BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: CLAIMANT, and INLAND REGIONAL CENTER, Service Agency.	OAH No. 2015110222

DECISION

Susan J. Boyle, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on February 8 and 9, 2016, in San Bernardino, California.

Julie A. Ocheltree, Enright & Ocheltree, LLP, represented Inland Regional Center (IRC)

Jeffrey A. Gottlieb, Law Offices of Jeffrey A. Gottlieb, represented claimant, who was present during the hearing. Claimant's mother and father were also present during the hearing.

Oral and documentary evidence was presented. The record remained open until March 11, 2016, to allow the parties to submit written closing argument. The closing argument filed on behalf of IRC was marked as Exhibit "W." The closing argument filed on behalf of claimant was marked as Exhibit "15."

The matter was submitted on March 11, 2016.

ISSUES

1. Is claimant eligible for regional center services on the basis of intellectual

disability under the Lanterman Developmental Disabilities Services Act (Lanterman Act)?

2. Is claimant eligible under the fifth category on the basis that she has a condition closely related to an intellectual disability or that requires treatment similar to that required for individuals with an intellectual disability?

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. Claimant is a twenty year-old woman who lives with her mother and father, who are her conservators.

2. Through her representatives, claimant sought regional center services based upon a claim that she had an intellectual disability and/or a disability that was closely related to an intellectual disability or that required treatment similar to that required for individuals with intellectual disabilities.

3. By letter dated November 1, 2013, IRC advised claimant that she was not eligible for regional center services based upon an intellectual disability or a disability closely related to an intellectual disability.

4. By letter dated September 30, 2015, IRC advised claimant that it reviewed her records and determined that "no 'intake' services can be provided" because she did not have a disability that qualified her for regional center services.

5. On November 2, 2015, claimant's mother signed a Fair Hearing Request on claimant's behalf appealing IRC's decision. In her hearing request claimant disagreed with IRC because she believed she was eligible for regional center services based upon having an intellectual disability or a condition closely related to an intellectual disability.

6. On November 18, 2015, claimant's mother, claimant's attorney and IRC staff met to discuss claimant's request for a fair hearing. By letter dated November 20, 2015, Stephanie Zermeño, Consumer Services Representative, summarized the meeting and IRC's

decision that claimant was not eligible for regional center services. Ms. Zermeño said that claimant's fluctuating scores on intelligence tests, which ranged from 67 to 85, were inconsistent with a person having an intellectual disability. Additionally, an adaptive functioning assessment given in November 2013 showed scores that were in excess of someone with an intellectual disability or a similar condition. Ms. Zermeño stated that claimant's history was consistent with a person who had a psychological disorder rather than an intellectual disability.

BACKGROUND/CALIFORNIA EARLY INTERVENTION SERVICES

7. Claimant was born to a mother who used cocaine while pregnant, and claimant tested positive for drugs at birth. After her birth, claimant was removed and placed in foster care by Child Protective Services (CPS). She exhibited global delays and was diagnosed with mild cerebral palsy. IRC found claimant eligible for services under the California Early Intervention Services Act as an "at risk" infant/toddler.

8. During a home visit with claimant and her then foster family when claimant was 28 months old, a CPS worker observed that claimant could follow simple two-part instructions, stack four cubes, wash and dry her own hands, brush her teeth with assistance and attempt to put on socks. She also found that claimant had limited expressive language skills and demonstrated "global delays in all areas."

9. Claimant lived in about five foster homes before being placed with her adoptive mother and father a few months before she turned three years old. At about three years of age, the regional center determined that claimant was ineligible for regional center services under the Lanterman Act and closed her regional center case. Her family did not request a Fair Hearing to challenge the IRC determination of ineligibility.

HISTORY OF MEDICATIONS

10. In second grade, claimant took Risperdal for a few months for attention

issues. That prescription was changed to Concerta, and claimant remained on Concerta until the summer of 2014. Depakote was prescribed at the age of 13 years to manage behavior and defiance. Claimant's doctor told the family that claimant had a mood disorder, but did not diagnose a specific disorder. A few years ago, claimant stopped taking all medications. The family has not seen a change in claimant's behavior since she stopped taking medications.

ASSESSMENTS AND EVALUATIONS

1995 to 2005 (0 to 10 years old)

11. Claimant's school district assessed claimant when she was three years old. The assessment showed the following results:

Physical Age	-10
Social Age	3-0
Academic Age	2-2
Communication Age	2-4
Self Help Age	2-6

In the Developmental Test of Visual-Motor Integration, claimant scored the age equivalent of two years and nine months.

12. Claimant attended a pre-school through Special Education Services and was placed in a Special Day Class for kindergarten. She was originally found eligible for special education services with an Orthopedic Impairment. She repeated kindergarten and was placed in a general education class. She was in general education classes until the fifth grade, when she was placed in a special day class again. During first through fourth grades, claimant was pulled out of the general education classes for resource assistance because she was struggling with assignments.

13. In July 2001, when claimant was just under six years of age and in

kindergarten, the school district administered the Woodcock-Johnson III Tests of Achievement (Woodcock III). Her test scores showed that she was performing in the average range in the kindergarten level as follows:

Woodcock III		
Broad Reading	106	K4 grade level
Broad Math	101	K1 grade level
Broad Written Language	109	K7 grade level

14. In 2004, when claimant was eight or nine years old, she began to see Dr. Santos-Nanadiego, a psychiatrist at Kaiser Canyon Crest Behavioral Medicine. She continued to see him until at least September 2013.

15. In January 2005, when claimant was nine years and three months old and in third grade, her school district administered a battery of tests, including the Wechsler Intelligence Scale for Children IV (WISC IV), Cognitive Assessment System, Developmental Test of Visual Perception, Behavior Assessment System for Children – Teacher, Behavior Assessment System for Children – Parent, and the Woodcock III. Some of the test results were as follows:

WISC IV		
Verbal Comprehension	89	Average/Low Average
Perceptional Reasoning	82	Low Average
Working Memory	94	Average
Processing Speed	85	Low Average
Full Scale	84	Low Average

Woodcock III			
Broad Reading	82	2.4 grade level	Low Average
Broad Math	89	2.5 grade level	Average/Low Average
Broad Written Language	77	2.1 grade level	Low Average/Borderline

In the Cognitive Assessment System, claimant scores ranged from 81 to 91. She obtained a score of 90 in Attention. In the Developmental Test of Visual Perception, claimant scored 64 in General Visual Perception.

Claimant was determined to be "At Risk" for "Attention Problems, Learning Problems & Withdrawal" in an assessment completed by her teacher. She scored "At Risk" for "Aggression & Social Skills" and "Significant" for "Hyperactivity, Conduct Problems, Anxiety, Attention Problems & Adaptability" in an assessment completed by her parents.

2008 (12 Years Old)

16. In January 2008, when claimant was 12 years and 2 months old and in the sixth grade, the district's school psychologist administered a battery of tests to claimant. The results from that testing were as follows:

WISC IV			
Verbal Comprehension	75	Borderline	
Perceptional Reasoning	77	Borderline/Low Average	
Working Memory	77	Borderline/Low Average	
Processing Speed	70	Borderline	
Full Scale	70	Borderline	
Woodcock III			
Broad Reading	72	3.0 grade level	Borderline
Broad Math	85	4.7 grade level	Low Average
Broad Written Language	78	3.5 grade level	Borderline/Low Average

Claimant's scores on the Test of Visual Perceptual Skills – 3 ranged from 57 to 60 with an overall score of 58. She received a Standard Score of 64 in the Development of Visual-Motor Integration. These tests show deficits in visual perception and fine motor coordination that can impact academic success.

The school psychologist noted that "[t]owards the end of fifth grade, academic

deficits seemed to have increased, and the parent reported [claimant] appeared to be increasingly stressed and having more behavioral difficulties."

The school psychologist found that "[o]verall cognitive functioning tested in the slow-learner range." She noted that the "[c]urrent scores on the WISC-IV are somewhat lower than those seen three years ago." She wrote, among other things, that "it appears that overall immaturity and in particular, immature reasoning and comprehension skills, are causing scores to be lower than actual learning potential. Mild cerebral palsy also may affect speed. When also considering low-average math achievement scores, it is likely that actual learning potential is in the low-average range." She concluded that "[c]ognitive functioning tested in the slow-learner range, but higher math achievement scores and subtest scatter suggest that learning potential is in the low-average range."

Claimant continued to receive special education services on the basis of Orthopedic Impairment. The school psychologist recommended that claimant could benefit from counseling and/or a social skills class.

2011 To 2013 (15 To 18 Years Old)

17. In high school, claimant was in a Resource Specialist Program. Her special education eligibility was based on "Orthopedically Impaired" and "Other Health Impairment due to academic difficulties and a diagnosis of Attention Deficit Hyperactivity Disorder."

18. On January 6, 2011, claimant was 15 years, 2 months and in the ninth grade when she was again assessed by the school district. She completed the Woodcock III and obtained the following scores:

Woodcock III			
Broad Reading	66	3.5 grade level	Extremely Low
Broad Math	78	5.3 grade level	Low Average/Borderline
Broad Written Language	77	5.4 grade level	Low Average/Borderline

The school psychologist's reported that, at this time, claimant was taking a variety of medications[1] and had been diagnosed with mild cerebral palsy, ADHD, and a sensory integration disorder. She had poor visual-motor integration skills, for which she needed more time to complete written assignments. Auditory processing difficulties required that she be given simple and brief instructions, to be repeated and certain accommodations were recommended because of claimant's ADHD.

19. A February 2012 report from Dr. Santos-Nanadiego, M.D. indicated that claimant was diagnosed with mood disorder, obsessive compulsive disorder, generalized anxiety disorder, ADHD, combined, learning difficulties, Autism Disorder and benign essential tremor. The doctor noted that claimant's behavior and mood were stable, "[b]ut that is with the medication regime she is taking."

20. Claimant's December 3, 2012, Individualized Education Plan (IEP), developed when claimant was in eleventh grade, indicated that claimant was eligible for special education as someone whose Primary Disability was "Orthopedically Impaired" and Secondary Disability was "Other Health Impairment." She received specialized academic instruction for three out of six periods each day. The 2012 IEP revealed, among other things, that claimant was working well with peers and adults on campus and showed improvement in controlling anger in a physical way, which the writer attributed to "correct medication." Claimant was reported to be progressing in "acquiring new vocabulary and using it in her classes." It was noted she benefited from "multiple repetitions of new curricular material. She was enrolled in the Junior ROTC program.

21. By letter dated September 10, 2013, when claimant was almost 18 years old, Dr. Santos-Nanadiego confirmed that he had been seeing claimant as a patient since 2004. He stated that he had diagnosed claimant with Autism, a Mood Disorder, Generalized

---

[1] The medications were to address attention and behavior issues.

Anxiety Disorder, Obsessive Compulsive Disorder and ADHD, Combined Type. He reported that claimant was taking Concerta, Abilify, Depakote and Zyprexa and that, in the past, she had tried Resperdal, Prozac, Lithium Hydroxyzine.

22. In September 2013, Virginia Sullivan, Ph.D., a Kaiser Clinical Psychologist, assessed claimant to rule out Autism Spectrum Disorder (ASD). Dr. Sullivan reported that claimant's parents stated that claimant did not like to be touched, loud noises made her angry, she kicked the door and growled at her parents if sent to her room, and she could be out of control for hours. Dr. Sullivan determined through specific testing that Claimant did not have ASD.[2]

Dr. Sullivan also administered the WISC –IV. In this testing, claimant obtained the following scores:

WISC- IV		
Verbal Comprehension	72	Borderline
Perceptional Reasoning	73	Borderline
Working Memory	80	Low Average
Processing Speed	62	Intellectually Disabled
Full Scale	67	Intellectually Disabled[3]

In describing the WISC – IV, Dr. Sullivan noted that the "processing speed score is often sensitive to such conditions as [ADHD]."

23. In late September 2013, claimant, just shy of her 18th birthday, applied for services at IRC. IRC referred claimant to an IRC counselor for a social assessment and

[2] The parties stipulated that claimant was diagnosed as autistic without testing for the condition. Claimant is not requesting services based upon ASD.

[3] Dr. Greenwald testified that a Full Scale score of 67 was "Mild Intellectually Disabled."

referred her to Julie Yang, Psy.D. to perform a psychological assessment to assist with determining eligibility for regional center services.

24. On October 17, 2013, claimant's 18th birthday, IRC Senior Counselor Sandra Ruiz conducted a social assessment of claimant. Ms. Ruiz reviewed claimant's past evaluations and interviewed claimant's mother. Among other things, claimant's mother told Ms. Ruiz that she was surprised claimant passed the high school exit examination in math and language, but she also stated that claimant studied all summer to do so. Claimant's mother reported that claimant did not retain the information after the test.

25. On November 1, 2013, Dr. Yang reviewed claimant's history and administered the Wechsler Adult Intelligence Scale – Fourth Edition (WAIS-IV). The scores obtained in that testing were:

WAIS – IV		
Verbal Comprehension	78	Borderline
Perceptional Reasoning	82	Low Average
Working Memory	80	Low Average
Processing Speed	65	Extremely Low
Full Scale	72	Borderline

Dr. Yang also scored claimant's test under the General Ability Index (GAI) standard which relies solely on verbal and perceptual abilities subtests and does not incorporate working memory and processing speed. Using the GAI standard, claimant received a score of 78, which is in the borderline range of intellectual functioning. Dr. Yang explained that the difference between the full scale score and the GAI score suggested "that the influence of working memory and processing speed negatively impacted the estimate of overall ability. Therefore, the GAI is a better representation of [claimant's] overall cognitive ability."

Among other things, Dr. Yang administered the Street Skill Survival Questionnaire

(SSSQ) to assess Claimant's adaptive abilities. The SSSQ measures knowledge and skills required to live independently in the community. Claimant obtained a standardized score on this test of 88, which falls in the low average range. Dr. Yang noted that claimant scored better than expected in this assessment as compared with her full scale IQ score of 78.

Dr. Yang diagnosed claimant with Borderline Intellectual Functioning, Mood Disorder, Not Otherwise Specified, and ADHD, Combined Type. She determined claimant was not eligible to receive regional center services on the basis of intellectual disability.

On November 12 and 13, 2013, when claimant was 18 years old and in twelfth grade, the school district's psychologist, Cindy Younderman, M.A., and others under her direction performed a Psychoeducational Evaluation of claimant and administered a battery of assessments. The evaluation report noted that claimant had passed the math portion of the California High School Exit Exam, but not the English/Language Arts section. Claimant's high school teachers commented that she had good work habits and study skills, was a pleasure to have in class and showed sincere effort. The test results included the following:

Reynolds Intellectual Assessment Scales (RIAS):

Verbal Intelligence Index	81	Low Average
Nonverbal Intelligence Index	98	Average
Composite Intelligence Index	87	Low Average
Composite Memory Index	79	Below Average/Average.
Composite Intelligence Index	87	Low average/Average

Woodcock III

Broad Reading	73	4.9 grade level	Below Average
Broad Math	73	5.4 grade level	Below Average
Broad Written Language	64	4.0 grade level	Intellectually Disabled

The achieved scores on the Woodcock III subtests showed a wide range of abilities from a low of 52 in writing fluency, to high of 85 on Applied Problems. Of the nine subtests, three of them were below 70.

26. Claimant's 2013 IEP, signed on November 18, 2013, showed that claimant was still eligible for special education as someone with a Primary Disability of "Orthopedically Impaired" and Secondary Disability of "Other Health Impairment (ADHD)," and that she was falling farther behind in academics. The school district offered claimant four periods of special education support and a calculator during the Math high school exit exam. As did the 2012 IEP, the 2013 IEP reported that claimant was progressing in "acquiring new vocabulary and using it in her classes," and she benefited from "multiple repetitions of new curricular material." Claimant continued her enrollment in the Junior ROTC program.

27. Sometime after this testing, claimant decided that she did not want to continue with school and she dropped out.

2014 - 2015 (19 to 20 Years Old)

28. On December 17, 2014, at 19 years of age, Dr. Reynaldo Abejuela, a psychiatrist at Diamond Medical Group, evaluated claimant in connection with her application for Social Security Disability income. Dr. Abejuela conducted a mental status examination and interviewed claimant; he did not conduct any other assessments. At this time, claimant had stopped taking all medications except medication to address bed wetting. Claimant told Dr. Abejuela that she felt anxious, had low energy and trouble sleeping. During the mental status examination, claimant was emotionally unstable, easily distracted, unable to focus and there was "psychomotor retardation with slowness of movement noted." Her affect was flat and she was apathetic and withdrawn. Dr. Abejuela diagnosed claimant with Generalized Anxiety Disorder, ADHD and Autism.

29. In late 2014, the Department of Rehabilitation referred claimant to the

agency EXCEED[4] for a "situational assessment," which was performed by Joann Taitano on December 9, 2014, and January 26, 2015. Ms. Taitano assessed claimant in various categories related to her ability to work. At the time of this assessment, claimant was not taking any medications. For part of the assessment, claimant worked at a thrift store for two days. It was reported that she demonstrated good time management skills and appropriate social interactions when she was spoken to, but she did not initiate conversation. Once she knew the task, she demonstrated good memory retention with simple repetitive tasks and initiated all job tasks with minimal difficulty. She needed support with complex or multi-step tasks. She appeared to be a visual learner.

Claimant also worked for a time at the Walgreens Distribution Center. In this environment, claimant could perform and retain simple tasks but became confused and overwhelmed with multi-step tasks. Her work quality and her focus were good but required job support for judgment skills. EXCEED determined that claimant needed supervision and job coach support for social skills and problem solving and, based on this, was able to work in a group type setting. Ms. Taitano expressed a concern that claimant might be victimized without supervision because of her desire to be liked by others.

Dr. Ingalls's Evaluations

30. At the request of the family, Christopher W. Ingalls, Ph.D., Q.M.E, a licensed psychologist, performed a comprehensive neuropsychological assessment of claimant on May 9, 10, 15 and June 20 2015. Dr. Ingalls reviewed claimant's history and, with the help of his staff, administered a battery of assessments to determine claimant's functioning at

[4] EXCEED is an organization that, among other things, provides vocational training and job matching and placement services for disabled adults. Its mission is "[t]o provide service and advocacy, which creates choices and opportunities, for adults with disabilities to reach their maximum potential."

that point.

One of the tests administered was the Wechsler Abbreviated Scale of Intelligence-II (WASI –II) to assess claimant's intellectual functioning. Claimant obtained a score of 67 in Verbal Comprehension Index (Mild Range of Intellectual Disability); a score of 77 (Borderline) in Perception Reasoning and a Full Scale IQ score of 69, which Dr. Ingalls determined was the Mild Range of Intellectual Disability. Dr. Ingalls found that claimant's highest scores were in the areas of drawing construction and learning, and memory. Claimant scored in the average and low average range in the List Learning subtest and in the average range in delayed recognition.

In other tests, Dr. Ingalls found that claimant's fine motor speed and dexterity were severely impaired. Visual scanning was poor and consistent with Mild Intellectual Disability. Claimant's drawing construction was average to low average range. Her processing speed was severely delayed on the Coding subtest, but she was in the borderline range in Block Design Construction. Attention and Concentration were in the mild intellectual disability to borderline range.

In language skills assessments, claimant scored in the borderline to mild intellectual disability in receptive vocabulary; average range in verbal fluency; average range for visual confrontation; and fairly intact reading comprehension. Claimant scored in the borderline to mild range in verbal reasoning; low average range in nonverbal reasoning; and severely impaired in mathematical reasoning.

Dr. Ingalls also administered the SSSQ. Consistent with the scores claimant obtained when the SSSQ was administered by Dr. Yang, claimant's adaptive abilities were measured in the low average range with a score of 87. Dr. Ingalls diagnosed claimant with Mild Mental Retardation based on, among other things, her low adaptive skills as assessed by other measurements.

31. On December 9, 2015, Dr. Ingalls administered the complete WAIS - IV to

claimant. In this testing, claimant obtained the following scores:

WAIS – IV

Verbal Comprehension	72	Borderline to Mild intellectual disability
Perceptional Reasoning	81	Low Average
Working Memory	69	Mild intellectual disability
Processing Speed	74	Borderline to Mild intellectual disability
Full Scale	70	Borderline to Mild intellectual disability

Dr. Ingalls again diagnosed Mild Mental Retardation.

EVIDENCE OF CLAIMANT'S CURRENT ADAPTIVE ABILITIES

Claimant's Presence at the Hearing

32. Claimant came to the hearing on both days. Each day she carried a large stuffed animal. She did not testify, but appeared to be immature in her affect. She did not have any outbursts or demonstrate inappropriate behavior in the hearing room.

Claimant's Functioning at Home and In the Community

33. According to the testimony of her parents and uncle[5], claimant cannot cook, make phone calls, or perform simple vocational skills requiring multiple steps, though they have tried to teach her these skills. She is easily distracted and lacks motivation. She would need one-on-one support to learn multi-step tasks and to complete them. She would be unable to understand a lease for an apartment or how to budget money. She would be unable to make and keep medical and other appointments. She is unable to use a computer, though they have tried to teach her.

34. At one time, claimant appeared to have friends, but those friendships did not last. She is very immature; she enjoys playing with an 8 year-old neighbor.

[5] Claimant's mother, father, and maternal uncle testified at the hearing.

Claimant is rigid in her routine; she becomes upset and cries, stomps, and yells when the routine changes. Her family is tied to a schedule to avoid upsetting her. Claimant will sometimes have tantrums when required to do chores.

Claimant has emotional outbursts at home and at her father's work place, where she spends most days. She yells and cries if she doesn't like something; even something as simple as when she is given a breakfast that she does not want. She used to hit and throw things during the outbursts, but the family has been able to train her to go to a corner when is upset and cry instead. Claimant's mother testified that claimant mostly followed the school rules, and as she became older, she would go see the counselor when she became agitated.

Claimant can care for her personal needs as long as personal care products are stocked in her bathroom. She does not always let her parents know when she is running out of a product. She is not good about keeping herself tidy and is irregular in cleaning herself after toileting. When claimant was on medication, her mother would fill a daily pill box and claimant would take the medication on her own. Claimant's mother did not believe that claimant on her own could complete the steps necessary to get medication, determine what medication to take and when, and properly take the medication.

Claimant demonstrates a lack of understanding of social proprieties. She has wanted to wear a bathing suit or costume to church or school. One day claimant refused to go to school unless she could wear her bathing suit, so she did not go to school that day.

At the age of 18 years, claimant decided that she no longer wanted to attend school, even though she is entitled to special education services until 22 years of age. Claimant is not independent, but would like to live outside of the family home in a group home setting.

Claimant's Functioning At "Work"

35. Claimant's uncle,[6] owns a small manufacturing business that creates products made of rubber. The business employs claimant's uncle, father and two others.

Claimant goes to her uncle's business two to three times a week. Her uncle gives her tasks to perform at the business like inspecting, counting or trimming product. He observed that claimant is not steady enough to use the scissors consistently or inspect product under magnification. She has been unable to perform the mathematical tasks to count product.

Claimant has been unable to perform multiple step tasks. Claimant's uncle instructed claimant how to inspect a box of gaskets, weigh them, package them in a bag and box them for shipping. Claimant could not complete the first step and did not get to the other steps. Claimant is able to sweep debris in the business, but she is unmotivated to do a complete job.

Claimant does not know how to use a computer. She watches videos on the computer, but cannot rewind, fast forward or otherwise use the computer while she is watching.

Claimant's uncle and father bring food to work for lunch. Claimant's uncle has asked claimant to prepare the food, which consists of making sandwiches or putting left overs in the microwave. Claimant does not take initiative to do this and, if asked, does not do it.

On the days claimant goes to the business, she is there for eight hours and primarily "just hangs out." Claimant requires a lot of re-direction and supervision. She has little ability to focus, and she needs frequent prompting and repeated instructions to perform a task. Claimant's uncle believes claimant is unable to work alone for employment. He has

[6] Claimant's uncle testified at the hearing.

not seen evidence that she is able to care for herself, ensure her own safety, prepare food for herself, or interact on a telephone.

36. Claimant's father, has worked at his brother-in-law's business for 15 years. He drives claimant to the business most days. All of the employees in the business try to give claimant tasks to perform, but she gets distracted and does not finish them. Even when given simple tasks, claimant is very slow, becomes distracted, and does not finish. Claimant's father has asked claimant to separate and count parts, but she was not able to accurately separate the items or perform any of the other tasks.

Claimant's father has worked in the restaurant business as a manager and is familiar with the kinds of skills required to be a hostess, waitress, dishwasher and cook. He stated that claimant does not have the ability to gain the skills necessary to be employed in any of these positions.

DR. GREENWALD'S TESTIMONY

37. Paul Greenwald, Ph.D. received a doctorate in clinical psychology from the California School of Professional Psychology in 1987. He has been licensed in California as a clinical psychologist since 2001. He has served as a staff psychologist for IRC since 2008. He has extensive experience assessing, evaluating and developing treatment plans for persons diagnosed with, or identified as being at risk for, autism, intellectual disabilities and psychological disorders. Dr. Greenwald is qualified to review and evaluate claimant's records and to form an opinion whether claimant is eligible for IRC services based upon his review. Dr. Greenwald did not conduct a psychological assessment of claimant.

Dr. Greenwald participated in the informal meeting held on November 18, 2015, to discuss claimant's request for services. He, along with other personnel, reviewed the various reports and evaluations discussed above. After his review of the records, Dr. Greenwald agreed with the eligibility team's initial determination that claimant did not qualify for regional center services on the basis of having an intellectual disability or a

condition closely related to an intellectual disability.

Dr. Greenwald based his opinion that claimant did not have a qualifying developmental disability on the fact that claimant has been diagnosed with other psychological conditions that impact cognition and performance on standardized tests. Further, claimant's test results subtly declined after 2001, and then more abruptly declined by one standard deviation between 2005, when claimant was 10 years-old, and 2008, when claimant was 13 years-old. Dr. Greenwald explained that this kind of abrupt decline is atypical for persons who have an intellectual disability or a condition substantially related to an intellectual disability. Instead, one would expect to see consistently low scores on psychological tests over time. Dr. Greenwald stated that claimant's scores in 2005 were not those of someone who was intellectually disabled.

Similarly, claimant's scores on individual subtests varied between "extremely low" to "fully average." This too, is not the profile for a person with an intellectual disability. A person with an intellectual disability would be expected to consistently score low in all or most of the subtests.

Dr. Greenwald pointed out that Attention Deficit Hyperactivity Disorder (ADHD), learning disabilities, and mood disorders impact an individual's cognitive functions and ability to perform well on tests. Dr. Greenwald testified that the medications claimant had been taking were indicated for a person who had depression, attention disorders, and mood disorders. An individual who has a lack of energy or focus is not necessarily limited in his or her abilities or intellect, but the signal gets lost in the noise of the disorder, and their test scores reflect the negative impact of the disorder. Also, claimant's cerebral palsy can have a negative impact on academic performance.

Dr. Greenwald disagreed with Dr. Sullivan's conclusion that claimant had an intellectual disability. Dr. Greenwald opined that a finding of intellectual disability was inconsistent with claimant's prior history and testing. He also considered that claimant

scored in the intellectually disabled range on the WAIS – IV test in processing speed which was not a good indicator of ability for an individual with a mental health disorder. Dr. Sullivan's summary of the test confirmed as much when it stated, "the processing speed score is often sensitive to such conditions as attention deficit hyperactivity disorder."

Dr. Greenwald also disagreed with Dr. Ingalls's evaluation of claimant. Dr. Greenwald found the scores obtained from Dr. Ingalls's testing to be inconsistent, with many in the low average or mild mental retardation range. In Dr. Greenwald's opinion, claimant's primary diagnosis was related to psychiatric disorders that would have interfered with cognitive functioning test results. He stated that the medications prescribed for claimant were consistent with her history of mood disorders and the impact of a mood disorder on intellectual functioning was consistent with the varying scores claimant obtained in testing. He believed claimant's history, behaviors, symptoms, medications and scores suggested a bi-polar disorder, although claimant was never specifically diagnosed with bi-polar disorder. Dr. Greenwald explained that the diagnosis of "mood disorder" is an umbrella diagnosis for a variety of psychiatric disorders.[7]

Dr. Greenwald further opined that claimant was not eligible for regional center services based on what is referred to as "the Fifth Category" for eligibility – where a person is eligible for regional center services on the basis that the individual has a developmental disability resulting from a disabling condition that is closely related to an intellectual disability or that requires treatment similar to that required for individuals with intellectual disabilities. Consistent with his opinion that claimant did not have an intellectual disability, Dr. Greenwald believed that claimant's disabilities originate from other conditions not

[7] Mood disorders are a category of illnesses that include: major depressive disorder, bipolar disorder, persistent depressive disorder, seasonal affective disorder and others.

closely related to intellectual disability. In Dr. Greenwald's opinion, there is no treatment for an intellectual disability and a person cannot recover from it, but the condition can be managed through supportive treatment including sheltered workshops, skills training with repetition and modeling. However, these management services are beneficial to persons with disabilities other then intellectual disability. The fact that claimant might benefit from them is not proof that she has a condition closely related to intellectual disability or that she requires treatment similar to that required for individuals with intellectual disabilities. Dr. Greenwald recognized that a person with a mental health diagnosis, under the appropriate circumstances, could be eligible for regional center services under the fifth category. He opined that claimant was not such a person.

DR. INGALLS'S TESTIMONY

38. Dr. Ingalls holds licenses as a Clinical Psychologist in California (1987) and Massachusetts (1984). He obtained a Masters Degree and Ph.D. in Clinical Psychology from the California School of Professional Psychology in 1983. He has been a Qualified Medical Examiner since 1990. Dr. Ingalls has worked as a consulting neuropsychologist in a variety of facilities and has administered "thousands" of intelligence tests. He is qualified to perform and evaluate psychological testing and to form an opinion concerning whether claimant is eligible for IRC services.

39. Dr. Ingalls is familiar with regional center eligibility requirements. He opined that claimant was eligible for regional center services based upon a diagnosis of intellectual disability. He stated that her intellectual disabilities were not caused solely by her psychiatric conditions.

Dr. Ingalls testified that an individual's IQ did not, absent brain injury, change over time; an individual is likely to have the same IQ earlier in life as he or she would have at 17 years of age.

Dr. Ingalls believed that Dr. Yang's assessment of claimant was administered too

close in time to the Kaiser assessment, and therefore the scores obtained were not a reliable estimation of claimant's capabilities. Nonetheless, he stated that Dr. Yang's full scale score of 72 was still within the range of intellectual disability; because a score indicates a plus or minus 5 points of reliability; thus, a score of 72 can be an indicator of mild intellectual disability or low average ability.

Dr. Ingalls testified that diagnosing an intellectual disability involves looking at the whole picture of the individual's functioning, including, but not exclusively, test scores. It is also necessary to examine an individual's adaptive functionality. He questioned the high score obtained by Dr. Yang in the SSSQ and stated it was one thing to discuss knowing how to do something with the assessor and actually being able to doing it.

Dr. Ingalls was skeptical of the 2005 assessment that resulted in a full scale score of 84 because it was inconsistent with other testing. He would have liked to have seen the raw protocols and to have scored the test himself. In his opinion, the fact that the 2005 assessment resulted in a score that was one standard deviation above the others made the results suspicious.

Dr. Ingalls spent approximately six hours with claimant. He found her maturity level to be that of a four or five year old. He was aware that claimant had tantrums and "meltdowns" that he attributed to intellectual disability and cognitive dysfunction. He stated that a mood disorder, as diagnosed by Dr. Santos-Nanadiego of Kaiser, could cause a person to act immaturely. He also stated that depression and anxiety could cause deficits in social functioning, but they would not affect IQ scores.

Dr. Ingalls disagreed with Dr. Greenwald's supposition that because claimant was prescribed medications that may be used to treat a bi-polar disorder it means she had bi-polar disorder. Some medications can be prescribed to control symptoms similar to the symptoms presented in an individual with bi-polar disorder. Dr. Ingalls opined that ADHD, bi-polar disorder or mood disorder could have an impact on assessment scores, but the

impact would be minimal.

According to Dr. Ingalls, claimant has an intellectual disability along with behavioral agitation. She is getting older and life's challenges are getting more difficult. She is failing at basic activities, but she does not have any insight into why or what she needs to succeed. Dr. Ingalls stated that there is no magic medicine or therapy to cure claimant; she needs lifetime supports. The supports she requires are like those needed by intellectually disabled individuals and include: a supportive living environment; assistance in shopping; doing laundry; getting and making food; appointment of a conservator; supportive employment; social protection; community mobility; medical oversight; and preparation for her parents' deaths. He also believed that claimant would benefit from applied behavior analysis (ABA) services. Although these services are usually associated with autism, Dr. Ingalls stated ABA also works well with intellectually disabled individuals.

Dr. Ingalls did not believe the Woodcock III given to claimant when she was five years old was a reliable indicator of her IQ or of a diagnosis of intellectual ability. He opined that it was too early to give that test. Dr. Ingalls did not dispute that mental illness shows up in adolescence or that scores could drop because of a mental illness or the treatment prescribed for a mental illness. He agreed that claimant has depression; however, in his opinion it was a symptom of intellectual disability and not her diagnosis. He believed claimant has a lot of symptoms that are consistent with a mental health disorder, but he believes they emanate from her intellectual disability. While Dr. Ingalls stated that an individual with intellectual disability could score 90 in a calculating subtest, he did not appear confident in his statement.

Dr. Ingalls believes a psychologist is better able to diagnose a psychological condition than a psychiatrist because a psychiatrist does not have the extensive training in test administration and evaluation. He was skeptical of the multiple psychiatric diagnoses Dr. Santos-Nanadiego ascribed to claimant. In Dr. Ingalls' opinion, claimant is eligible for

services.

DIAGNOSTIC CRITERIA FOR INTELLECTUAL DISABILITY

40. Intellectual disability is addressed in the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition,* (DSM-V), which all experts relied upon in their diagnoses. The DSM-V contains the diagnostic criteria used for 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 intellectual disability] 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 "may function age-appropriately in personal care. 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 . . . . In adulthood, competitive employment is often seen in jobs that do not emphasize conceptual skills. Individuals generally need support to . . . learn to perform a skilled vocation competently."

The DSM-V notes that, with regard to Criterion A, "individuals with intellectual disability have 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)." The DSM-V cautions that IQ tests must be interpreted in conjunction with considerations of adaptive function. It states that "a person with an IQ 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 IQ score."

With regard to Criterion B, the DSM-V provides that "Criterion B is met when at least one domain of adaptive functioning – conceptual, social, or practical – is sufficiently impaired that ongoing support is needed in order for the person to perform adequately in one or more life settings at school, at work, at home, or in the community."

FIFTH CATEGORY ELIGIBILITY

41. The Lanterman Act provides for assistance to individuals with "disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability." (Welf. & Inst. Code, § 4512, subd. (a). This is known as the "fifth category." Eligibility, however, may not be based on "other handicapping conditions that are solely physical in nature" (Welf. & Inst. Code § 4512, subd. (a)), those solely resulting from psychiatric disorders (Cal. Code. Regs., tit. 17 § 54000, subd. (c)(1)), or those solely resulting from leaning disabilities. (Cal. Code.

Regs., tit. 17 § 54000, subd. (c)(2)). Like the other four qualifying conditions (cerebral palsy, epilepsy, autism, and intellectual disability), the fifth category condition 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 a diagnosis in the DSM-V. 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."

LEGAL CONCLUSIONS

THE BURDEN AND STANDARD OF PROOF

42. 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 developmental disability. The standard of proof required is preponderance of the evidence. (Evid. Code, § 115.)

43. 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

44. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. (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.)

45. An applicant is eligible for services under the Lanterman Act if he or she is suffering from a substantial developmental disability 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 individuals with an intellectual disability. (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.)

46. Welfare & Institutions Code section 4512, subdivision (l)(1), 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:
>
> (A) Self-care.
> (B) Receptive and expressive language.
> (C) Learning.
> (D) Mobility.
> (E) Self-direction.
> (F) Capacity for independent living.
> (G) Economic self-sufficiency.

47. 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[8], 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) 1The 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.

[8] The regulations have not been amended to replace "mental retardation" with "intellectual disability."

(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."

48. 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.)

EVALUATION

49. In her Fair Hearing Request, claimant asserted that she was eligible for regional center services based upon intellectual disability or under the fifth category for a disabling condition closely related to intellectual disability, or that requires treatment similar to that required for individuals with an intellectual disability.

50. This case presented many difficulties. Claimant is undoubtedly an individual who requires supports and services to live a relatively independent life. The question is whether she is eligible for regional center services because she has a developmental disability as defined by the Lanterman Act.

Claimant Is Not Eligible For Services Based on Intellectual Disability

51. To be eligible for regional center services, claimant must prove that she has a substantial disability that is attributable to a developmental disability recognized under the Lanterman Act. Claimant's primary claim for eligibility is an assertion that she has an intellectual disability. Claimant bears the burden of proof in showing that a preponderance of the evidence supports her claims. Claimant did not meet her burden.

52. Although claimant received IRC services under the Early Intervention Services Act as an "at risk" infant, these services ceased when claimant turned three years old. She

was never identified as having a developmental disability during her youth. Claimant received special education services from her school district for an orthopedic impairment and other health impairment. There is no evidence that claimant was ever provided special education services under "Intellectual Disability/MR" or that any teacher, psychologist or psychiatrist suggested that claimant should or might be classified as intellectually disabled until Dr. Ingalls's evaluations in 2015, when claimant was almost 20 years old.

53. In 2001, when claimant was almost six years old, she obtained scores on the Woodcock III, 106, 101, and 109, which showed she was performing in the average range of intelligence. This was inconsistent with having an intellectual disability under the DSM-V.

54. In 2004, claimant began to see a Dr. Santos-Nanadiego, a psychiatrist. She was diagnosed with ADHD, and a sensory integration disorder. She continued to see Dr. Santos-Nanadiego until at least 2014. Claimant took medications designed to address behavior problems from the time she was in second grade until 2014. In 2012, Dr. Santos-Nanadiego diagnosed claimant as having mood disorder, obsessive compulsive disorder, generalized anxiety disorder, ADHD, combined, learning difficulties, Autism Disorder and benign essential tremor. With the exception of Autism Disorder, these psychiatric conditions and learning disabilities do not constitute developmental disabilities under the Lanterman Act. In 2013, Dr. Sullivan assessed claimant specifically to determine if claimant had ASD. Dr. Sullivan determined that she did not.

55. In 2005, when claimant was nine years old, she obtained scores on the WISC IV and Woodcock III that were in the average/low average range. Her lowest score was 77. The remaining scores were in the eighties, and she scored a 94 in working memory. Her full scale score on the WISC IV was 84. Her 2005 Woodcock III scores of 82, 89, and 77, were lower than her 2001 Woodcock III scores. Claimant was found to be at risk for attention and learning problems and withdrawal.

56. In 2008, when claimant was in sixth grade, her scores on the WISC–IV dropped dramatically to a full scale score of 70, and her scores on the Woodcock III also dropped to 72, 85, 78. In almost all categories, claimant scored in the borderline range. In 2011, claimant's scores in the Woodcock III dropped to 66, 78, and 77. Her parents reported that claimant's academic deficits and behavioral difficulties increased at the end of fifth grade. Claimant stated that she had chores that she performed at home, including cleaning the bathroom, her room and windows. Claimant's declining scores were inconsistent with the stability of scores one would expect with an individual with an intellectual disability. During this time, claimant received special education services under the Orthopedic Impairment designation.

57. During high school, claimant received special education services under Orthopedic Impairment and "Other Health Impairment (ADHD)". In the 9th grade claimant scored 66, 78 and 77 on the Woodcock III. Claimant was reported to have ADHD, a sensory integration disorder, poor visual motor integration skills, and auditory processing difficulties. Despite these impairments, claimant passed the California high school exit examination.

58. In Dr. Yang's 2013 evaluation of claimant, claimant obtained a full scale IQ score of 72 on the WAIS – IV. When evaluating claimant's scores using another accepted method, claimant's IQ was 78. Claimant received a score of 88 in the SSSQ, which Dr. Yang felt was better than expected, given her WAIS – IV scores. Dr. Yang determined claimant was not intellectually disabled and not eligible for regional center services.

59. In November 2013, claimant's school district evaluated her, and she obtained a composite intelligence index score of 87 – low average/average. On the Woodcock III, claimant scores put her at below average in two categories and intellectually disabled in one category – broad written language. The Woodcock III subtest scores were inconsistent and ranged from a low of 52 to a high of 85. The school psychologist did not suggest that

claimant had an intellectual disability.

60. In December 2104, Dr. Abejuela, diagnosed claimant with generalized anxiety disorder ADHD and Autism.

61. In 2015, when she was almost 20 years old, Dr. Ingalls evaluated claimant. Claimant obtained a full scale score of 70, borderline to mild intellectually disabled, on the WAIS –IV. Only her working memory score was below 70 in that testing. She obtained an 81 in perceptional reasoning.

62. There was little evidence of claimant's adaptive skills except those relating to her current functioning. School records indicated that claimant was progressing in the classroom academically and socially. Comments from teachers in high school included that she had good work habits and study skills, was a pleasure to have in class, and showed sincere effort. She was in the Junior ROTC program in high school. At one time she appeared to have friends, but those friendships did not last. Claimant's mother testified that she was able to follow school rules.

63. More is known about claimant's current adaptive skills from the testimony of her parents and uncle and claimant's presence at the hearing. During the hearing, claimant held a large stuffed animal. She did not testify, but appeared to be immature in her demeanor. She did not have any outbursts or demonstrate inappropriate behavior in the hearing room. Based upon claimant's parents' and uncle's testimony, it was undisputed that claimant currently has functional limitations in adaptive behavior.

64. Claimant is eligible for regional center services if she has a developmental disability that is attributable to an intellectual disability and the developmental disability constitutes a substantial disability. Claimant is not eligible for regional center supports and services if her handicapping conditions are "[s]olely psychiatric disorders" or "[s]olely learning disabilities."

65. A preponderance of the evidence did not establish that claimant has an

intellectual disability under the DSM V and the Lanterman Act. More persuasive evidence established that the scatter pattern of scores obtained by claimant, and the decline in her social and intellectual functioning over the years was "an integral manifestation" of her psychiatric disorders and/or learning disabilities.

Claimant's history of psychiatric disorders and learning disabilities is well-documented in the records. In her younger years, claimant achieved average scores. Those scores decreased as her psychiatric disorders and/or learning disabilities became more pronounced. It is more likely that claimant's deficits in adaptive behaviors also resulted from her psychiatric disorders and/or learning disabilities, and the evidence supporting that conclusion was more persuasive. Claimant is not eligible for regional center services on the basis of on intellectual disability because her handicapping conditions are solely psychiatric disorders and/or solely learning disabilities.

Claimant is Not Eligible For Services Based On the "Fifth Category"

66. Claimant argued that she is eligible to receive services and supports from IRC based upon the fifth category. Such eligibility may be established through evidence that claimant has a disabling condition closely related to an intellectual disability or that requires treatment similar to that required by an individual who has an intellectual disability. (Samantha C. v. Department of Developmental Services (2010) 185 Cal.App.4th 1462). Establishing eligibility based on the fifth category cannot be based upon handicapping conditions that are solely psychiatric disorders or learning disabilities. (Cal. Code Regs., tit. 17 § 54000, subds. (c)(1), (2).

67. Claimant contends that she is eligible for regional center services because she has a disabling condition closely related to an intellectual disability. The evidence does not support her position. Claimant has a documented history of psychiatric disorders and learning disabilities. Her IQ test results, were not stable. They fluctuated significantly over the years beginning in the average/low average range, moving downward overall in later

years in some tests, but with subtest scores ranging from intellectually disabled to low average in a single test. In 2013, claimant obtained a composite intelligence score of 87, with a subtest score of 98 in nonverbal intelligence. An individual with a disabling condition similar to an intellectual disability would not be expected to obtain scores that fluctuated and showed significant discrepancies. Because claimant scored in the average to low average range in her earlier years, it is more likely that her psychiatric disorders and/or learning disabilities interfered with her intellectual functioning rather than the other way around. Claimant's test results demonstrate that her abilities are higher than her performance and do not establish that claimant functions as a person with an intellectual disability.

Claimant also contends that she is eligible for regional center services because deficits in her adaptive functioning suggest that she requires treatment similar to that received by individuals with intellectual disability. At the hearing, it was not disputed that claimant currently has adaptive functioning deficits. Dr. Ingalls testified that claimant required the same "treatments" as those needed by intellectually disabled individuals, such as assistance in shopping; doing laundry; getting and making food; supportive employment; social protection; community mobility; and medical oversight to lead a relatively independent and/or productive life. He also believed that claimant would benefit from ABA services. Dr. Greenwald testified that supportive treatment for managing an intellectual disability, or a condition closely related to in intellectual disability, could include sheltered workshops, skills training with repetition and modeling. The fact that claimant had adaptive functioning deficits and that she could benefit from these "treatments," or even that these "treatments" were required for her to live a productive life, does not

establish she is eligible for regional center services based on the fifth category.[9]

68. The Lanterman Act is clear that it extends only to individuals with developmental disabilities. Prior to Dr. Ingalls's evaluation in 2015, no other professional determined that claimant had an intellectual disability or a condition closely related to an intellectual disability. To the contrary, claimant's records are replete with reference to her psychiatric disorders and learning disabilities. Although Dr. Ingalls concluded that claimant's psychiatric deterioration was related to her developmental disability, Dr. Greenwald's opinion that claimant's decline in intellectual function was related to her psychiatric condition was more persuasive.

The evidence established that claimant's intellectual functioning, as demonstrated by scatter pattern results and decreasing scores on standardized tests, and adaptive functioning deficits, were not due to cognitive inabilities but were due to her psychiatric condition and learning disabilities. Thus, claimant's handicapping conditions are not due to a developmental disability and they are not due to the fifth category. Claimant's disabilities are solely psychiatric and/or solely learning disabilities. These conditions are exempted from the definition of a developmental disability and, therefore claimant is not eligible for regional center services under the fifth category.

69. IRC's eligibility team reviewed the available documentation and determined that claimant was not eligible for services. These determinations have been described as difficult and complex, particularly as they relate to the fifth category of eligibility. (See, Mason v. Office of Administrative Hearings (2001) 89 Cal.App.4th 1119, 1129.) The language of the Lanterman Act and the implementing regulations "clearly defer to the expertise of the [Department of Developmental Services] and the [regional center]

[9] The distinction between "treatment" and "supports and services" is not entirely clear; however, it is not necessary in this decision to resolve that issue.

professionals and their determination as to whether an individual is developmentally disabled." (Id., at p. 1129.)

70. In this matter, claimant had the burden of proof. She has challenges and disabilities, and may need assistance to function as an independent adult. There are other agencies and programs for which claimant may be eligible. But based on the evidence provided in this record, the weight of the evidence did not establish that claimant has an intellectual disability, condition closely related to that of an intellectual disability, or that she requires treatment similar to that required by those with an intellectual disability. Claimant did not establish that she is entitled to regional center services under the Lanterman Act. The evidence does not support overturning IRC's determination that claimant is ineligible for IRC supports and services.

ORDER

1. Claimant's appeal from Inland Regional Center's determination that claimant was not eligible for services based upon claimant having an intellectual disability is denied.

2. Claimant's appeal from Inland Regional Center's determination that claimant was not eligible for services based upon claimant having a disabling condition closely related to intellectual disability or one that requires treatment similar to that required for individuals with intellectual disabilities is denied.

DATED: March 25, 2016

_____/s/_____

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.