

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2015100502

DECISION

On February 23, 2016, Debra D. Nye-Perkins, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California.

Stephanie Zermeño, Consumer Services Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

Juanita Mantz, Deputy Public Defender, represented claimant, who is currently incarcerated.

Oral and documentary evidence was introduced, and the matter was submitted on February 23, 2016.

ISSUE

Is claimant eligible for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) on the basis of a diagnosis of intellectual disability¹?

¹ The American Psychiatric Association's Diagnostic and Statistical Manual of Mental

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. Claimant is a 31 year-old man who lives with his father. Claimant is currently incarcerated.

2. Sometime in 2015, claimant requested that IRC provide regional center services to claimant based on criteria for intellectual disability. Claimant's attorney provided various documents to IRC, including reports from two licensed psychologists, and documents from the Riverside Unified School District.

3. On September 30, 2015, IRC notified claimant's attorney in a Notice of Proposed Action that claimant was ineligible for regional center services because he did not have a substantial handicap that qualified him to receive those services. The Notice of Proposed Action specified that claimant did not have a substantial handicap as a result of intellectual disability, or Autism, or a condition closely related to intellectual disability, or a condition that needs treatment similar to that needed by intellectually disabled individuals.

4. On October 9, 2015, claimant's attorney filed a fair hearing request appealing IRC's decision. In the fair hearing request, claimant's attorney contended, "Client's records indicate IQ below 70 and DD diagnosis prior to age 18."

5. On October 22, 2015, claimant's attorney met with representatives of IRC to discuss the fair hearing request. On October 27, 2015, IRC sent a letter to claimant's

Disorders, Fifth Edition (DSM-V), recently replaced the term "mental retardation" with the term "intellectual disability." Although the Lanterman Act has also been amended to eliminate the term "mental retardation" and replace it with "intellectual disability," the California Code of Regulations and some other references have not been amended to reflect that change. Regardless, the terms "intellectual disability" will be used in this decision interchangeably with the term "mental retardation."

attorney summarizing the informal meeting and stating that the IRC was denying claimant eligibility based on the claim of intellectual disability. The letter stated that IRC believes that claimant did not have sufficient motivation to do well in school and that his lack of motivation impacted his overall scores for intellectual testing conducted by the school. The letter further stated that claimant's overall adaptive functioning was not significantly impaired.

EDUCATIONAL AND PSYCHOLOGICAL RECORDS

6. Claimant was placed in special education programs in 1991 based upon his learning disabilities. Claimant was given a psychoeducational evaluation by the Riverside Union School District on February 11, 2000, in order to assess his social-emotional status. Ms. Jan Ruffner, M.A., school psychologist, conducted that evaluation and created a report, which was provided to IRC. Her report included scores from previous tests for intellectual functioning conducted in 1991, 1994, and 1997 using the Wechsler Intelligence Scale for Children (WISC-III). The scores from 1991 show that claimant had a verbal IQ of 55, a performance IQ of 70 and a full scale IQ of 62. The scores from 1994 show that claimant had a verbal IQ of 70, a performance IQ of 68, and a full scale IQ of 66. The scores from 1997 show that claimant had a verbal IQ of 80, a performance IQ of 73, and a full scale IQ of 75. In her report Ms. Ruffner concluded that claimant's cognitive profile "is consistent with one who has limited cognitive functioning, however growth in Verbal Intelligence has been evidenced in each triennial evaluation His Performance ability has remained constant with some upward movement . . . [and his] Visual-Motor ability has also increased over time . . ." In her report Ms. Ruffner further stated that the 1997 psychoeducational report for claimant "stated that low achievement was due to 'a marked inability to auditorily process and reason at age level.'" She further stated that claimant "has potential, however at this time has little motivation toward any goal."

7. As part of his triennial reevaluation for special education services from the

Riverside Unified School District, claimant was again evaluated by Ms. Jan Ruffner in October 2000, and she created a report for this psychoeducational evaluation, which was provided to IRC. In this report Ms. Ruffner summarized the same intellectual functioning scores from the February 11, 2000, report. Her summary and conclusions in the October 2011 report were identical to those of the February 11, 2000, report except that she noted that claimant would benefit from encouragement provided through counseling through the Department of Mental Health. A referral was made to the Department of Mental Health, but claimant did not appear for his appointment.

8. Claimant provided IRC with a Data Report Form dated November 8, 2002, from Riverside Unified School District as part of his Individualized Education Program for his special education services. The Data Report Form summarized information about claimant's educational needs, current functioning, and plan for improvement. It is based on information provided by his special education teacher, claimant and his father. The Data Report Form stated that claimant was in the 11th grade at the time and that he was completing reading assignments at a third grade level. The report further stated that "due to auditory processing deficits, cognitive deficits and low cognitive functioning, claimant requires more opportunity for practice and repetition at an appropriate functioning level." The report also stated that claimant "can take care of most of his self-help needs," but did not provide any information on what was meant by "self-help needs."

The report had a section where boxes could be checked regarding claimant's specific learning disability. The boxes checked indicated that "a severe discrepancy exists between ability and achievement as a result of a disorder in: . . . Auditory Processing . . . Cognitive Skills." Two other boxes were checked next to form statements that stated: "Discrepancy cannot be corrected through general education even with interventions or categorical services", and "Discrepancy is not a result of visual, hearing or motor impairment, mental retardation, environment, or cultural or economic conditions."

9. Sometime in 2011 when claimant was 26 years old, licensed psychologist, Harrell Reznick, Ph.D., of the Diamond Medical Group on behalf of the Department of Social Services, Disability and Adult Programs gave claimant a psychological evaluation for a determination of whether he was eligible for benefits. Dr. Reznick performed a mental status examination, the Bender Visual-Motor Gestalt Test-II, the Trailmaking Test – Parts A and B, the Wechsler Adult Intelligence Scale-IV test, and the Wechsler Memory Scale – IV test. Dr. Reznick summarized the evaluation in a report dated April 19, 2011, that was provided to IRC. Dr. Reznick's report stated:

The claimant obtained a Verbal Comprehension Index of 63 (1st percentile for his age group), a Perceptual Reasoning Index of 54 (< 1st percentile), a Working Memory Index of 60 (< 1st percentile), and a Processing Speed Index 65 (1st percentile), for a Full Scale I.Q. of 54, which is in the mildly mentally retarded range of current intellectual functioning for the claimant's age group. . . . Given the above test results and clinical data, the claimant is diagnosed as having the following DSM-IV classifications: Axis I: Methamphetamine Abuse, by history. Cannabis Abuse, in remission, by history. Axis II: Mild Mental Retardation.

Dr. Reznick's report provided the following Functional Assessment:

The claimant would be unable to perform any work tasks in a normal work environment without supervision, even simple and repetitive tasks. He would be unable to understand, remember or carry out even simple verbal instructions on a consistent basis in a normal work environment without

supervision. The claimant would experience extreme difficulties tolerating ordinary work pressures and extreme difficulties interacting with others in the workplace. He appears incapable of observing even basic work and safety standards satisfactorily in a normal work environment, and also appears incapable of managing his own financial affairs independently.

Dr. Reznick's report provided the following information regarding claimant's adaptive functioning:

[C]laimant indicated that he performs rudimentary household chores independently, but he cannot cook even simple meals without help and cannot run errands or go shopping alone . . . [H]e can perform all self-care activities independently, including dressing and bathing himself. . . . [His] financial affairs are handled by his family members. . . . [C]laimant is able to walk independently in his immediate neighborhood area, but otherwise, he relies on rides by car provided by family members as a basic means of transportation.

10. Jennifer A. Bosch, Psy.D., provided a psychological evaluation of claimant in order to provide information regarding claimant's functioning to the Superior Court for a competency hearing related to claimant's pending criminal case. Ms. Bosch summarized her psychological evaluation in a report dated September 24, 2015. Ms. Bosch's evaluation consisted of her review of the Riverside Unified School District records for claimant, discussed above; her interview of claimant; her interview of claimant's father; her

competency assessment utilizing the FIT-R test, which is a semi-structured clinical interview with 16 sections designed to assess adjudicative competence; and her mental status examination of claimant.

Ms. Bosch reported that her interview with claimant revealed that he was unable to read or write beyond simple site words; he does not cook; and he needs help being reminded about self-care. Ms. Bosch reported that her interview with claimant's father revealed that the father looks after claimant and reminds him to change his clothes and bathe. The father informed her that claimant is not capable of driving or engaging in complex tasks and can't read or write. In her summary of the mental status exam, Ms. Bosch stated that "[f]rom the onset it was easy to ascertain the defendant suffers from cognitive deficits with him slow to respond and process information using simple words and asking for clarification when more complex words were used." Ms. Bosch concluded that claimant was not competent to proceed with his court case. She opined that "[i]t is difficult to ascertain at what degree the defendant can learn, retain and process information [I] suggest . . . he take a competency class to determine his ability to learn, understand and retain information. Ms. Bosch noted that claimant "appeared to put forth his best efforts in answering questions but the vast majority of the questions asked he did not know the answer to with it clear he was embarrassed by his lack of knowledge."

11. Julie Yang, Psy.D., performed a psychological evaluation of claimant on September 11, 2015, on behalf of IRC and summarized her findings in a report dated September 21, 2015. Ms. Yang performed the psychological evaluation in order to assess his eligibility for Regional Center services. Ms. Yang did not testify at this hearing. Ms. Yang based her assessment upon her review of the Riverside Unified School District records discussed above; a clinical interview with claimant and claimant's father; and psychological testing she conducted utilizing the Wide Range Achievement Test-Fourth Edition (WRAT-4), the Wechsler Adult Intelligence Scale –Fourth Edition (WAIS-IV), and the

Adaptive Behavior Assessment System – Second Edition (ABAS-II) Adult Form.

Ms. Yang stated in her report that the Riverside Unified School District records demonstrate that claimant's cognitive profile is consistent with a person with limited cognitive functioning based upon his I.Q. scores reported from 1991, 1994 and 1997. She noted that while those reports stated that his "low achievement was due to a marked inability to auditorily process and reason at age level" his Visual-Motor ability demonstrated an increase over time from scores of 78 to 84 to 91 on the VMI. She noted also that his reported adaptive behavior was in the borderline range of functioning.

With regard to her assessment of independent living skills, Ms. Yang relied solely on claimant's and his father's answers during their interviews. Ms. Yang reported that claimant was able to complete his hygiene and grooming on his own without difficulty and was able to complete chores without supervision. She stated that "[a]ccording to his father, he was able to use the stove to cook simple things." Later she reported that his father stated that claimant "never really tried cooking." She reported that claimant could do his own laundry and gets around town on his bike and by using the city bus and makes transfers without getting lost. She reported that claimant is able to count money and does not need help using money, but that he does not pay bills because his father does that.

Ms. Yang noted in her report that claimant has been drinking alcohol since the age of 15, began using marijuana at the age of 13 with daily use until the age of 23, and began using methamphetamine at the age of 15. Claimant stated that his last use of methamphetamine was "a couple of days ago."

Ms. Yang's report summarized the WRAT-4 testing she conducted showing that claimant's score in word reading was low, that his score in spelling was lower extreme, and that his score in math computation was lower extreme. With regard to the Wechsler Adult Intelligence Scale-Fourth Edition (WAIS-IV) test she gave, claimant had an overall Full Scale I.Q. score of 57, which was in the 0.2 percentile or Extremely Low range of intellectual

functioning. His highest score on that test was in Perceptual Reasoning at 71 placing him in the Borderline range. The remaining scores on the WAIS-IV all fell in the Extremely Low range of between 55 and 68. Ms. Yang stated that claimant's overall thinking and reasoning abilities exceed those of less than 1 percent of adults his age, and she concluded that claimant's scores "suggest that he has cognitive limitations."

Ms. Yang's report also summarized the ABAS-II test she gave, which assesses the extent to which individuals display the skills necessary to meet the demands of daily living. The results of that test show that claimant's overall level of adaptive behavior is in the Borderline range, which is higher than the score of 4 percent of individuals his age. The results of the test in individual skill areas, such as communication, functional academics, social, self-directional, self-care etc. ranged from Extremely Low to Above Average. The only score that was Above Average was Self-Care based on claimant's and his father's interview responses. Claimant received an Average score in Home Living, but all other scores were in the Extremely Low, Below Average, or Borderline range. Based upon these scores, Ms. Yang stated in her report that claimant's adaptive functioning "can be characterized as lower functioning for his age, but not significantly impaired."

Ms. Yang's report concluded that claimant had the following diagnoses: Borderline Intellectual Functioning; Alcohol Use Disorder, Moderate; Cannabis Use Disorder, Severe, In Sustained Remission; Severe Amphetamine Use Disorder with Amphetamine-Induced Psychotic Disorder. She stated in her report that Intellectual Disability is a disorder that requires the following criteria be met: "(1) deficits in intellectual functions confirmed by clinical assessment and individualized, standardized intelligence testing, (2) deficits in adaptive functioning and (3) onset of deficits during the developmental period." Ms. Yang's report concluded as follows:

[Claimant's] history of intellectual testing results demonstrate an individual that presents with cognitive deficits that are

better accounted for by a diagnosis of Borderline Intellectual Functioning. Prior testing results generally demonstrated an upward movement in his cognitive and adaptive ability with his highest functioning falling within the Borderline range. This is not typically seen in individuals with an intellectual disability. Intellectual disability is a condition that is relatively stable over time and may decline due to other factors (e.g., substance abuse, mental illness, etc.). There was a decline in his intellectual and adaptive functioning from when he was last tested in 1997 which may likely be explained by his performance motivation, learning disability, lack of academic attendance, early school drop out, and long history substance abuse problems. [Claimant] presented with a problematic pattern of substance use leading to clinically significant impairment or distress and thus was given the diagnosis of Alcohol, Cannabis, and Amphetamine Use Disorders.

12. Claimant's attorney provided a copy of the Disability Determination and Transmittal from the Social Security Administration for claimant that shows that, pursuant to the Social Security Act, claimant is disabled by a diagnosis of mental retardation as of March 10, 2011.

TESTIMONY OF MICHELLE M. LINDHOLM, PH.D.

13. Michelle M. Lindholm, Ph.D. 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; she became a staff clinical psychologist and board certified analyst with

IRC in 2014. Her duties in both positions include reviewing records and documentation, performing comprehensive intellectual assessments, and evaluating individuals' eligibility for regional center services. Dr. Lindholm reviewed claimant's records and, based solely on that review, formed an opinion as to whether claimant is eligible for IRC services. Dr. Lindholm did not perform any assessments or evaluations of claimant.

14. Dr. Lindholm testified that claimant was not eligible for IRC services on the basis of intellectual disability because he did not meet the requirement of an intellectual disability and because he did not have a substantial disability as defined in the Lanterman Act. (Welf. & Inst. Code § 4512, subd. (l); Cal. Code of Regs., tit. 17, § 54001, subd. (a).) Dr. Lindholm explained that in order to have a diagnosis of intellectual disability under the DMS-V, a person would need to have onset during the developmental period of before the age of 18 that includes both intellectual and adaptive functioning deficits meeting the following 3 criteria: (1) deficits in intellectual functions confirmed by clinical assessment and individualized, standardized intelligence testing; (2) deficits in adaptive functioning that result in failure to meet developmental and socio-cultural standards for personal independence and social responsibility (such adaptive functioning deficits limit functioning in one or more activities such as communication, social participation, and independent living); and (3) onset of intellectual and adaptive deficits during the developmental period.

Dr. Lindholm stated that claimant's Riverside Union School District WISC-III tests show that claimant has low I.Q. scores, but that the reports state that those low scores are the result of his low motivation towards any goal and that he could benefit from counseling. Dr. Lindholm opined that claimant's low motivation could have impacted his test results to create a false low number. She also opined that depression and substance abuse also could have created a false low number on his I.Q. tests. She noted that claimant's WISC-III I.Q. scores increased each year from 1991, 1994 and 1997.

Dr. Lindholm opined that claimant had an upward movement in his intellectual

functioning as demonstrated by those increased scores, and such an upward movement was not typically seen in persons with an intellectual disability. She stated that there is a margin of error on all of these testing scores that varies depending on the age of the test taker, but typically there is at least a 5 point margin of error. She admitted that the I.Q. testing results for the years 1991, 1994 and 1997 were not that far apart from each other despite their upward trend. Dr. Lindholm stated that typically an I.Q. below 70 is deemed to indicate intellectual disability, but the I.Q. score alone can't be determinative of intellectual disability without considering adaptive functioning as well. Any clinical assessment requires that you look at I.Q. scores with adaptive functioning. She stated that claimant had an upward trend in his I.Q. scores during school but that his substance abuse then created a downward trend in his cognitive abilities as an adult. Dr. Lindholm again noted that claimant's substance abuse started at age 13, and his alcohol abuse started at age 15.

Dr. Lindholm testified that she does not agree with Dr. Resnick's diagnosis of mild mental retardation because claimant was tested at 26 years of age, which is outside of the developmental period of before 18 years of age. With regard to Ms. Bosch's report, Dr. Lindholm stated that she agrees with Ms. Bosch that claimant has cognitive limitations but that pursuant to Dr. Yang's report regarding claimant's adaptive functioning, claimant's cognitive limitations are not sufficiently debilitating to qualify for services from IRC. Dr. Lindholm also testified that she disagreed with Ms. Bosch's assessment of claimant's life skills and diagnosis of mild mental retardation because claimant was outside of the development period of under 18 years of age when Ms. Bosch evaluated him.

Dr. Lindholm relied exclusively on Dr. Yang's report regarding claimant's adaptive functioning, which was based upon Dr. Yang's interview of claimant and his father. Dr. Lindholm admitted that it was not unusual for a person with cognitive limitations to exaggerate his or her life skill abilities because they want to seem smarter than they are.

She stated that, based on her review of those records, claimant's life skills are scattered, but if his motivation were higher, he would likely be able to do more if he applied himself.

TESTIMONY OF CLAIMANT'S FATHER

15. Claimant's father testified that claimant has lived with him since birth and has a long history of learning difficulties. Claimant's mother is absent from his life. Claimant and his brother both live with claimant's father, who is his primary care taker. Claimant's brother also helps with transportation and caretaking for claimant. Claimant's father first had claimant's cognitive abilities tested through the Riverside Unified School District when claimant was seven years old. When claimant was 13 years old, a teacher advised the father that claimant should be tested by IRC to see if he qualified for services. Claimant's father attempted to bring claimant to IRC for testing at that time, but claimant was stubborn and refused to go.

16. Claimant's father testified that claimant can cook an egg, but that is the only cooking he can do. While claimant does dress himself, claimant's father must check claimant's clothing daily because claimant will put on his clothing inside-out or otherwise incorrectly. The father stated that claimant can't drive a car and will panic when presented with any task that is not simple in nature. Despite claimant's ability to use public transportation, claimant will frequently get lost when walking, and the father must come and get him. According to the father, claimant can't read or write at all, and does not know how to pay a bill or manage his own finances. Claimant's father manages all of claimant's finances for him. The father stated that he gives claimant spending money, but claimant will spend the money frivolously. Claimant's father characterized claimant's life skills as "low."

THE PARTIES' ARGUMENTS

17. IRC argued that the claimant's records provided for IRC's review failed to

establish that claimant had an intellectual disability that would qualify him for regional center services. IRC further argued that because claimant's I.Q. testing scores in school showed an upward trend because claimant had a substance abuse problem that could lower his I.Q. testing scores, and because Dr. Yang found that claimant had adaptive functioning abilities that were lower functioning, but not significantly impaired, claimant did not qualify for services from IRC.

18. Claimant's attorney disagreed with IRC's position, claiming that the evidence presented was sufficient to establish claimant's eligibility for services on the basis of intellectual disability and that Dr. Yang's determination of claimant's adaptive functioning was incorrect and based on false information provided by claimant.

EVALUATION

19. A preponderance of the evidence supports a finding that claimant possesses a developmental disability involving intellectual disability, as defined by the Lanterman Act, that triggers IRC's obligation to provide claimant with regional center services. Claimant's Full Scale I.Q. scores from the WISC-II examination given to him at ages 7, 10, and 13 were 62, 66, and 75 respectively, each with a 5 point margin of error. While these scores may show a slight upward trend, the variation in these scores is low. The Riverside Union School District reports for claimant were clear that claimant's "cognitive profile is consistent with one who has limited cognitive functioning . . . [h]is Performance ability has remained constant with some upward movement . . . and [his] Visual-Motor ability has also increased over time . . . [his] low achievement was due to 'a marked inability to auditorily process and reason at age level.'" The evidence demonstrates that claimant had significant cognitive limitations before the age of 18, which has not changed significantly over time. Claimant's most recent I.Q. tests given by Dr. Yang provided a Full Scale I.Q. score of 57, which falls in the descriptive classification of "Extremely Low." According to the DSM-V these I.Q. test scores are only approximations of conceptual functioning. The DSM-V

states:

Individual with intellectual disability have [I.Q.] scores of approximately two standard deviations or more below the population mean, including a margin for measurement error (generally +5 points). On tests with a standard deviation of 15 and a mean of 100, this involves a score of 65-75 (70 ± 5). . . . I.Q. test scores are approximations of conceptual functioning but may be insufficient to assess reasoning in real-life situations and mastery of practical tasks. For example, a person with an I.Q. score above 70 may have such severe adaptive behavior problems in social judgment, social understanding, and other areas of adaptive functioning that the person's actual functioning is comparable to that of individuals with a lower I.Q. score. Thus, clinical judgment is needed in interpreting the results of I.Q. tests.

In addition to claimant's low I.Q. scores taken before the age of 18, a preponderance of the evidence established that claimant has poor adaptive functioning, which has been consistent for his entire life. Dr. Yang's report was the only evidence provided by IRC regarding claimant's adaptive functioning. Her report concluded that while claimant's adaptive functioning is lower functioning, she stated that he was not significantly impaired as a result. Notably, the information from claimant and his father on which she relied to some degree contradicted the information from other evaluators. Also, Dr. Lindholm acknowledged that sometimes individuals tend to overstate their abilities in an effort to avoid embarrassment. Ms. Bosch specifically noted in her report that claimant was embarrassed by his lack of knowledge. Dr. Resnick reported that claimant could not

cook even simple meals without help, can't run errands or go shopping alone, and could not manage his own financial affairs. Ms. Bosch reported that claimant does not cook, and needs help in being reminded about self-care. Claimant's father testified that claimant can dress himself, but that claimant's father must check his clothing because frequently claimant improperly dresses himself. The father also testified that claimant can only cook an egg, cannot read or write, cannot drive, and cannot manage his finances or pay bills. Accordingly, a preponderance of the evidence established that claimant's low adaptive functioning and cognitive limitations constitute a significant disability because they demonstrate significant functional limitations in at least three categories of: self-care, learning, mobility, capacity for independent living, and economic self-sufficiency. While these evaluations were not conducted before claimant was 18 years of age, a preponderance of the evidence established that claimant's condition has not changed over time, and his adaptive functioning prior to the age of 18 was sufficiently low to indicate he is intellectually disabled.

While his low motivation and substance abuse may have a negative impact on his cognitive limitations, there was no evidence presented to demonstrate that claimant's cognitive limitations at the ages of 7, 10 and 13 as shown in the Riverside Union School District documents were impacted by those factors. Indeed, while there was evidence that claimant began his substance abuse at age 13, there was no evidence to show that substance abuse began before he was tested at age 13. The evidence demonstrated that claimant was intellectually disabled regardless of his low motivation and substance abuse.

20. The weight of the evidence provided by claimant, including the Riverside Unified School District documents and the reports of Dr. Resnick and Ms. Bosch, was sufficient to demonstrate that claimant has an Intellectual Disability, or mental retardation, as defined by DSM-V. That evidence was more persuasive than the evidence the IRC presented to the contrary. While Dr. Resnick performed his evaluation on claimant when

he was 26 years old, rather than under the age of 18, the Riverside Union School District documents in conjunction with claimant's father's testimony and evaluations from Ms. Bosch support the conclusion if claimant had been evaluated when he was under the age of 18, that the diagnosis of intellectual disability would be the same.

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.)

2. 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

3. Under the Lanterman Act (Welf. & Inst. Code, § 4500, et seq.), the State of California accepts responsibility for persons with developmental disabilities. The purpose of the Act is to rectify the problem of inadequate treatment and services provided to 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.)

4. An applicant is eligible for regional center services under the Lanterman Act

if he or she can establish that he or she suffers from a substantial disability that is attributable to intellectual disability, cerebral palsy, epilepsy, autism, or what is referred to as the fifth category – a disabling condition closely related to intellectual disability or requiring treatment similar to that required for intellectually disabled individuals. (Welf. & Inst. Code, § 4512, subd. (a).) A qualifying condition must originate before the age of 18 and must continue or be expected to continue indefinitely. (Welf. & Inst. Code, § 4512.)

5. California Code of Regulations, title 17, section 54000, defines “developmental disability” and the nature of the disability that must exist before an individual can be 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:
 - (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. Welfare and Institutions Code section 4512, subdivision (l), provides:

Substantial disability" means the existence of significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person:

- (1) Self-care.
- (2) Receptive and expressive language.
- (3) Learning.
- (4) Mobility.
- (5) Self-direction.
- (6) Capacity for independent living.
- (7) Economic self-sufficiency.

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

California Code of Regulations, title 17, section 54001, subdivision (a), also defines "substantial disability" and requires "the existence of significant functional limitations, as

determined by the regional center, in three or more of the . . . areas of major life activity " listed above.

7. When an individual is found to have a developmental disability under the Lanterman Act, the State of California 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.)

8. A regional center must provide 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 whether 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).)

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

ORDER

Claimant's appeal from Inland Regional Center's determination that claimant is not eligible for regional center services based upon claimant's assertion that he has the diagnosis of Intellectual Disability is granted. Inland Regional Center shall provide services to claimant.

DATED: March 7, 2016

_____/s/_____

DEBRA D. NYE-PERKINS

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.