BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Eligibility of: Claimant, and Inland Regional Center, Service Agency.	OAH No. 2014080999

DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California (OAH), heard this matter in San Bernardino, California, on March 26, 2015.

Claimant's parents, his legal guardians, represented claimant, who was not present at the fair hearing. They were assisted by a Spanish language interpreter.

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

The record remained open until April 9, 2015, to allow claimant time to provide additional pages that were missing from Exhibits 10, 28 and 30.[1]

[1] The fax cover page and the missing pages of Exhibits 10 and 28 were marked and received as Exhibit 32. The fax cover page stated that claimant could not locate the missing pages of Exhibit 30.

ISSUE

Is claimant eligible for regional center services under the Lanterman Act as a result of a diagnosis of cerebral palsy, epilepsy, autism, intellectual disability,[2] or a condition closely related to intellectual disability or requiring treatment similar to that required for an intellectually disabled individual, which constitutes a substantial handicap (fifth category)? IRC conceded that claimant had diagnoses of seizure disorder and cerebral palsy, but asserted that they did not constitute a substantial disability, thereby rendering him ineligible for regional center services. The issue at this hearing regarding claimant's seizure disorder and cerebral palsy was whether they created a substantial disability, thereby making him eligible for regional center services.

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. On August 4, 2014, IRC notified claimant that he was not eligible for regional center services.

2. On August 26, 2014, claimant's parents filed a fair hearing request appealing that decision and this hearing ensued.

DIAGNOSTIC CRITERIA FOR AUTISM SPECTRUM DISORDER

3. The American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, (DSM-5)*, identified criteria for the diagnosis of Autism

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[2] The Diagnostic and Statistical Manual of Mental Disorders, fifth edition (DSM-5) uses the term Intellectual Disability or Intellectual Developmental Disorder in place of the formerly used term, "Mental Retardation." The two terms are used interchangeably in this decision as both terms are contained in the documents.

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

DIAGNOSTIC CRITERIA FOR INTELLECTUAL DISABILITY

4. The *DSM-5* also contains the diagnostic criteria used for intellectual disability. Three diagnostic criteria must be met: deficits in intellectual functions, deficits in adaptive functioning, and the onset of these deficits during the developmental period. An individual must have a *DSM-5* diagnosis of intellectual disability to qualify for regional center services. Intellectual functioning is typically measured using intelligence tests. Individuals with intellectual disability typically have IQ scores in the 65-75 range.

THE "FIFTH CATEGORY"

5. Under the "fifth category" the Lanterman Act provides 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."[3] Along with the other four qualifying conditions (cerebral palsy, epilepsy, autism spectrum disorder, and intellectual disability), a disability involving the fifth category

[3] Welfare and Institutions Code section 4512, subdivision (a).

must originate before an individual attains age 18 years of age, must continue or be expected to continue indefinitely, and must constitute a substantial disability.

The fifth category is not defined in the *DSM-5*. In *Mason v. Office of Administrative Hearings* (2001) 89 CalApp.4th 1119, 1129, the California Court of Appeal held that the fifth category was not unconstitutionally vague and set down a general standard: "The fifth category condition must be very similar to mental retardation, with many of the same, or close to the same, factors required in classifying a person as mentally retarded. Furthermore, the various additional factors required in designating an individual developmentally disabled and substantially handicapped must apply as well."

On March 16, 2002, in response to the *Mason* case, the Association of Regional Center Agencies (ARCA) approved the *Guidelines for Determining 5th Category Eligibility for the California Regional Centers* (Guidelines).[4] In those Guidelines, ARCA noted that eligibility for Regional Center services under the fifth category required a "determination as to whether an individual functions in a manner that is similar to that of a person with mental retardation **OR** requires treatment similar to that required by individuals with mental retardation." (Emphasis in original.) The Guidelines stated that *Mason* clarified that the Legislative intent was to defer to the professionals of the Regional Center Eligibility Team to make the decision on eligibility after considering information obtained through the assessment process. The Guidelines listed the factors to be considered when determining eligibility under the fifth category.

[4] The ARCA guidelines have not gone through the formal scrutiny required to become a regulation.

EVIDENCE PRESENTED AT HEARING

6. Claimant is a 21-year-old male. He asserted he was eligible for services on the basis of epilepsy, cerebral palsy, autistic disorder, intellectual disability, and/or fifth category.

7. A May 25, 2004, MRI of claimant's brain depicted "schizencephaly vs. porencephaly,[5] left parietal lobe in the distribution of the left middle cerebral artery probably due to encephalomalacia from remote ischemic event. Associated atrophy of the corpus callosum and cerebral peduncle on that side." Grace Nam, M.D., IRC's medical expert, testified that nothing in this report demonstrated that claimant was eligible for regional center services. Dr. Nam testified that "schizencephaly vs. porencephaly" does not necessarily cause epilepsy or seizure activity. Further, the MRI indicated that claimant could have had a stroke and there is atrophy in his brain. However, as Dr. Nam explained, physicians do not treat what they see on imaging, they treat the patient and here, claimant's seizures have been well controlled on medication the past few years. Thus, nothing on this scan changed her opinions that he was not eligible for regional center services.

8. An August 29, 2005, Comprehensive Report of Evaluation, documented the evaluation performed when claimant was almost 12 years old to evaluate his continuing need for special education services. Claimant was uncooperative with Occupational Therapy (OT) services and wanted to discontinue them as he claimed his therapist touched him inappropriately. His mother advised that he had been having more seizures

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[5] Schizencephaly is a rare birth defect characterized by abnormal slits, or clefts, in the brain's cerebral hemispheres. Porencephaly is an extremely rare disorder of the central nervous system in which a cyst or cavity filled with cerebrospinal fluid develops in the brain.

and his medication was being adjusted. Claimant was "on home schooling" because of his medical disability, and his mother was concerned about outbursts that had started happening at home. Claimant enjoyed school except for being teased about his right hand because of his cerebral palsy. Claimant was "sensitive to peers' teasing him about his noticeable hand difficulty." The teasing increased his stress leading to an increase in his seizures. Devices and methods to assist claimant with fine motor tasks were referenced in his OT Assessment Report. During the psycho-educational portion of the evaluation, claimant was polite and had good concentration. No behavioral problems were noted by his teachers or his family.

Claimant scored in the average range on non-verbal testing, in the lower limits of low average on visual-motor processing tests, and in the average range on visual-perceptual testing. He scored in the low average range on auditory processing testing. Claimant's academic testing scores ranged from 0.4 percentile to 77 percentile in the various categories measured. Based on the information reviewed, the school psychologist concluded that claimant's areas of disability were "Other Health Impaired" due to his chronic medical condition. Claimant was also eligible for services due to a "specific learning disability." Claimant had a significant discrepancy between ability and achievement in math and reading with a processing deficit in sensor motor skills and auditory processing/memory skills. Claimant was eligible for OT. In the Assurances section of the report, the school psychologist noted that motor disabilities and mental retardation were two of the factors that had been "ruled out as the primary cause of a severe discrepancy [between achievement and ability]." In the summary section, the school psychologist noted that claimant met the eligibility criteria for "Other Health Impairment," and had a "severe discrepancy between IQ and achievement."

9. In 2005, when claimant was almost 13 years old, he was evaluated by his school to determine if there was a need to adjust his Individualized Education Plan (IEP),

and to determine if his seizure condition had affected other areas of his cognitive functioning. His results on the Behavior Dimensions Scale demonstrated "extreme behaviors significant to require attention and a significant intervention program." An auditory processing disorder was identified. Achievement Test scores indicated that claimant's academic skills were within the Deficient to Borderline range. When compared to others at his grade level, claimant's academic skills were within the Low range. Claimant's fluency with academic tasks and his ability to apply academic skills were both within the Very Low range. The Intellectual assessment (IQ) indicated that claimant was functioning in the Low Average range in nonverbal reasoning. Claimant had displayed behavioral problems since beginning middle school and had shown a lack of impulsivity control. The school psychologist determined that claimant met the eligibility criteria for educational services under "Other Health Impairment," "Orthopedic Impairment," and "Emotional Disturbance."

10. In 2006 when claimant was almost 13 years old, L.D. Miller, Ph.D., conducted psychological testing at the request of claimant's treating psychiatrist. Dr. Miller's Report of Psychological Testing reported that the WASI, an intelligence test, revealed scores in the mild mental retardation range. Claimant's scores in the verbal and language areas were much lower than his other scores. His verbal and language scores were in the Moderate Mental Retardation range; whereas his performance and non-verbal scores were in the Borderline Range. Claimant's scores on the Hooper Visual Organization Test were consistent with someone with a mild degree of organic impairment or a moderate degree of emotional disturbance. Claimant's scores on the Test of Variable of Attention reflected one with a moderate to severe attention deficit disorder (ADD). The results of emotional testing revealed both depression and high anxiety. The report concluded that claimant was operating in the mild mentally retarded range with severe ADD and emotional disturbance. Dr. Miller's diagnostic impression

was: Axis I - Bipolar Disorder, NOS; ADD, Combined Type; Axis II – Mild Mental Retardation; Axis III – None; Axis IV – primary support group and school functioning. Dr. Miller referred claimant to IRC for services. Claimant's father testified that he never shared this report with his son's school and never sought regional center services at that time. Thus, what the school or IRC would have done with this information in 2006 will never be known. Paul Greenwald, Ph.D., IRC's psychology expert, testified that Dr. Miller did not perform as thorough testing as did IRC, and claimant's bipolar disorder and ADD would strongly impact his IQ test results. This is because bipolar disorder is a depressive disorder, tending to cause lower scores, and ADD affects one's abilities to focus. Dr. Greenwald testified that given those psychiatric diagnoses, he could not attribute claimant's IQ scores to intellectual disability. Further, claimant's most recent IQ testing did not produce scores in the intellectual disability range.

11. A September 27, 2006, Psychoeducational Assessment Report, conducted by claimant's school when he was almost 13 years old, noted that the reason for the referral was "due to a manifestation determination," to determine if claimant's special education placement was appropriate, and to determine if his health condition had affected other areas of his cognitive functioning. Claimant's Primary Disability listed on his Individualized Education Plan (IEP) was "Orthopedic Impairment." Claimant had been receiving special education services since 1996. Claimant's speech and language report noted his verbal skills to be characteristic of a second language learner; Spanish was his primary language. Speech services were discontinued in 2004, due to his lack of progress and failure to self-monitor his behavior. Claimant had been receiving physical therapy services since he was five years old for his diagnosis of Right Hemiplegia Secondary to CVA. However, services were discontinued in 2005, due to claimant's refusal to participate. Claimant's discipline file contained numerous referrals due to confrontations and mutual combat; he was suspended from school three times.

Claimant's treating neurologist recommended a psychiatry referral for anger, aggressive behavior, and compliance problems. A 2003 physician report noted that claimant's EEG was consistent with "left frontal lobe epilepsy."

During testing claimant was cooperative and completed all tasks. Claimant "displayed the following behaviors: facial tics, tongue thrusting, drooling, and constant cracking of his right hand fingers. He also displayed impulsivity while performing all the tasks throughout the evaluation session . . . and he exhibited negative self-concept . . . ." Claimant displayed anger and outbursts at school and home. On cognitive testing, claimant received Average range intelligence scores, Low-Average range sensory-motor scores and Average range visual processing scores. His intellectual assessment (IQ) indicated he was functioning in the Low Average range in nonverbal reasoning. His academic performance scores on the various tests administered were in the Very Low range, Borderline range and Deficient range. A comparison of his intellectual performance ability scores with his academic performance scores demonstrated that his academic performance was Deficient/Borderline and stood below his Low Average cognitive ability. Claimant's receptive and expressive vocabulary indicated scores in the Borderline range, but his bilingual verbal ability was in the Low Average range. Testing identified an auditory processing disorder. Claimant's current academic achievement tests indicated his academic skills were in the deficient to borderline range. When compared to others at his grade level, claimant's skills were within the Low range. Claimant's fluency with academic tasks and his ability to apply academic skills were both in the Very Low range. His total achievement score placed him in the Borderline range. Memory weaknesses and behavioral issues were identified. His behavioral problems were consistent with one with frontal lobe epilepsy. Claimant's "overall test results indicated that there weren't any cognitive or ecological factors adversely affecting his academic performance at this time." Claimant was eligible for special education services

on the basis of "Other Health Impairment" due to his cerebral palsy and epilepsy. Nothing in this report identified claimant as having an intellectual disability or autism spectrum disorder.

12. Claimant's September 12, 2006, IEP noted that claimant's primary disability category was "Orthopedic Impairment." He spent 100 percent of his time in a regular classroom but was "given an ELD curriculum to perform English [illegible.]" Claimant was an English Language Learner with Spanish being his native language. His area of need was identified as "behavior," as he needed to "self monitor anger management." Claimant was below grade level for reading and written expression. He was expected to graduate with a high school diploma. Nothing in this report identified claimant as having an intellectual disability or autism spectrum disorder.

13. An October 3, 2006, addendum to claimant's September 12, 2006, IEP documented that claimant was suspended for hitting another student. The section marked "Relevant Information provided by parent/guardian" contained the following: "[Treating physician] recommends that [claimant] receive home hospital until his anticonvulsant medications stabilize and to prevent further aggression at school." The section marked "Other relevant information including unique circumstances to be considered" contained the following:

> Current psychoeducational evaluation indicates that [claimant's] intellectual ability has decreased in ability level and assessment results of his memory skills indicate his memory ability is in the Very Deficient range. . . . It appears his seizure condition is more prominent than his orthopedic impairment due to the side effects [of transitioning his anticonvulsant medications] . . . [Claimant] has been displaying behavioral problems since he began attending

> [middle school] and he has shown lack of impulsivity control, which is greatly recognized to what his neurologist uncover in the electroencephalogram [sic] . . . [left frontal lobe epilepsy]. The frontal lobe is responsible for the higher mental functions, general movement, perception, impulsivity control, and behavioral reactions. Therefore, it is imperative that his primary disability category includes Other Health Impaired with chronic condition of epilepsy diagnoses supported by the neurologist report . . . and with deficits in memory skills as diagnosed by this psychoeducational assessment.

The addendum noted that claimant's conduct was directly caused by his disability. Nothing in the addendum identified claimant as having an intellectual disability or autism spectrum disorder. While the 2006 addendum may have indicated claimant qualified at that time because his seizures were not then under control, that is not the case today.

14. Herman R. Clements, II, M.D., a board certified psychiatrist, authored a letter dated August 29, 2007, in which he wrote that claimant was "currently a patient … with a diagnosis of major depression, ADHD [Attention Deficit Hyperactivity Disorder] and ODD [Oppositional Defiant Disorder]." None of these diagnoses are qualifying diagnoses for regional center services.

15. Claimant's May 21, 2012, IEP, prepared when he was in twelfth grade, identified claimant's primary disability category as "Other Health Impairment," and his secondary disability category as "Orthopedic Impairment." In the portion of the report asking how the student's disability affects has involvement and progress at school, the IEP noted that "[d]ue to seizure disorder and cerebral palsy, [claimant] needs extra

support in his general education classes in order for him to be successful. He benefits from a very structured classroom that offers extra support with collaborating teachers and para-educators." Claimant's reading and writing were below grade level and higher math skills were a struggle. Claimant had shown great improvement in behavior in all his classes. His last seizure was approximately four years ago. Claimant had limited use of his right hand due to cerebral palsy, but he is very independent and writes legibly with his left hand." Claimant had surgery on his right hand in 2010 that improved mobility and strength. His gross motor skills were age appropriate. His goals upon graduation were attending junior college and a obtaining a part time job. The IEP noted that claimant "has an orthopedic impairment due to his [cerebral palsy], but he is highly functional and independent in caring for his personal needs." An accommodation was to give him extra time for testing. Claimant spent 100 percent of his time in a regular classroom and received his special education services there. Goals were set for his academic instruction and claimant was slated to graduate in June 2012. Nothing in the IEP identified claimant as having an intellectual disability or autism spectrum disorder, or indicated that his seizures or cerebral palsy were substantially disabling.

16. On May 13, 2014, the Social Security Administration denied claimant's request for reconsideration. The SSA noted that claimant's contention was that he was unable to work due to "cerebral palsy, bipolar [and] seizures." The SSA advised that claimant's condition was "not severe enough to keep you from working."

17. Yvonne Chan, M.D., IRC's Medical Consultant, evaluated claimant on July 17, 2014. Dr. Chan documented that claimant had the onset of seizures at age eight, but due to medicine, his last seizure was five years ago. Claimant had a history of abnormal EEGs depicting left cerebral dysfunction. A 1994 MRI depicted a large left middle cerebral artery infarct. Claimant had a complicated pre-natal and delivery history. He was in special education throughout his school age years. Claimant's psychiatric history

included a September 7, 2006, psychological diagnosis of mild mental retardation, moderate to severe attention deficit disorder, and bipolar disorder with difficulty controlling his anger. Claimant was not currently seeing a psychiatrist and was on medication. Dr. Chan's physical examination demonstrated that claimant's right arm was significantly shorter than his left, his muscle tone, strength and bulk were abnormal. Following her examination, Dr. Chan's impression was mild right hemiplegic palsy, partial complex seizures well controlled, and possible intellectual disability. Dr. Chan concluded that claimant did not satisfy the medical criteria for regional center services for cerebral palsy/seizures. Dr. Chan recommended continued medical care, vision screening, vocational and day program/job training.

18. On August 4, 2014, Edward G. Frey, Ph.D., conducted a Psychological Evaluation at IRC's request to determine eligibility for regional center services. Claimant was specifically assessed for the possibility of an Intellectual Disability. Claimant graduated from high school in 2012. He "was considered a student with other health impairment." Dr. Frey noted that although claimant had been previously diagnosed in 2006 with bipolar disorder and ADD, at the time of this evaluation, it did not appear that claimant was "engaged in any sort of mental health treatment." Also, Dr. Frey noted that although the same 2006 evaluation gave claimant a diagnosis of Mild Mental Retardation, "[a]ccording to all school records, however, he has never been seen, at least educationally, as a student with an Intellectual Disability."

Claimant presented with some slight motor difficulty in his right arm. His speech was clear and easily understood. Claimant did not appear to have any difficulty understanding questions or directions. His eye contact was appropriate. He was able to sustain appropriate attention and concentration. Intellectual Assessment testing produced scores in the borderline range, with areas of strengths and weaknesses. Dr. Frey opined that, "Overall, the test scores do not support viewing [claimant] as a young

man with an Intellectual Disability." On adaptive testing, claimant had "some slight weaknesses" but these "may be more of a result of emotional/psychological factors and/or medical issues." Dr. Frey noted that claimant had a history of seizures but was on medication and had not had a seizure in several years. Claimant attempted to attend community college but transportation was an issue. Dr. Frey opined that "[p]sychological testing suggested that claimant "is functioning overall in a borderline range. He has a slight weakness in the area of working memory. Perceptual reasoning is in the average range. Father reports some mild delays. In summary, current testing would not support a diagnosis . . . of either Intellectual Disability or Autism Spectrum Disorder." Dr. Frey's diagnostic impression was Borderline Intellectual Functioning, Perceptual reasoning in the average range, and Psychiatric diagnosis deferred to treating physician. Dr. Frey recommended that claimant explore the possibility of attending community college, contact the Department of Vocational Rehabilitation to explore vocational options, continue his neurological care and medications, and participate in appropriate social and recreational activities. Dr. Greenwald testified that Dr. Frey administered the "top tier" cognitive tests, and determined that claimant was not eligible.

19. An October 7, 2014, x-ray report of claimant's right shoulder noted that he had right shoulder dislocation multiple times. Grace Nam, M.D., IRC's medical expert, testified that claimant's cerebral palsy did not cause his shoulder dislocations.

20. A December 21, 2014, letter from Warren Chichique from Arizona documented the "results of the mathematics test" he administered to claimant. Mr. Chichique wrote that he had a Bachelor's degree in mathematics from California State University – San Bernardino and worked as an independent math tutor for 10 years. Claimant had mastery in the areas of simple addition and subtraction, understanding and solving simple algebraic expressions, and reading and interpreting simple tables. Claimant had deficiencies in the areas of difference between positive and negative

integers, adding and subtracting simple fractions, distributive property and combining like terms, mathematical reasoning, and working with decimals and fractions in real life situations. Nothing in Mr. Chichique's letter established eligibility for regional center services.

21. A January 8, 2015, letter on Kaiser Permanente letterhead, from Todd Flynn LCSW, and Jon Watt, M.D., stated that claimant was "currently receiving psychiatric services" for Mood Disorder and Intermittent Explosive Disorder. Claimant received medication services from Dr. Watt and Case Management services from Mr. Flynn and Victoria Delgadillo, LCSW. The letter noted that claimant was being treated at Kaiser for "a variety of other disorders." The "complete list of disorders" included: epilepsy, hemiplegic cerebral palsy, learning difficulties, intermittent explosive disorder, and mood disorder. Further, "There have been questions raised regarding: [claimant's] IQ. His Documentation reflects a wide range of potential scores, many of them under 70."

22. On January 20, 2015, John Magner, Ph.D., performed a neuropsychology outpatient consult at the request of claimant's treating neurologist. Dr. Magner's report noted that claimant had "rather significant memory problems, both verbal and visual." Claimant's verbal cognitive abilities were "at the 1st percentile for your age …." Dr. Magner noted this score "would fall within the intellectually deficient range." Claimant had a history of cerebral palsy with right hemiplegia, seizure disorder, and psychiatric issues involving intermittent explosive disorder and mood disorder. Claimant also had "significant learning issues." Dr. Magner opined that "significant memory impairment is noted in both verbal and visual spheres." Based on the findings, "no routine neuropsychological follow up is suggested." Dr. Magner made recommendations to help with claimant's memory problems. Dr. Greenwald testified that it is unclear from Dr. Magner's report exactly what tests were administered, although Dr. Greenwald did recognize the names of the subtests. Dr. Greenwald testified that Dr. Miller's testing was

administered just five months after Dr. Frey's tests and Dr. Greenwald has never seen such a dramatic drop in scores in such a short time, absent some kind of acute neurological condition. These scores looked like an aberration from all other testing performed.

23. Claimant's Spring 2015 California's Standardized Testing and Reporting (STAR) Student Report revealed English and math scores in the Far Below Basic range, and science scores in the Below Basic range. Nothing in these scores, alone, demonstrated eligibility for regional center services.

WITNESS TESTIMONY

24. Grace Nam, M.D., a pediatric consultant for IRC, addressed the issues of eligibility based on diagnoses of epilepsy and cerebral palsy. Dr. Nam evaluated claimant's condition to see if it interfered with his activities of daily living to determine if it was a "substantial disability," as that term is defined by the Lanterman Act. Dr. Nam testified that claimant has not had a seizure for the past four or five years, indicating his condition is currently controlled with medication. Moreover, although claimant does have cerebral palsy, and has a limp and slight weakness on his right side, he can write legibly, he can build toys with batteries, and his cerebral palsy does not interfere with his activities of daily living. Thus, neither his seizure condition nor his cerebral palsy is substantially disabling, making him ineligible for regional center services. Dr. Nam testified that there was nothing in any of the exhibits introduced at hearing that indicated claimant was eligible for regional center services due to his seizure condition or his cerebral palsy.

25. Paul Greenwald, Ph.D., reviewed the records to determine if claimant was eligible for services due to a diagnosis of intellectual disability or autism, or if he qualified under the fifth category. Dr. Greenwald reviewed all of the assessments, noting that claimant had been administered one of the "top tier" tests, the latest version of the

Weschler test. Dr. Greenwald testified that the results of that test, as well as all of the other cognitive functioning and adaptive functioning testing performed, demonstrated that claimant did not have an intellectual disability or autism. Furthermore, Dr. Greenwald testified that claimant's psychiatric conditions, bipolar disorder and ADD, "strongly impact claimant's results on IQ tests." Dr. Greenwald did not doubt that claimant performed at an impaired level, but his impairment was not due to a developmental disability. Claimant's test scores also had areas of great variability and areas of strength and weaknesses, further demonstrating that claimant did not have an intellectual disability. As Dr. Greenwald explained, "someone with mental retardation shows significant deficits in all areas" but that was not the case here. Dr. Greenwald noted that no testing ever suggested that claimant had autism, claimant's school testing never determined that he had an intellectual disability, and none of the testing indicated he had an intellectual disability. Dr. Greenwald determined that claimant was not eligible for regional center services based on a diagnosis of intellectual disability, autism spectrum disorder, or under the fifth category.

26. Claimant's father testified about his son's condition, explaining that he was trying to find help for his son. He explained that he respected IRC's expert's opinions; he was just trying to do all he could for his son. His testimony was credible and sincere. However, it did not establish eligibility for regional center services.

LEGAL CONCLUSIONS

BURDEN OF PROOF

1. In a proceeding to determine eligibility, the burden of proof is on the claimant to establish he or she meets the proper criteria. The standard is a preponderance of the evidence. (Evid. Code, § 115.)

STATUTORY AUTHORITY

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

3. Welfare and Institutions Code section 4501 states:

> The State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge. Affecting hundreds of thousands of children and adults directly, and having an important impact on the lives of their families, neighbors and whole communities, developmental disabilities present social, medical, economic, and legal problems of extreme importance . . .
>
> An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community. To the maximum extent feasible, services and supports should be available throughout the state to prevent the dislocation of persons with developmental disabilities from their home communities.

4. Welfare and Institutions Code section 4512, subdivision (a), defines "developmental disability" as follows:

"Developmental disability" means a disability which originates before an individual attains age 18, continues, or can be expected to continue indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disablin*g* conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, but shall not include other handicapping conditions that are solely physical in nature.

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

(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:

(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.

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

(a) 'Substantial disability' means:

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

(2) The existence of significant functional limitations, as determined by the regional center, in three or more of the following areas of major life activity, as appropriate to the person's age:

(A) Receptive and expressive language;

(B) Learning;

(C) Self-care;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living;

(G) Economic self-sufficiency.

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

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

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

EVALUATION

7. The Lanterman Act and the applicable regulations set forth criteria that a claimant must meet in order to qualify for regional center services. None of the documents introduced in this hearing demonstrated that claimant had a diagnosis of autistic spectrum disorder, intellectual disability, or a condition similar to mental retardation requiring similar treatment. Although claimant does have cerebral palsy, it does not constitute a substantial disability for him. He is able to engage in activities of daily living. Claimant's seizure disorder is currently well controlled by medication. Accordingly, it, too, does not constitute a substantial disability for claimant. Claimant had the burden of establishing his eligibility for regional center services. As claimant introduced no evidence demonstrating that he was eligible to receive regional center services, his appeal of IRC's determination that he is ineligible to receive services must be denied.

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ORDER

Claimant's appeal from Inland Regional Center's determination that he is not eligible for regional center services and supports is denied. Claimant is ineligible for regional center services and supports under the Lanterman Developmental Disabilities Services Act.

DATED: April 23, 2015

_____/s/_____

MARY AGNES MATYSZEWSKI

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.