

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2018041050

DECISION

Susan J. Boyle, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on June 5, 2018, in San Bernardino, California.

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

Claimant appeared at the hearing and was represented by his mother.

The matter was submitted on June 5, 2018.

ISSUES

1. Is IRC required to provide intake services, including an assessment of claimant, to determine if he is eligible for regional center services under the Lanterman Act based on intellectual disability?
2. Is claimant eligible for regional center services based on a diagnosis of intellectual disability?

## FACTUAL FINDINGS

### JURISDICTIONAL MATTERS

1. Claimant is a 14-year-old young man who lives with his mother and three siblings. He was adopted when he was 18 months old. His birth mother was a drug-user, and claimant was exposed to drugs in utero. Claimant's mother sought regional center services for claimant based upon her claim that he has an intellectual disability.

2. Individuals having a developmental disability resulting from an intellectual disability, autism, cerebral palsy, epilepsy, or a disabling condition closely related to intellectual disability or requiring treatment similar to that required for individuals with an intellectual disability (fifth category) may be entitled to supports and services supplied by or through IRC. (Welf. & Inst. Code § 4512, et seq. (Lanterman Act).)

3. By letter dated April 5, 2018, IRC advised claimant that it reviewed his records and determined that "no 'intake services' can be provided at this time" because his records indicate that claimant did not "currently have a 'substantial disability'" and, therefore, he was not eligible for IRC services. IRC's Notice of Proposed Action of the same date stated that claimant was found to be ineligible for regional center services because he did "not have a 'developmental disability.'" IRC did not specify, in either the letter or the Proposed Action, the category of the disability it considered when it determined claimant was not eligible for services.

4. Through his mother, claimant filed a Fair Hearing Request in which he appealed IRC's determination. The Fair Hearing Request alleged that claimant was eligible for regional center services and supports because he has an intellectual disability. The Fair Hearing was limited to the issue of whether claimant had a developmental disability that resulted from an intellectual disability.

5. On April 26, 2018, IRC representatives and claimant's mother participated in a telephonic informal meeting to discuss claimant's Fair Hearing Request. Claimant's

mother described her observations of claimant and stated her belief that claimant was incapable of learning. IRC representatives discussed that claimant's school district "estimated [claimant's] overall ability to learn to be within the average range" but that his learning was impacted by his mental health conditions. The parties did not reach a resolution.

#### CLAIMANT'S SCHOOL RECORDS

6. Claimant began receiving special education services from his school district in 2009 when he was almost six years old under the category, "Other Health Impairment." He had previously been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD). The basis for a student to receive special education services and a plan for the student's continuing educational needs is set forth in an Individualized Education Program (IEP). The IEP is developed by the student's school district during a meeting at which a team of educational professionals familiar with the student and the student's family discuss the student's needs and progress. The IEP is periodically reviewed and revised in accordance with the student's progress. The criteria used to determine whether a student is eligible for special education services is not the same as that used to determine eligibility for regional center services. The assessments and determinations for regional center eligibility under the Lanterman Act are independently made by IRC, although IRC may consider information obtained from school and special education determinations in its assessment of a prospective client.

#### Triennial Assessment May 2, 2012

7. On three days in March 2012, Maria Hughes, M.S., Bilingual School Psychologist, conducted a psychoeducational evaluation of claimant as part of the triennial review of his IEP. Ms. Hughes's report noted that, because claimant was of African-American descent, other measures of intelligence were administered in place of

standardized intelligence tests. Ms. Hughes reviewed claimant's records, conducted interviews, observed claimant in his classroom, administered the Test of Auditory Perceptual Skills – 3 (TAPS-3), and requested that claimant's teacher and mother complete the Attention Deficit Disorder Evaluation Scale 3 (ADDES 3).

8. Ms. Hughes identified claimant's socio-emotional and behavior needs. She noted claimant was seeing a family therapist to address these needs. Claimant's teacher reported that claimant had difficulties sounding out words, reading, and spelling, but he had strengths in math. His teacher stated claimant was easily distracted, and he was unable to "block out normal classroom background noise." Although his behavior was an impediment to his learning, claimant's teacher said great improvements had been observed.

9. Ms. Hughes determined that claimant's "overall ability to learn is estimated to be within the average range." In testing administered by Ms. Hughes, claimant obtained scores in the "average," "low," and "low average" range.

10. On May 2, 2012, Daniel Baldwin, SDC/Learning Center Teacher administered the Woodcock Johnson III Test of Achievement, Form A, to claimant who was then eight years old and in third grade. Claimant scored in the "low average" range in math computation, the "low" range in reading, brief mathematics and brief writing and the "very low" range in broad reading, broad written language and written expression.

May 23, 2017, IEP

11. On May 23, 2017, when claimant was 13 years old and in eighth grade, claimant's middle school held an IEP meeting to conduct an annual review of claimant's then current IEP. Claimant qualified for special education services under a primary disability of specific learning disability and a secondary disability of speech or language impairment. Claimant's mother expressed concerns about claimant's "antagonistic

behavior and the stealing that is escalating here at school and at home.” Claimant had been diagnosed with ADHD and was being treated with medications.

Comments from claimant’s teachers indicated that claimant was performing well in class and on assessments, but he regressed in 2017 in reading, writing, and math. Comments in the portion of the IEP reporting on social and emotional behavior stated that claimant:

has struggled all year with his peers in and outside of class.

[Claimant] initiates confrontations with his peers by saying hateful things or flipping people off and then lying about it.

[Claimant] has a habit of lying and stealing in and outside of class. All 3 behaviors lying, stealing and confrontational relationships have all escalated over the school year. . . .

Multiple interventions and supports have been implemented but nothing seemed to help [claimant] make appropriate choices. . . .

The IEP indicated that claimant’s behavior impeded his and his classmate’s ability to learn. Behavior intervention plans had limited effectiveness and worked to stop behavior for only short periods of time. Staff reported that new bad behaviors often developed after a negative behavior had been addressed and eliminated. In art class, claimant lit a match and cut himself “to watch it bleed all over the floor.”

The IEP team recommended that claimant’s placement be changed from a mild to moderate special day class to a behavior oriented special day class “to address emotional and behavior concerns.” Claimant’s mother agreed with the decisions and recommendations of the IEP team.

## October 13, 2017 IEP Amendment

12. On October 13, 2017, claimant's school held an IEP meeting to "review and discuss [claimant's mother's] concerns pertaining to [claimant's] recent behaviors." Claimant's mother told the IEP team that claimant was stealing from stores and breaking into cars, and she was concerned that his conduct will lead him to juvenile hall. School staff reported that claimant's bad behaviors had increased, claimant was not honest about incidents he became involved in, and he was losing credibility with the staff. The IEP team proposed that claimant spend additional class periods in the "behavior class" and counseling supports were added.

## NOVEMBER 2017 MENTAL HEALTH ASSESSMENT

13. On November 6, 2017, Ellaveline Pulido Contrano, M.F.T.I, Riverside University Health System – Behavioral Health, performed a mental health assessment of claimant. The assessment was motivated by claimant's mother's observation that claimant's negative behaviors had increased, he was stealing and had become more aggressive. She also said claimant had demonstrated feelings of irritation, sadness, helplessness and "being on the edge." Ms. Contrano recommended individual and group therapy for claimant and parenting support for claimant's mother.

## DECEMBER 2017 MENTAL HEALTH ASSESSMENT

14. On December 19, 2017, Saeed Eshraghi, M.D., Staff Child and Adolescent Psychiatrist IV, Riverside University Health System – Behavioral Health, performed a psychiatric evaluation of claimant. A one page report of Dr. Eshraghi's assessment was identical to the first page in Ms. Contrano's report with the exception that Ms. Contrano diagnosed claimant as having an adjustment disorder with mixed anxiety and depressed mood, and Dr. Eshraghi diagnosed claimant as having ADHD. A second seven page report from Dr. Eshraghi followed the one page report. Of the second report, the first

five pages of Dr. Eshraghi's report are identical to the second through seventh pages of Ms. Contrano's report.

15. Dr. Eshraghi's "Summary/Plans" section of his report differs from Ms. Contrano's. Dr. Eshraghi stated that claimant appeared sleepy, did not make eye contact and responded only minimally to questions asked of him. Based on information from claimant's mother, Dr. Eshraghi determined that claimant's adaptive skills were "not much behind" others his age. Dr. Eshraghi found claimant's social skills were "frankly behind"; however, he was unable to "obtain symptoms compatible with [autism spectrum disorder]". Dr. Eshraghi wrote that, if claimant's mother was correct that claimant used to go to IRC as a child, that "can suggest having some kind of ID[intellectual disability]." Dr. Eshraghi's report noted that he had made "some provisional diagnoses" but that he needed "collateral info to clarify his diagnoses."

#### SEARCH ASSESSMENT – JANUARY 23 2018

16. On January 23, 2018, Katherine Stavropoulos Ph.D., Assistant Director, SEARCH Family Autism Resource Center (Support, Education, Advocacy, Resources, Community, Hope) performed an assessment of claimant. Dr. Stavropoulos administered the Wechsler Abbreviated Scale of Intelligence – Second Edition (WASI-II), Autism Diagnostic Observation Scales, Second Edition (ADOS-2), Vineland Adaptive Behavior Scales, Third Edition (ABS-3), Social Responsiveness Scale, Second Edition (SR-2), Child Behavior Checklist – Ages 6-18 (CBCL), Conners 3 – Parent Short, and Conners 3 – Self-report Short. Claimant was referred to SEARCH by Riverside County Mental Health to rule out possible Autism Spectrum Disorder (ASD). Dr. Stavropoulos listed the concerns regarding claimant as including aggression, tantrums, depression, impulsiveness, and poor social skills. Dr. Stavropoulos noted that, in claimant's first three years of life, claimant's mother expressed concerns of irritability, withdrawn behavior, tantrums, poor eye contact and learning problems.

17. In the WASI-II, Dr. Stavropoulos reported that claimant's "overall cognitive abilities fell in the Extremely Low range with a [Full Scale IQ] of 64." Dr. Stavropoulos found claimant to be cooperative in the assessment and believed he "put forth a strong effort on all presented items." However, she also noted that claimant "put his head in his hands between items, and only looked at the materials when it was necessary for answering questions." During the administration of the ADOS-2, claimant also rested his head on his hand most of the time. He did not echo Dr. Stavropoulos's words or use stereotyped phrases, but he would provide only short responses without elaboration after prompting. He reported to Dr. Stavropoulos that he was teased and bullied at school. He told Dr. Stavropoulos he had a girlfriend, but his responses regarding this relationship were inconsistent and Dr. Stavropoulos questioned the veracity of the statement.

18. When Dr. Stavropoulos interviewed claimant, he expressed being in trouble a lot but did not want to talk about it. He told Dr. Stavropoulos he was sad most of the time, and he could not recall a time he did not feel sad. He said he goes to school and goes home. He denied enjoying any activities or having any friends. He said he is close to his oldest sister and is comfortable sharing feelings with her.

19. Claimant's mother reported that claimant preferred to be alone and seemed sad most of the time. She stated claimant appeared withdrawn and tired for the past three years. She also said that claimant engaged in frequent outbursts that are out of proportion to the situation.

20. The VABS-3 measures an individual's adaptive behavior – "day-to-day activities necessary to take care of oneself and get along with others." Claimant obtained scores in the "low" range in the VABS-3.

21. The SRS-2 is a parent report questionnaire that measures symptoms associated with autism. Claimant scored in the "severe" range, "indicating deficiencies in



reciprocal social behavior that are clinically significant and are likely to lead to severe interference with everyday social interactions.”

22. In the CONNERS 3 assessments, claimant’s mother reported, among other things, that claimant had learning problems, whereas claimant did not report a clinically elevated score in that category.

23. Dr. Stavropoulos diagnosed claimant with Major Depressive Disorder (MDD) and Intermittent Explosive Disorder. Dr. Stavropoulos recommended that claimant continue receiving services from psychologists and psychiatrist and that he and his family participate in family therapy. Dr. Stavropoulos noted that family therapy for teens with mental health challenges were available through the Riverside County Health System and other providers. Dr. Stavropoulos did not make a diagnosis of ID or ASD.

#### DR. ESHRAGHI’S REVISION OF HIS DIAGNOSIS OF CLAIMANT

24. In a progress note dated March 1, 2018, Dr. Eshraghi wrote he had reviewed Dr. Stavropoulos’s psycho-educational report of her assessment of claimant and, based on claimant’s test results obtained in that assessment, he determined claimant qualified for a diagnosis of mild intellectual disability. He based his diagnosis on the WASI –II IQ score of 64 and low to moderately low scores in adaptive skills obtained in the VABS-3. Dr. Eshraghi confirmed that claimant did not have ASD. Dr. Eshraghi suggested IRC provide “behavioral treatment (ABA), social skills training and occupational therapy” to claimant.

#### TESTIMONY OF SANDRA BROOKS, PH.D.

25. Sandra Brooks, Ph.D. is a licensed clinical psychologist. She has been employed by IRC as a staff psychologist for eight years, and she was a psychological assistant at IRC for two years prior. Her duties include reviewing records and documentation to assist IRC in determining whether a prospective consumer is eligible

for IRC services because he or she is intellectually disabled, has autism or an autism spectrum disorder, or falls within the fifth category. She stated that, to be eligible for regional center services under the intellectually disabled category, a consumer must show sub-average intellectual functioning, usually determined through IQ testing, and have substantial deficits in daily living skills. The disabling condition must exist before the consumer is 18 years old.

26. Dr. Brooks reviewed claimant's records that are summarized above. She noted that claimant was not provided special education services based on intellectual disability. Further, she referenced claimant's history of mental health concerns and stated that mental health disabilities alone do not qualify a consumer to receive IRC services. After a complete review of claimant's records she opined that none of the information contained in the records indicated to her that claimant has a qualifying disability that would entitle him to IRC services. Based on the many assessments of claimant already performed and the lack of indication in all but one of those assessments that claimant had an intellectual disability that was combined with substantial deficits in daily living skills, she did not believe IRC needed to perform an additional assessment of claimant to support its finding that he did not qualify for regional center services.

27. Dr. Brooks testified that IRC is not required to assess every person who seeks regional center services; they are obligated to perform an assessment only if there is a reasonable suspicion that the individual has a developmental disability. In claimant's case, there was no history of sub-average capabilities. Claimant received special education services at an early age, but they were based upon a determination that claimant had an "other health impairment" and/or specific learning disability and required speech and language services. He was not determined to be eligible for special education services based on having an intellectual disability. The basis for claimant

receiving special education services do not make him eligible for regional center services. Although claimant's school district acknowledged that claimant was not to be given standardized IQ tests because of his African-American background, the district did evaluate his cognitive abilities and found that his overall ability to learn was within the average range.

28. With regard to the test scores obtained in Dr. Stavropoulos's administration of the WASI-II, Dr. Brooks stated claimant's lower scores were not a valid measure of his abilities, but instead that the scores were affected negatively by his mental health conditions. Dr. Brooks specifically referenced claimant's diagnosis of ADHD. She testified that individuals with ADHD are unable to focus and maintain attention to a task. When required to perform a test or activity, their inability to focus and retain attention can negatively impact the outcome of the test. ADHD can result in obtaining significantly lower scores that do not accurately reflect the individual's cognitive abilities. Dr. Brooks opined that the effect of claimant's ADHD, Major Depressive Disorder, and Intermittent Explosive Disorder impacted claimant's ability to perform on the test, thereby lowering his scores and obtaining results that did not accurately reflect his ability to learn.

29. Dr. Brooks disagreed with Dr. Eshraghi's diagnosis of mild intellectual disability because he looked only at the scores without considering how claimant's mental health concerns impacted those scores. Dr. Brooks also referred to higher academic scores obtained by claimant in the past. She attributed the lowering of those scores in later years, to the impact of claimant's mental health conditions. She also noted that claimant's scores in mathematics were in the average range. She stated an individual with intellectual disability would not score in the average range in mathematics. This inconsistency compels a finding that claimant does not have an intellectual disability.

30. Dr. Brooks determined that claimant's history and the information contained in his records is not consistent with a person who has an intellectual disability, and he is not eligible for IRC services. Dr. Brooks did not alter her opinion after hearing claimant's mother's testimony about her observations of claimant.

#### OBSERVATION OF CLAIMANT AT THE ADMINISTRATIVE HEARING

31. Claimant remained in the hearing room throughout the Fair Hearing. Immediately upon entering the hearing room, he went to a far chair and put his head on his hands on the table. He remained in that position through most of the hearing. At one time, he responded to his sister, but his response very short. He did not display any interest in the proceedings.

#### EVIDENCE PRESENTED ON CLAIMANT'S BEHALF

##### Testimony of Claimant's Mother

32. Claimant's mother testified at the hearing. She stated that claimant had been depressed ever since he was a baby. She said that claimant was hospitalized on one occasion after expressing thoughts of suicide.

33. Claimant's mother criticized claimant's public school placement. She said claimant had behavior issues in school and was in a class of eight students the entire day. Claimant must sit with a security guard each day during lunch. She stated that claimant was in special education classes full-time because of his learning disabilities, but she believed that claimant was not learning in his current placement. She alleged that the only thing that happened in that classroom was that the students fought with one another. Claimant's mother takes claimant to school late each day so that he would not be harassed by other students.

34. Claimant cannot be left alone and cannot go anywhere by himself because he is easily influenced by others and would steal things if another person asked

him to do so. He does not have any friends. His best friend is claimant's mother's five-year old granddaughter.

35. Claimant's mother seeks behavior therapy and life skills training for claimant so that he will have the skills necessary to lead a productive and independent life. She would like him to be able to hold a job and have a family in the future, and she feels the services IRC could provide would help claimant achieve these goals.

36. Claimant's mother argued that, at a minimum, IRC should conduct its own assessment of claimant.

#### Testimony of Claimant's Sister

37. Claimant's sister, an adult, testified at the hearing. She is close to claimant, cares deeply for him, and is concerned about his welfare. She stressed that claimant needed regional center services to help him lead an independent and successful life after high school. She stated that claimant did not have any social skills and did not understand the consequence of his actions. She was concerned that, without help, claimant will harm himself or others and/or wind up in jail.

#### Letters From Medical Professionals

38. By letter dated May 21, 2018, Dr. Eshraghi confirmed that claimant was under his psychiatric care. He wrote that claimant is diagnosed with mild intellectual disability as confirmed by "independent psychoeducational testing." He "strongly disagree[d]" with the position expressed by Dr. Brooks and IRC that claimant's "ADHD has artificially brought down his IQ score or its equivalent." Dr. Eshraghi contended that claimant was "mentally challenged, his adaptive and social skills are under-developed, and he definitely needs services such as behavioral therapy, social skills training, and occupational therapy." Dr. Eshraghi suggested that "[e]ven if the regional center's claim about the effect of his ADHD on his intellectual disability is correct, this has to be

confirmed by the second psycho-educational testing done by another clinical psychologist trusted by regional services, not simply assuming the fact.”

39. In a letter dated May 8, 2018, Wendy Evans, M.S.W., L.C.S.W., Clinical Therapist II, Riverside University Health System – Behavioral Health, confirmed that claimant was participating in services provided by the health system. She stated claimant was evaluated by Ms. Contrano and Dr. Eshraghi and that his treating diagnosis included, “Mood Disorder NOS, Attention Deficit Hyperactive Disorder, and Mild Intellectual Disability.”

## 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 developmental disability. 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 developmentally disabled individuals 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 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.)

5. 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.

6. A regional center is required to perform initial intake and assessment services for “any person believed to have a developmental disability.” (Welf. & Inst. Code, § 4642.) “Assessment may include collection and review of available historical

diagnostic data, provision or procurement of necessary tests and evaluations, and summarization of developmental levels and service needs . . . .” (Welf. & Inst. Code, § 4643, subd. (a).) To determine if an individual has a qualifying developmental disability, “the regional center may consider evaluations and tests . . . that have been performed by, and are available from, other sources.” (Welf. & Inst. Code, § 4643, subd. (b).)

7. 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<sup>1</sup>, 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:

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<sup>1</sup> 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. . . .

8. 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 his integration into the mainstream life of the community. (Welf. & Inst. Code, § 4501.)

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

## EVALUATION

10. To be eligible for regional center services, claimant must prove that he has a substantial disability that is attributable to a developmental disability recognized

under the Lanterman Act that originated before the age of 18. In his Fair Hearing Request, claimant alleged he was entitled to services based upon his having an intellectual disability. Establishing eligibility cannot be based upon handicapping conditions that are solely learning disabilities or psychiatric disorders. (Cal. Code Regs., tit. 17 § 54000, subds. (c)(1) & (c)(2).) Claimant bears the burden of proving that a preponderance of the evidence supports his claims.

11. Claimant's mother and sister are devoted to claimant and are doing all they can to obtain help for claimant. Their motives are sincere and admirable. However, claimant has not met his burden to prove he has an intellectual disability that originated before the age of 18 that was not solely the result of a learning disability or psychiatric disorder. Claimant does not receive special education services for intellectual disability. The only medical professional who suggested claimant has a disabling condition based upon intellectual disability was Dr. Eshraghi, who gave that opinion based solely on test scores obtained by Dr. Stavropoulos. It is instructive that Dr. Stavropoulos did not diagnose claimant with intellectual disability, but determined that claimant had Major Depressive Disorder and Intermittent Explosive Disorder.

12. Claimant has been fully evaluated and his cognitive abilities assessed repeatedly throughout his life and most recently in January 2018. His records are consistent with a finding that any academic delays and/or low test scores are caused by a mental health condition and/or other health impairments not covered by the Lanterman Act and are not caused by below average cognitive abilities.

13. 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. (*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] professionals and their determination as to whether an individual is developmentally disabled.” (*Id.*, at p. 1129.) The evidence claimant presented does not support requiring IRC to conduct its own assessment of claimant or overturning IRC’s determination that claimant is ineligible for IRC supports and services.

14. Based on this record, claimant does not have a substantial disability on the basis of autism spectrum disorder or intellectual disability, and he is not eligible to receive regional center services.

## ORDER

Claimant’s appeal from Inland Regional Center’s determinations that claimant was not eligible for services because he did not have a substantial developmental disability as defined in the Lanterman Act and that it was not required to provide an independent assessment prior to making a determination of ineligibility is denied.

DATED: June 18, 2018

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SUSAN J. BOYLE

Administrative Law Judge

Office of Administrative Hearings

## NOTICE

**This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within ninety (90) days.**