, communication skills, and community living skills are age-appropriate.

[Claimant] has limitations in one adaptive skill area: home/community orientation.

[Claimant's] greatest strengths include her personal living skills. Her lowest scores include her community living skills.

Overall, [claimant] demonstrates normal problem behaviors.

[Claimant] will need intermittent support, about the same as others her age.

#### RESULTS FROM WECHSLER INTELLIGENCE SCALE FOR CHILDREN – III

9. Ms. O'Connor administered the WISC-III. Claimant's IQ was "not reported in compliance with court injunction" but scores obtained in the WISC-III subtests were reported. Ms. O'Connor wrote that claimant's "general cognitive ability is within the intellectually deficient range of intellectual functioning . . . ," and that her "verbal and nonverbal reasoning abilities also are in the intellectually deficient range." Ms. O'Connor found that claimant "performed significantly better on the Picture Completion subtest than on the nonverbal reasoning tasks." She also determined that claimant's performance on the Similarities subtest and the Information and Comprehension subtests differed significantly. Although claimant performed best in the Similarities subtest, her scores were below most children her age, and her scores in the Information and Comprehension subtests were far below most children her age.

#### RESULTS FROM WECHSLER INDIVIDUAL ACHIEVEMENT TEST

10. A Resource Specialist administered the WIAT to claimant. Claimant "scored in the low average range in overall reading skills," in the well below average range in overall math skills, and in the below average range in writing skills. Claimant's scores in basic reading and mathematical reasoning "differ[ed] significantly, suggesting that these are the areas of most pronounced strength and weakness . . . ." It was determined that claimant's age equivalent scores in math and reading ranged from under 5 to 8.3 years old. Her grade equivalent scores ranged from below kindergarten to 2.6. Her average age equivalent was 7.2

#### RESULTS FROM DEVELOPMENTAL TEST OF VISUAL-MOTOR INTEGRATION

11. Claimant scored in the below average range in the Visual Motor Integration test.

#### March 2001 Social Assessment By Regional Center of Orange County

12. On March 29, 2001, Timothy Day, M.A., Service Coordinator, Intake and Assessment, Regional Center of Orange County (RCOC), performed a social assessment of claimant by interviewing claimant and her parents. In his report he stated incorrectly that Ms. O'Connor diagnosed claimant with mental retardation. Mr. Day determined that claimant did not have delayed motor skills, that she required prompts to complete simple chores, could dress herself independently, and was a social girl who can have tantrums particularly with relation to homework. Claimant was able to carry on a conversation although her vocabulary was restricted. Mr. Day recommended that the RCOC obtain claimant's records and that she be referred to health and psychological services to determine whether she was eligible for regional center services.

### June 2001 RCOC Eligibility Review

13. On June 6, 2001, an Eligibility Team Conference consisting of various RCOC professionals met, reviewed claimant's records, and determined that claimant was not eligible for regional center services. A psychologist team member noted that claimant was receiving therapy through Orange County Mental Health. She also noted that claimant's academics are "in the low average range - math is borderline" and that she was in resource classes for three periods a day when in school. The psychologist determined that claimant "does not meet mental retardation criteria and is not autistic."

A nurse member of the Eligibility Team wrote that claimant was not medically eligible for regional center services; she did not have cerebral palsy, nor did she have a history of seizures. A physician member agreed that claimant was not medically eligible.

### August 2001 Psycho-Educational Report

14. RCOC referred claimant to Robert Patterson, Psy.D. for a psycho-educational assessment. On August 29, 2001, Dr. Patterson conducted the assessment. Dr. Patterson reviewed claimant's early medical history and her social and daily living skills as summarized in the reports discussed above. He noted that claimant had "an IEP [Individual Education Plan] for having significantly below average intellectual functioning and adaptive behavior that affects her educational performance; although she is being serviced in the Resource Specialist Program only." He wrote that claimant was retained in kindergarten because of speech delays.

Claimant's father reported to Dr. Patterson that claimant had problems with the core academic classes but liked school and did not have difficulty getting along with her classmates. She watched television for long periods but had difficulty focusing on homework. He was concerned that claimant was falling behind in her schoolwork.

Dr. Patterson administered eight psychological assessments: Kaufman Assessment Battery for Children (KABC); Wide Range Intelligence Test (WRIT); Test of Non-Verbal Intelligence – 3 (TONI-3); Peabody Picture Vocabulary test – III B (PPVT-III B); Peabody Individual Achievement Test – Revised (PIAT-R); Conners’ Parent Rating Scale – Revised: Long Form; Personality Inventory for Children (PIC); and Adaptive Behavior Inventory (ABI).

Claimant obtained “widely divergent scores” in the WRIT. Dr. Patterson, therefore, administered the TONI-3 in which she obtained a standard score in the mid to low average range. In other tests, claimant’s scores varied from the 5th to the 63rd percentile, which placed her in the borderline to low average to average range.

Dr. Patterson concluded:

[Claimant] shows variable Cognitive Processing but generally appears to be performing in the low average range but with some specific areas of difficulty, usually language based. She also has some difficulty with Visual Closure and with some components of Spatial Memory.

On both Age and Grade Based norms, she is generally performing in the low average range, although she has a significant difficulty with mathematics. She has a Visual-Motor Integration difficulty, but in Language Functioning for receptive language she is performing in the mid average range. . . .

In terms of Social-Emotional Functioning she does not appear to be showing significant difficulties except having

problems with general adjustment and with psychological processing.

#### November 2001 RCOC Eligibility Review

15. On November 14, 2001, after reviewing Dr. Patterson's report, the RCOC Eligibility Team again met and determined that claimant did not meet the criteria for regional center services. The RCOC specifically found that she was not mentally retarded, she did not have autism, epilepsy or cerebral palsy, and she did not qualify under the Fifth Category.

#### Assessments from 2004 to 2010

16. School/educational records between 2001 and 2011 were not offered into evidence at the hearing; however, the results of educational assessments performed during those years were summarized in later reports. The following information was obtained from the later reports:

In March 2004, when claimant was 12 years and 9 months old, she was administered the WISC – IV; claimant obtained a full scale IQ score of 66 and her age equivalent ranged from below 6 years to ten years and ten months. Her percentile ranks ranged from 1 to 37.

In March 2007, when claimant was in the 9th grade, the Woodcock-Johnson was administered. Her grade equivalent ranged from 2.0 to 5.2. In 2010, when she was in 12th grade, her grade equivalent on the Woodcock Johnson ranged from 4.5 to 7.6.

#### February 2011 IEP

17. In 2011, when she was almost 20 years old and preparing to graduate from high school, the Riverside County SELPA developed an Individual Education



Program (IEP) for claimant. The IEP noted that claimant entered the public school special education program in February 1995, when she was 4 years old.

The IEP provided that claimant was eligible for special education services based on a primary disability of speech or language impairment (SLI) and a secondary disability of specific learning disability (SLD). Comments in the IEP included that claimant "reads well and doesn't mind using her language skills in the right situations." Her functional reading level was determined to be 8th grade. She had more difficulty with math. The notes indicated that claimant's parents wanted her to take classes at the community college after high school. With regard to adaptive living skills, claimant was described as being "quite independent in the community and can find things in almost any store. She has been gaining in her cooking skills and can read a recipe and follow most steps."

#### March 2012 Multidisciplinary Team Re-evaluation Report

18. On March 12, 2012, the Multidisciplinary Team of Temecula Valley Unified School District met to re-evaluate claimant and determine whether she should be re-identified as a student with Multiple Disabilities<sup>3</sup> under the Individuals with Disabilities Education Act (IDEA). Her IEP team recommended that she be identified as a student with Multiple Disabilities due to a combination of SLI, SLD and her health condition of

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<sup>3</sup> A Student with Multiple Disabilities is one who has "concomitant impairments . . . the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. . . ." (Title 34 C.F.R., sec. 300.8, subd. (c)(7).) Multiple Disabilities students can have the most severe cognitive impairments but can also be of average or above average intelligence.

Charcot – Marie – Tooth disease (CMT).<sup>4</sup> In a report dated March 16, 2012, the team identified claimant as continuing “to demonstrate eligibility for special education services under the category of Multiple Disabilities.”

#### May 2012 IEP

19. On May 15, 2012, an IEP team met to review claimant’s eligibility for special education services. The 2012 IEP provided that claimant was eligible for special education services under the primary category of Multiple Disabilities and a secondary category of SLI. The IEP noted that claimant was enrolled in a program called “Adult Bridge.” This program provided services to help students transition to adult living without receiving school supportive services. The comments portion of the 2012 IEP contained the same remarks as those in the 2011 IEP. Claimant signed the IEP.

#### October 2012 Social Assessment By IRC

20. In July 2012, claimant requested services from IRC. She indicated that she had new information that would establish that she was eligible for services based upon an intellectual disability or under the Fifth Category. In a social assessment report dated October 19, 2012, an IRC intake counselor reviewed claimant’s medical, academic, and social records. Claimant and her parents discussed the type of services they sought from IRC, including supported living services and vocational and mobility training. Claimant was to return to IRC for a psychological assessment.

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<sup>4</sup> CMT is a group of conditions related to muscular dystrophy that affect the nerves in a person’s arms and legs and cause muscle weakness and lessening of sensation. Onset of symptoms is usually in adolescence or early adulthood.

## December 2012 Psychological Assessment By IRC

21. On December 27, 2012, when claimant was almost 22 years old, a psychological assessment was performed by Michelle Lindholm, Ph.D., a psychologist with IRC, to determine claimant's eligibility for IRC services. Dr. Lindholm reviewed claimant's file and administered the SIB – r and Street Survival Skills Questionnaire (SSSQ). She interviewed claimant and her mother.

Dr. Lindholm noted that claimant had recently moved into an apartment with her 23 year old brother, who also received services from IRC. Claimant's mother stated that although claimant had not been diagnosed with CMT until she was in high school, she (the mother) observed gross motor and speech deficits in earlier years that she now believes were related to CMT. Claimant's mother reported that claimant had hand tremors, and her mother was concerned that the tremors made claimant socially anxious and caused her to lack confidence. She also expressed a concern that the CMT affected claimant's walking and that, because of the hand tremors, claimant may not be safe in the kitchen and/or bathroom.

In the SIB –r claimant scored in the "limited" range. In the SSSQ, claimant's scores ranged from 3 to 11. Her "Street Survival Quotient was 91.

Dr. Lindholm determined that, "[b]ased upon school district evaluations prior to the age of 18, [claimant] did not demonstrate mental retardation, a disabling condition closely related to mental retardation, or one that would require similar treatment." Although the results of the SIB-r indicated that claimant had mild deficits in all areas, Dr. Lindholm did not believe these were related to her intellectual capacity; she felt they could be from the CMT condition or an anxiety disorder. She determined that claimant was "intellectually . . . capable of understanding what is needed in order to function adaptively." Dr. Lindholm concluded that claimant had a cognitive functioning in the low

average range and found her ineligible for regional center services under the criteria for mental retardation, Fifth Category or autism.

June/July 2014 Psychological Assessment By Christine D. Kraus

22. On June 28 and July 2, 2014, claimant underwent a neuropsychological evaluation by Christine D. Kraus, Ph.D. The examination was to “assess [claimant’s] current neurocognitive and psychological functioning and to determine if she would qualify to receive special services from [IRC] and for a grant to attend the Pathways Program at the University of California, Los Angeles (UCLA).

23. Claimant’s parents told Dr. Kraus that claimant was living in an apartment with her brother that was five minutes from her parent’s home. Although claimant was able to independently take care of her basic needs, she lacked confidence to accomplish tasks necessary for other daily needs, such as grocery shopping and cooking. Her parents reported that claimant required consistent guidance and follow-up for all self-care tasks.

Dr. Kraus reviewed claimant’s prior test scores, and she administered the WAIS-IV, Woodcock Johnson Tests of Cognitive Ability III – Expanded Test (WJ-Cog III), the Woodcock Johnson Tests of Academic Cognitive Ability (WJ-Ach) and the Minnesota Multiphasic Personality Inventory (MMPI).

In the cognitive assessments, claimant scored in the borderline range in four subtests and in the extremely low range in two subtests. Dr. Kraus administered ten subtests of the WAIS-IV. Dr. Kraus reported that claimant’s “general cognitive ability is within the extremely low range of intellectual functioning, as measured by the [full scale intelligence quotient]. Her overall thinking and reasoning abilities exceed those of only approximately 1% of individuals her age . . . .” Dr. Kraus determined that claimant’s IQ was 66. She also determined that claimant’s verbal and nonverbal reasoning and her

working memory abilities were in the borderline range. She found her visual processing abilities to be in the extremely low range.

Dr. Kraus specifically found that the **“results of this IQ testing are commensurate with the IQ testing complete by Deanne Johnson on 2/20/2004 when [claimant] was 12 years of age. Thus, [claimant’s] IQ within the EXTREMELY LOW RANGE OF SS= 66 was established PRIOR to age 18 and is present as of the date of this evaluation at age 23; this qualifies as a DEVELOPMENTAL DISABILITY under CCR Title 17, Section 54000.”** (Emphasis and punctuation in original.)

Dr. Kraus administered the expanded version of the WJ-Cog III to “confirm cognitive ability that was established via the current WAIS-IV.” In the subtests of the WJ-Cog III, claimant scored in the average range in three subtests, low average in five subtests, and very low in three subtests. Dr. Kraus concluded that claimant was functioning at a very low to low average ability. In the WJ-Ach, claimant’s total achievement score was in the low average range.

Overall, Dr. Kraus recommended that claimant be considered eligible for regional center services **“due to her continued developmental disability, which was established prior to age 18 . . . .”** (Emphasis in original.)

#### TESTIMONY OF MICHELLE M. LINDHOLM, PH.D.

24. Dr. Lindholm is a licensed clinical psychologist. She was employed by IRC as a psychologist assistant in 2003; she became a clinical psychologist with IRC in 2011. Her duties include reviewing records and documentation, performing comprehensive intellectual assessments, and evaluating individuals’ eligibility for regional center services. She also consults with staff, clients, client’s families, and vendors to assist in treatment planning. Dr. Lindholm administered the December 2012 psychological assessment of claimant, which included interviewing claimant’s mother. For this hearing Dr. Lindholm reviewed her assessment report and claimant’s other records.

Dr. Lindholm confirmed the opinion she had after administering the December 2012 assessment, that claimant was not eligible for IRC services based upon mental retardation or under the Fifth Category. She opined that claimant did not have a qualifying developmental disability that existed prior to the age of 18. She noted that the public schools had not provided special education services to claimant based upon a diagnosis of mental retardation, but upon assessment results that showed she had a specific learning disability. Dr. Lindholm stated that a person with a specific learning disability was not, without more, qualified for regional center services. Dr. Lindholm determined that the information contained in claimant's records was not consistent with a person who had a mental retardation or fell under the Fifth Category. She noted that claimant's various assessment scores showed a scatter pattern; some scores were below average and some were above. She stated that the scores of a person with mental retardation or who falls within the Fifth Category would be consistently low and would not show the scatter pattern present in claimant's assessment results. The scattered scores, instead, are indicative of a person with a specific learning disability. She stated that the school district's more recent designation of claimant as a student with multiple disabilities was based upon her medical diagnosis of CMT and was not related to a change in intellectual functioning or adaptive behavior and was not related to a finding that claimant had a qualifying developmental disability before the age of 18.

Dr. Lindholm disagreed with Dr. Kraus's interpretation of test results. First, she noted that the scores were from an assessment administered when claimant was 23 years old. Further, Dr. Lindholm testified that, in her opinion, Dr. Kraus found claimant's abilities to be lower than the scores suggested. Dr. Lindholm added that eligibility is not based upon IQ scores alone, but they must be considered in conjunction with adaptive skills. The assessment results performed when claimant was under 18 years old determined that her skills were age appropriate. Dr. Lindholm felt it was more

appropriate to consider claimant's history of test results rather than rely on one test. Additionally, Dr. Lindholm stated that medical or psychological disorders, such as the disorders claimant had, could depress IQ scores and render them less reliable.

Dr. Lindholm testified that none of the information she reviewed, including Dr. Kraus's report, indicated to her that claimant has a disability that would entitle her to regional center services based upon mental retardation or Fifth Category.

On cross-examination, Dr. Lindholm was shown a "Notice of Eligibility" from the Department of Rehabilitation (DOR) which found claimant eligible for DOR services as a disabled person. Dr. Lindholm stated she was not familiar with DOR's criteria to determine eligibility for their services; however, she said it was likely that its criteria were not the same as those used by regional centers to determine eligibility. The Notice from DOR was not relevant to a determination of whether claimant had a developmental disability within the terms of the Lanterman Act.

#### CLAIMANT'S FATHER

25. Claimant's father testified at the hearing. He stressed his belief that Dr. Krauss's evaluation was more reliable than other testing because the assessment was performed when claimant was an adult and in the environment in which claimant was, and is, living. Claimant is participating in a program called "Pathways." The program is operated by UCLA in conjunction with Creative Services and Los Angeles Regional Center. She lives in an apartment and is provided with services designed to assist her in obtaining employment and in developing independent living skills. Claimant received a federal grant to help defray the costs of the Pathways program. Claimant's father noted that most of the participants in the Pathways program are regional center clients; he stated that claimant was the exception.

26. Claimant's father argued that claimant had consistently obtained IQ scores below 70 and that she is unable to perform necessary, daily life activities such as

shopping, traveling by herself, seeking medical attention when needed, and attending medical appointments. Claimant is unable to understand budgets or how to write a check. He asserted that claimant had Strep and Meningitis at birth which caused permanent injury and contributed to receptive and expressive language impairments. He claimed that claimant was in special education classes her entire life due to her impairments and that she should qualify to receive IRC services.

Claimant's mother and father pay a portion of claimant's tuition to attend Pathways. Claimant's father vowed, even without IRC services, to continue to pay so that claimant can attend that program.

## LEGAL CONCLUSIONS

### THE BURDEN AND STANDARD OF PROOF

1. In a proceeding to determine whether an individual is eligible for regional center services, the burden of proof is on the claimant to establish that he or she has a qualifying diagnosis. The standard of proof required is preponderance of the evidence. (Evid. Code, § 115.) A preponderance of the evidence means that the evidence on one side outweighs or is more than the evidence on the other side, not necessarily in number of witnesses or quantity, but in its persuasive effect on those to whom it is addressed. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

### THE LANTERMAN ACT

2. Pursuant to the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities. (Welf. & Inst. Code, § 4500, et seq.) The purpose of the Act is to rectify the problem of inadequate treatment and services for the developmentally disabled and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting



possible. (Welf. & Inst. Code, §§ 4501, 4502; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.) The Lanterman Act is a remedial statute; as such it must be interpreted broadly. (*California State Restaurant Association v. Whitlow* (1976) 58 Cal.App.3d 340, 347.)

3. An applicant is eligible for services under the Lanterman Act if he or she is suffering from a substantial disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism, or what is referred to as the fifth category – a disabling condition closely related to mental retardation or requiring treatment similar to that required for mentally retarded individuals. (Welf. & Inst. Code, § 4512, subd. (a).) A qualifying condition must also start before the age 18 and be expected to continue indefinitely. (Welf. & Inst. Code, § 4512.)

4. California Code of Regulations, title 17, section 54000, defines “developmental disability” and the nature of the disability that must be present before an individual is found eligible for regional center services. It states:

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

(b) The Developmental Disability shall:

(1) Originate before age eighteen;

(2) Be likely to continue indefinitely;

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

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

[¶] . . . [¶]

(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."

5. When an individual is found to have a developmental disability as defined under the Lanterman Act, the State of California, through a regional center, accepts responsibility for providing services and supports to that person to support his or her integration into the mainstream life of the community. (Welf. & Inst. Code, § 4501.)

6. "Services and supports" for a person with a developmental disability can include diagnosis and evaluation. (Welf. & Inst. Code, § 4512, subd. (b).)

7. A regional center is required to perform initial intake and assessment services for "any person believed to have a developmental disability." (Welf. & Inst. Code, § 4642.) "Assessment may include collection and review of available historical diagnostic data, provision or procurement of necessary tests and evaluations, and summarization of developmental levels and service needs . . . ." (Welf. & Inst. Code, § 4643, subd. (a).) To determine if an individual has a qualifying developmental disability, "the regional center may consider evaluations and tests . . . that have been performed by, and are available from, other sources." (Welf. & Inst. Code, § 4643, subd. (b).)

8. California Code of Regulations, title 5, section 3030, provides the eligibility criteria for special education services required under the California Education Code. The criteria for special education eligibility are not the same as the eligibility criteria for regional center services found in the Lanterman Act.

## EVALUATION

9. Claimant's Fair Hearing Request sought to require IRC to find claimant eligible for regional center services based upon mental retardation or under the Fifth Category, a condition closely related to mental retardation, or that requires treatment similar to that required for individuals with mental retardation.

### Eligibility Based Upon Mental Retardation

10. The DSM-V contains the diagnostic criteria used for mental retardation (intellectual disability). It provides that three criteria must be met:

- A. Deficits in intellectual functions, such as reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience, confirmed by both clinical assessment and individualized, standardized intelligence testing.
- B. Deficits in adaptive functioning that result in failure to meet developmental and socio-cultural standards for personal independence and social responsibility. Without ongoing support, the adaptive deficits limit functioning in one or more activities or 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.

The DSM-V further notes that the "levels of severity (of mental retardation) are defined on the basis of adaptive functioning, and not IQ scores, because it is the adaptive functioning that determines the level of supports required." According to a chart of expected characteristics of an individual with mild mental retardation, children and adults would have "difficulties in learning academic skills involving reading, writing, arithmetic, time, or money, with support needed in one or more areas to meet age-

related expectations.” Additionally, communication and social judgment are immature and the individual may be easily manipulated by others. Mild mentally retarded individuals “need some support with complex daily living tasks . . . . In adulthood, supports typically involve grocery shopping, transportation, home . . . organizing, nutritious food preparation, and banking and money management.”

11. Claimant did not prove by a preponderance of the evidence that she had a developmental disability that originated before the age of eighteen as required under the Lanterman Act. Claimant’s scores obtained in assessments performed prior to the age of 18, and the inconsistency of those scores (scatter), warrant a finding that claimant does not have a developmental disability under the Lanterman Act and is not eligible for regional center services on the basis of mental retardation.

#### Eligibility Based Upon the “Fifth Category”

12. Under the “fifth category,” the Lanterman Act provides for assistance to individuals with “disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals” but does “not include other handicapping conditions that are solely physical in nature.” (Welf. & Inst. Code § 4512, subd. (a) (emphasis added).) Like the other four qualifying conditions (cerebral palsy, epilepsy, autism, and mental retardation), a disability involving the Fifth Category must originate before an individual attains age 18, must continue or be expected to continue indefinitely, and must constitute a substantial disability.

13. The fifth category is not defined in the DSM-V. In *Mason v. Office of Administrative Hearings* (2001) 89 CalApp.4<sup>th</sup> 1119, 1129, the California Court of Appeal held that the fifth category was not unconstitutionally vague and set down a general standard: “The fifth category condition must be very similar to mental retardation, with many of the same, or close to the same, factors required in classifying a person as

mentally retarded. Furthermore, the various additional factors required in designating an individual developmentally disabled and substantially handicapped must apply as well."

14. Claimant failed to prove by a preponderance of the evidence that she is eligible for regional center services under the Fifth Category.

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## ORDER

Claimant's appeal from Inland Regional Center's decision not to find her eligible for regional center services is denied.

DATED: November 10, 2014

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SUSAN J. BOYLE

Administrative Law Judge

Office of Administrative Hearings

## NOTICE

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