

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2017060994

DECISION

Susan J. Boyle, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on November 1, 2017, in San Bernardino, California.

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

Claimant's father represented claimant, who was present.

The matter was submitted on November 1, 2017.

ISSUES

1. Is claimant eligible for regional center services under the Lanterman Act as a result of a diagnosis of autism spectrum disorder that constitutes a substantial disability?
2. Is claimant eligible for services under the Lanterman Act as a result of a diagnosis of intellectual disability that constitutes a substantial disability?
3. Is claimant eligible for regional center services under the Lanterman Act as a result of a condition closely related to intellectual disability or requiring treatment

similar to that required for an intellectually disabled individual, which constitutes a substantial handicap (fifth category)?

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. Claimant is a 23-year-old man who lives with his adopted father and grandparents. Claimant and his father moved to California in or around 2012.
2. Prior to May 17, 2017, claimant's father met with Ms. Cummings and asked that claimant be provided services from IRC. On May 17, 2017, claimant's father sent a lengthy letter to Ms. Cummings outlining many of the reasons he felt claimant needed, and was eligible for, IRC services. He included some records relating to claimant in support of his request.
3. IRC's multi-disciplinary team met on May 23, 2017, to consider claimant's request for services. The team reviewed a letter from a licensed mental health counselor in Florida and assessments of claimant performed in 2014 by two California psychologists. The team determined claimant was not eligible for IRC services and additional assessment was not required.
4. By letter dated May 23, 2017, IRC advised claimant that it reviewed his records and determined that "no 'intake' services can be provided" because he did not have a "substantial disability" that qualified him for regional center services.
5. On June 19, 2017, claimant signed a Fair Hearing Request appealing IRC's decision. In his hearing request he stated that he disagreed with IRC and requested he be found eligible to receive IRC services.
6. A hearing set for August 3, 2017, was continued by agreement of the parties to allow IRC to conduct an evaluation of claimant by IRC's psychologist that focused on whether claimant qualified for IRC services under the "fifth category." That

evaluation was completed on September 25, 2017. After reviewing the results of the evaluation, IRC did not change its determination that claimant was ineligible for regional center services.

7. This hearing ensued.

CLAIMANT'S RECORDS

2010 Psycho-Educational Reevaluation

8. On May 17, 2010, Leslie E. Harriott-Godfrey, M.S., School Psychologist for Palm Beach County [Florida] School District conducted a three-year Psycho-Educational Reevaluation of claimant and wrote a report. Claimant was 15 years and 8 months old, and in the ninth grade, when this reevaluation was performed. The purpose of the reevaluation was to provide information about claimant's psychological and educational levels to determine future educational needs and placement.

9. Ms. Harriott-Godfrey's report noted that claimant was receiving special education services "in the areas of Specific Learning Disabled and Other Health Impaired programs." Ms. Harriott-Godfrey found claimant to be "a friendly young man" who "was able to converse easily" with her. Ms. Harriott-Godfrey administered the Kaufman Test of Educational Achievement – Second Edition (KTEA-II) and Gilliam Asperger's Disorder Scale (GADS).

In the KTEA – 11, claimant scored in the average range for reading skills and the below average range for math skills. The GADS was completed by claimant's English teacher, Algebra teacher and father. Based on his teacher's responses, claimant's Asperger's Quotient fell in the "Low/Not Probable range." Based on his father's responses, claimant's Asperger's Quotient fell in the "High/Probable range."

Records from 2012

10. Claimant and his father moved to California in 2012.

11. On May 14 and 15, 2012, Cynthia Youngerman, M.A., School Psychologist, Riverside Unified School District, conducted a Psychoeducational Evaluation of claimant to "verify his eligibility for special education and assist in determining the least restrictive environment that can best meet his educational needs." Claimant was 17 years and 8 months old at the time of this evaluation.

Ms. Youngerman interviewed claimant, reviewed his educational records, administered the Reynolds Intellectual Assessment Scales (RIAS), the Cognitive Assessment System (CAS), the Developmental Test of Visual-Motor Integration (VMI), the Gilliam Autism Rating Scale – Second Edition (GARS-2), and Sentence Completion, and she wrote a report. Claimant's scores in the RAIS placed him in the average range for overall cognitive ability. His verbal and nonverbal reasoning skills were within the average range. His memory skills were in the low average range. Claimant's gross motor skills were within normal limits. Claimant scored in the Well Below Average classification in the CAS planning processing scale. This score was lower than his other CAS scores which were in the average and low average range. Claimant told Ms. Youngerman he was "happy when he is around people" and that it was "easy for him to make friends." Two of claimant's teachers completed the GARS-2. Both results indicated it was "unlikely" that claimant had autism. Ms. Youngerman found there was "no indication through this evaluation that [claimant] has an emotional disturbance." Ms. Youngerman recommended the Individualized Education Plan (IEP) team consider eligibility for special education services under Specific Learning Disability and Other Health Impairment.

12. By letter dated July 26, 2012, Jeremiah Cody Smith, M.A., L.M.H.C, a mental health counselor licensed in Florida, wrote that claimant:

has been diagnosed with Asperger's disorder, Depressive Disorder NOS and Attention Deficit Hyperactivity Disorder in

March 2012. He is exhibiting symptoms that include inattentiveness, forgetfulness, social isolation, social awkwardness, physical aggression, property destruction, inappropriate speech, excessive sleeping, over-eating, and poor motivation. Individual therapy services were taking place for one to two hours per week over the course of several years. [Claimant] continues to be in need of therapeutic and psychiatric services at this time. It is my understanding, at this time, that [claimant] is working with a psychiatrist and has been waiting for several months for a therapist to be assigned.

Records From 2013 to 2014

13. An IEP with Riverside Unified School District dated January 23, 2013, designated claimant as eligible for special education services under the categories of Specific Learning Disability and Other Health Impairment.

14. On April 7, 2014, Paul Greewald, Ph.D., IRC Psychologist, performed a psychological assessment of claimant to determine if he was eligible for IRC services under Autism Spectrum Disorder criterion. Claimant was 19 years 7 months old at the time of this assessment. Dr. Greenwald reviewed prior assessments and educational records, interviewed claimant, administered the Autism Diagnostic Observation Schedule -2nd Edition (ADOS-2) Module 4, the Childhood Autism Rating Scale – 2nd Edition (CARS2-ST), and the Vineland II Adaptive Behavior Scale, and he wrote a report. Dr. Greenwald determined that claimant's ADOS-II and CARS2-ST scores did not "meet or approach cutoff criteria consistent with [Autism Spectrum Disorder]" and that claimant was not eligible for regional center services under Autism Spectrum Disorder criterion.

15. On April 7, 2014, IRC's interdisciplinary team met and determined that claimant was not eligible for regional center services because he did not have a developmental disability. The team recommended claimant contact the Department of Rehabilitation for vocational training and inquire about a program for students with disabilities at a community college.

16. In May 2014, Westview Services, Inc. conducted an External Situational Assessment of claimant and prepared a report of its findings. In the vocational assessment of the evaluation, claimant worked for eight days at the Salvation Army Thrift Store. He was responsible for stocking, organizing shelves, pricing merchandise, and replacing items that had been misplaced. The person assessing claimant had to prompt claimant on occasion to continue working, but the assessor wrote that claimant "put effort into his work and produced quality work. . . . He was "very friendly and got along with everyone." The assessor stated claimant was able to help customers; however, it was noted he talked a lot and liked to give his opinion, but he did not understand when talking or providing his opinion was inappropriate. Westview recommended that claimant begin work in an "individual supported employment placement with coaching"

17. On June 13, 2014, pursuant to a referral from the Department of Rehabilitation, Kurt R. Bickford, Ph.D., IME, BCIAC, performed a psychological evaluation of claimant to determine if claimant was ready for vocational training and permanent employment. Dr. Bickford interviewed claimant, administered the Neurobehavioral Mental Status Exam, the Wechsler Abbreviated Scales of Intelligence (WASI), the Woodcock-Johnson Tests of Achievement – Revised (WJ) the Trail Making Test A&B, and the VMI, and wrote a report.

Claimant's scores of cognitive functioning on the WASI fell within the average to high average range of intelligence overall. His scores on the VMI showed inconsistent performance throughout. The WJ noted:

academic performance reveals that reading vocabulary is his academic area of relative strength, scoring at an eighth-grade level; statistically this qualifies as a learning disability due to his superior language vocabulary v. low average reading vocabulary. Math calculation and written expression score within mid-elementary levels and at the 1 [percentile]; both qualify as learning disabilities.

Dr. Bickford gave an Axis I diagnosis of: Autism Spectrum Disorder, Asperger's Syndrome, mild-moderate;¹ ADHD combined type, moderate; Persistent Depressive Disorder, moderate; Reading Disorder, mild; Mathematics Disorder, moderate; and Written Expression, moderate. Dr. Bickford found claimant "a good candidate for DOR assistance towards a [very basic and comprehensive behavioral training program that focuses on daily living skills.]" Dr. Bickford concluded that vocational training was premature and that claimant "first needed to work on activities of daily living"

¹ The basis of Dr. Bickford's diagnoses of Autism Spectrum Disorder, Asperger's Syndrome is unclear. He did not administer assessments used to diagnose these conditions and, other than Dr. Greenwald's opinion that claimant did not have either condition, the records do not include reports that analyzed whether claimant had Autism Spectrum Disorder or Asperger's Syndrome.

18. On August 5, 2014, IRC's interdisciplinary team reviewed Dr. Bickford's report and determined that any new information provided by Dr. Bickford "does not warrant an assessment." The team found claimant was not eligible for IRC services under any category.

19. On August 22, 2014, Department of Rehabilitation (DOR) closed claimant's case on the basis that he required extended services that were not available to him by DOR.

20. On September 18, 2014, claimant's father attended an informal meeting with IRC's staff to discuss claimant's father's observations of claimant and why he felt claimant was eligible for services under the fifth category and/or under a diagnosis of autism. IRC adhered to its decision that claimant was not eligible for regional center services.

21. Claimant filed an appeal of IRC's decision; however, claimant later withdrew his appeal.

2017 Request for Services

22. In mid-May, claimant's father met with Ms. Cummings to discuss claimant's functioning and what his father observed about his conduct. On May 17, 2017, claimant's father faxed a four page letter to Ms. Cummings setting forth his observations of claimant and his concerns for claimant's future.

Claimant's father reported a pattern of claimant staying alone in his room except when he leaves the room to get something to eat. After quickly eating, claimant promptly returns to his room. Although claimant says he wants to be around family, he does not vary this pattern when a family celebration is taking place and extended family members are in the home. When claimant and his family are away from the home, claimant becomes impatient and wants to return to the house.

Claimant does not cook for himself and he will eat left-over food cold rather than warm it. He has a list of daily chores that are taped to his bedroom door, but he has to be prompted each day to complete the chores. Claimant is not self-motivated to change his clothing, bath or care for his hygiene needs.

Claimant is unable to manage money. He has spent excessive amounts on video games, and he has been taken advantage of by others who convince him to purchase items for them.

Claimant's father expressed his abiding love for his son but wrote, "I don't know what to do for him anymore, and I want him to succeed and be happy in life, and to be able to attain his goals."

23. On May 23, 2017, IRC's interdisciplinary team reviewed claimant's records, including Dr. Greenwald and Bickford's assessment reports and information from DOR to consider claimant's request for services. The team determined that claimant was not eligible for IRC services and that an additional assessment was not required.

24. Claimant appealed IRC's decision. Prior to the date originally set for a Fair Hearing, IRC agreed to conduct a further assessment of claimant based primarily upon whether he was eligible for services under the fifth category.

25. On September 25, 2017, Sandra Brooks, Ph.D., performed a psychological assessment of claimant, who was 23 years old. Dr. Sandra Brooks received her Ph.D. in Clinical Psychology from Loma Linda University in 2006. She has worked as a staff psychologist at IRC for about 10 years. Her duties in the position of staff psychologist include reviewing records and conducting evaluations to assist the multidisciplinary team to determine if potential clients are eligible for service. During her employment at IRC, Dr. Brooks has reviewed the records of over one thousand clients or potential clients to determine their eligibility for services with IRC.

26. Dr. Brooks reviewed claimant's records, administered the Street Survival Skills Questionnaire (SSS-Q), observed and interviewed claimant, and conducted a parent interview. She authored a detailed report and testified in this proceeding. The SSS-Q is designed to "obtain objective information about [an individual's] adaptive functioning." Dr. Brooks noted that claimant's overall responses on the SSS-Q were in the average range with only one score in the low average category for public services. Dr. Brooks used norms for average, rather than neuropsychologically disabled, individuals when comparing claimant's scores on the SSS-Q. When compared to neuropsychologically disabled individuals, claimant's scores "far exceed what would be expected for such individuals."

27. Based upon her assessment, Dr. Brooks concluded claimant does not qualify for regional center services under the fifth category. She referred to the Association of Regional Center Agencies's (ARCA) guidelines for determining fifth category eligibility which state that "the higher an individual's IQ is above 70, then the less similar to a person with intellectual disability is the individual likely to appear. Additionally the guidelines provide that "as an individual's intelligence quotient rises above 70, it becomes increasingly essential for the eligibility team to demonstrate that: (a) there are substantial adaptive deficits, and (b) such substantial deficits are clearly related to cognitive limitations."

Dr. Brooks concluded:

The results of previously administered intellectual testing indicate that [claimant] is functioning in the average range of intellectual ability, making it less likely that [claimant] is similar to someone with an intellectual disability. . . . The results of the SSS-Q indicate that [claimant's] Street Survival Skills are in the average range, indicating that [claimant]

demonstrates a knowledge of street survival skills that is far beyond that which would be expected of individuals with an intellectual disability.

Dr. Brooks also opined that difficulties claimant may experience in using the information he knows can be attributed to claimant's "longstanding diagnosis of ADHD," his diagnosis of Persistent Depressive Disorder, and his receiving special education services for a specific learning disability.

EVIDENCE PRESENTED AT THE ADMINISTRATIVE HEARING

28. Claimant's father testified at the hearing. His testimony was consistent with his letter to Ms. Cummings, his observations of claimant, and the information he shared with Dr. Brooks during claimant's assessment. Claimant's father's love and determination to get claimant the best services and assistance available to him was evident in his demeanor and testimony. He frequently complimented claimant, expressed his love, and stressed that claimant was a great son. Claimant's father worried what would happen to claimant when his father is not around to guide him.

29. Dr. Brooks testified at the hearing. Her testimony was consistent with her written report. She was present throughout the proceeding and listened to claimant's father's testimony. After hearing claimant's evidence, she confirmed her opinion that claimant did not meet eligibility criteria under the fifth category. She also opined that, based upon the records she reviewed, including Dr. Greenwald's assessment, and the results of the assessment she conducted, claimant was not substantially disabled. She testified he was not similar to an individual with intellectual disability, and he was not similar to an individual with autism spectrum disorder. Therefore, Dr. Brooks also concluded claimant was not eligible for regional center services based upon the

categories of intellectual disability or autism spectrum disorder. Dr. Brooks's opinions were well-reasoned and supported by the existing evidence.

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. 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.)

4. An applicant is eligible for services under the Lanterman Act if he or she is suffering 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 also start before the age 18 and 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 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,² cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation.

(b) The Developmental Disability shall:

(1) Originate before age eighteen;

(2) Be likely to continue indefinitely;

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

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

² The regulations have not been amended to replace “mental retardation” with “intellectual disability.”

(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. 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.)

7. A regional center is required to perform initial intake and assessment

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

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

DIAGNOSTIC CRITERIA FOR INTELLECTUAL DISABILITY

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

The DSM-5 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.”

The DSM-5 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-5 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-5 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.”

CRITERIA FOR DETERMINATION OF ELIGIBILITY BASED ON “FIFTH CATEGORY”

10. Under the “fifth category” the Lanterman Act provides 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” but does “not include other handicapping conditions that are solely physical in nature.”³ Along with the other four qualifying conditions (cerebral palsy, epilepsy, autism spectrum disorder, and intellectual disability), a disability involving the fifth category must originate before an individual attains 18 years of age, must continue or be expected to continue indefinitely, and must constitute a substantial disability.

11. The fifth category is not defined in the DSM-5. In *Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.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

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

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.”

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

13. Another appellate decision, *Samantha C. v. State Department of Developmental Services* (2010) 185 Cal.App.4th 1462, has suggested that when considering whether an individual is eligible for regional center services under the fifth category, that eligibility may be based largely on the established need for treatment similar to that provided for individuals with intellectual disability, notwithstanding an individual’s relatively high level of intellectual functioning. In *Samantha C.*, the individual applying for regional center services did not meet the criteria for intellectual disability. Her cognitive test results scored her above average in the areas of abstract reasoning and conceptual development and she had good scores in vocabulary and

⁴ The ARCA guidelines have not gone through the formal scrutiny required to become a regulation and were written before the DSM-5 was in effect.

comprehension. She did perform poorly on subtests involving working memory and processing speed, but her scores were still higher than persons with intellectual disability. The court understood and noted that the ARCA Guidelines recommended consideration of fifth category for those individuals whose "general intellectual functioning is in the low borderline range of intelligence (I.Q. scores ranging from 70-74)." (*Id.* at p. 1477.) However, the court confirmed that individuals may qualify for regional center services under the fifth category on either of two independent bases, with one basis requiring only that an individual require treatment similar to that required for individuals with intellectual disability.

DIAGNOSTIC CRITERIA FOR AUTISM SPECTRUM DISORDER

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

EVALUATION

15. IRC determined claimant was ineligible to receive regional center services because he did not have a substantial disability based upon an intellectual disability, a diagnosis of autism, or the fifth category (that he had a condition closely related to intellectual disability, or that required treatment similar to that required for individuals with intellectual disabilities).

Eligibility Based Upon Intellectual Disability

16. The information contained in claimant's records did not support a reasonable belief that claimant has a developmental disability based upon intellectual disability. He received special education services from his school districts based upon Specific Learning Disability and Other Health Impairment. Test scores obtained by claimant in multiple tests over several years were generally within the average range and do not qualify him for regional center services.

Eligibility Based Upon the "Fifth Category"

17. Under the "fifth category," 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 intellectually disabled individuals" but does "not include other handicapping conditions that are solely physical in nature," (Welf. & Inst. Code § 4512, subd. (a); "solely psychiatric disorders" (Cal. Code. Regs., tit. 17 § 54000, subd. (c)(1); or "solely learning disabilities" (Cal. Code. Regs., tit. 17 § 54000, subd. (c)(2).) Like the other four qualifying conditions (cerebral palsy, epilepsy, autism, and intellectual disability, a disability involving the fifth category 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.

18. The first question under the ARCA Guidelines is whether claimant functions in a manner similar to that of a person with intellectual disability. In this case, the evidence established that claimant's intellectual functioning is, at a minimal, in the average range. Additionally, claimant scores on the SSS-Q did not suggest claimant has substantial adaptive deficits that would qualify for regional center services. Claimant has not established that he functions in a manner similar to that of an individual who has an intellectual disability.

19. The second question is whether claimant requires treatment similar to that required by an individual who has an intellectual disability. Dr. Brooks testified that claimant does not function in a manner similar to an individual with an intellectual disability and he does not require treatment similar to an individual with an intellectual disability.

20. Claimant has not sustained his burden of proof in providing sufficient evidence to sustain a finding that he qualified for regional center services based upon the fifth category.

Eligibility Based Upon Autism

21. The information contained in claimant's records does not support a reasonable belief that claimant has a developmental disability based upon Autism Spectrum Disorder, which would trigger IRC's obligation to provide services and supports. Although there is a reference to claimant having been diagnosed with Asperger's Disorder, the source of this information is not identified and there was no corroborative evidence of this diagnosis submitted at the hearing. Dr. Greenwald's psychological assessment also did not show claimant met the diagnostic criteria for autism, and no evidence was presented to rebut his expert opinion.

ORDER

Claimant's appeal from Inland Regional Center's determination that he is not eligible for regional center services based upon a diagnosis of intellectual disability or a disabling condition closely related to intellectual disability and/or requires treatment similar to that required for individuals with an intellectual disability, and autism spectrum disorder is denied.

DATED: November 14, 2017

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.