

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2019010341

DECISION

Debra D. Nye-Perkins, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter in San Bernardino, California, on April 10, 2019.

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

Claimant's mother appeared on behalf of claimant, who was not present. Claimant's mother utilized the assistance of a court-certified language translator to translate the hearing from Mandarin Chinese to English and from English to Mandarin Chinese.

The matter was submitted on April 10, 2019.

ISSUE

Is claimant's diagnosis of Prader-Willi Syndrome a disabling condition closely related to an intellectual disability or that requires treatment similar to a person with an

intellectual disability, rendering him eligible for regional center services under the fifth category?

## FACTUAL FINDINGS

### JURISDICTIONAL MATTERS

1. Claimant is a seven-year old boy born in China who relocated with his mother to the United States within the last two years. Claimant's first learned language is Mandarin Chinese, but English is spoken in claimant's home. Claimant's mother applied to IRC to obtain services under the Lanterman Act alleging claimant has Prader-Willi Syndrome (PWS), a condition she claims is closely related to an intellectual disability that requires treatment similar to that required for individuals with an intellectual disability. On December 17, 2018, IRC notified claimant's mother that claimant was not eligible for regional center services because the records provided to IRC did not establish that he had a substantial disability as a result of an intellectual disability, autism, cerebral palsy, epilepsy, or a disabling condition closely related to an intellectual disability or that required similar treatment needs as an individual with an intellectual disability.

2. On December 28, 2018, claimant's mother filed a Fair Hearing Request on claimant's behalf appealing IRC's determination.

3. On January 28, 2019, the parties held an informal meeting to discuss claimant's eligibility. Following the meeting, IRC adhered to its original determination finding claimant ineligible for regional center services. On January 30, 2019, IRC sent a letter to claimant's mother summarizing the discussions at the informal meeting and advising claimant's mother that IRC was adhering to its decision that claimant was not eligible for regional center services. This matter proceeded to hearing.

## PRADER-WILLI SYNDROME<sup>1</sup>

4. In June 2017 claimant was diagnosed with PWS. PWS is a rare genetic medical condition, as opposed to a developmental or neurological condition, that arises due to an abnormality of the 15th chromosome. There is no cure. PWS symptoms vary from individual to individual, but generally the condition is characterized by hypotonia (low muscle tone); hyperphagia (inability to feel satiated even after eating); emotional challenges (due primarily because of the inability to feel satiated); and morbid obesity. Some people with PWS do have a problem with planning, problem solving, and functioning in everyday life, among other things. These deficits in executive functioning can also lead to challenges in language skills, communication, learning, and judgement. One document submitted by claimant entitled, "Overview of Food and Behavior Management for the Individual with Prader-Willi Syndrome," noted that secondary to the hyperphagia, the biggest concerns for persons with PWS are behavioral problems, such as anxiety, frustration, and temper tantrums that include acting out physically. Individuals who have PWS often need constant supervision and will never be able to live independently. In sum, PWS is a life-long and life-threatening medical condition.

### DIAGNOSTIC CRITERIA FOR THE "FIFTH CATEGORY"

5. Under the "fifth category" the Lanterman Act provides assistance to individuals with "disabling conditions" found to be closely related to an intellectual

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<sup>1</sup> The description of PWS was obtained from various documents provided by claimant as well as the testimony of Emily Dame, M.Ed., Executive Director for the Prader-Willi Foundation.

disability<sup>2</sup> or to require similar treatment as an individual with an intellectual disability, but does not include other handicapping conditions that are “solely physical in nature.” A disability involving the Fifth Category must also have originated before an individual attained 18 years of age, must continue or be expected to continue indefinitely, and must constitute a substantial disability.

The Association of Regional Center Agencies Guidelines (ARCA Guidelines) provide criteria to assist regional centers in determining whether a person qualifies for services under the fifth category.<sup>3</sup> The ARCA Guidelines provide that the person must function in a manner similar to a person with an intellectual disability or require treatment similar to a person with an intellectual disability.

#### Functioning Similar to a Person With an Intellectual Disability

6. The *DSM-5* provides three diagnostic criteria which must be met to support a diagnosis of Intellectual Disability: deficits in intellectual functions (such as reasoning, problem solving, abstract learning and thinking, judgment, and learning from

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<sup>2</sup> The American Psychiatric Association’s *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. Intellectual functioning is typically measured using intelligence tests. Individuals with intellectual disability typically have intelligent quotient (I.Q.) scores in the 65-75 range.

<sup>3</sup> 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 and are not entitled to be given the same weight as regulations.

experience) “confirmed by both clinical assessment and individualized standardized intelligence testing”; deficits in adaptive functioning “that result in failure to meet developmental and sociocultural standards for personal independence and social responsibility”; and the onset of these deficits during the developmental period. Intellectual functioning is typically measured using intelligence tests. The *DSM-5* states, “[i]ndividuals 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 ( $70 \pm 5$ ). Clinical training and judgment are required to interpret test results and assess intellectual performance.”

Under the heading, “Diagnostic Features,” the *DSM-5* states:

The essential features of intellectual disability (intellectual developmental disorder) are deficits in general mental abilities ... and impairment in every day adaptive functioning, in comparison to an individual’s age-, gender-, and socioculturally matched peers ... onset is during the developmental period . ... The diagnosis of intellectual disability is based on both clinical assessment and standardized testing of intellectual and adaptive functions.

[11] ... [11]

7. Factors that may affect test scores include practice effects and the “Flynn effect” (i.e., overly high scores due to out-of-date test norms). Invalid scores may result from the use of brief intelligent screening tests or group test; **highly discrepant individual subtest scores may make an overall I.Q. score invalid.** ... Co-occurring disorders that affect communication, language, and/or motor or sensory function may

affect test scores. **Individual cognitive profiles based on neuropsychological testing are more useful for understanding intellectual abilities than a single I.Q. score.**

Such testing may identify areas of relative strengths and weaknesses, and assessment important for academic and vocational planning. (Emphasis added.)

8. I.Q. test scores are approximations of conceptual functioning but may be insufficient to assess reasoning in real-life situations and mastery of practical tasks. For example, **a person with an I.Q. score above 70 may have such severe adaptive behavior problems in social judgment, social understanding, and other areas of adaptive functioning that the person's actual functioning is comparable to that of individuals with a lower I.Q. score.** Thus, clinical judgment is needed in interpreting the results of I.Q. tests. (Emphasis added.)

9. Deficits in adaptive functioning ... refer to how well a person meets community standards of personal independence and social responsibility, in comparison to others of similar age and socio-cultural background. Adaptive functioning involves adaptive reasoning in three domains: conceptual, social, and practical. The *conceptual (academic) domain* involves competence in memory, language, reading, writing, math reasoning, acquisition of practical knowledge, problem solving, and judgment in novel situations, among others. The *social domain* involves awareness of others' thoughts, feelings, and experiences; empathy; interpersonal communication skills; friendship abilities; and social judgment, among others. The *practical domain* involves learning and self-management across life settings, including personal care, job responsibilities, money management, recreation, self-management of behavior, and school and work task organization, among others. Intellectual capacity, education, motivation, socialization, personality features, vocational opportunity, culture experience, and coexisting general medical conditions or mental disorders influence adaptive functioning.

10. Adaptive functioning is assessed using both clinical evaluation and individualized, culturally appropriate, psychometrically sound measures. **Standardized measures are used with knowledgeable informants (e.g., parent or other family member; teachers; counselor; care provider)** and the individual to the extent possible. Additional sources of information include educational, developmental, medical, and mental health evaluations. Scores from standardized measures and interview sources must be interpreted using clinical judgment. When standardized testing is difficult or impossible, because of a variety of factors (e.g., sensory impairment, severe problem behavior), the individual may be diagnosed with unspecified intellectual disability. **Adaptive functioning may be difficult to assess in a controlled setting** (e.g., prisons, detention centers); **if possible, corroborative information reflecting functioning outside those settings should be obtained.** (Emphasis added.)

11. A person functions in a manner similar to a person with an intellectual disability if the person has significant sub-average general intellectual functioning that is accompanied by significant functional limitations in adaptive functioning. Factors a regional center should consider include: the ability of an individual to solve problems with insight, to adapt to new situations, and to think abstractly and profit from experience. (Cal. Code Regs., tit. 17, § 54002.) If a person's I.Q. is above 70, it becomes increasingly essential that the person demonstrate significant and substantial adaptive deficits and that the substantial deficits are related to the cognitive limitations, as opposed to a medical problem. It is also important that, whatever deficits in intelligence are exhibited, the deficits show stability over time. Significant deficits in adaptive functioning are established based on the clinical judgements supplemented by formal adaptive behavioral assessments administered by qualified personnel. Adaptive skill deficits are not performance deficits due to factors such as physical limitations,

psychiatric conditions, socio-cultural deprivation, poor motivation, substance abuse, or limited experience.

#### Treatment Similar to a Person With an Intellectual Disability

12. In determining whether a person requires treatment similar to a person with an intellectual disability, a regional center should consider the nature of training and intervention that is most appropriate for the individual who has global cognitive deficits. This includes consideration of the following: individuals demonstrating performance-based deficits often need treatment to increase motivation rather than training to develop skills; individuals with skill deficits secondary to socio-cultural deprivation but not secondary to intellectual limitations need short-term, remedial training, which is not similar to that required by persons with an intellectual disability; persons requiring habilitation may be eligible, but persons primarily requiring rehabilitation are not typically eligible as the term rehabilitation implies recovery; individuals who require long-term training with steps broken down into small, discrete units taught through repetition may be eligible; the intensity and type of educational supports needed to assist children with learning (generally, children with an intellectual disability need more supports, with modifications across many skill areas).

#### Substantial Disability

13. California Code of Regulations, title 17, section 540001 defines the term "substantial disability." This means the person must have a significant functional limitation in three or more major life areas, as appropriate for the person's age, in the areas of: communication (must have significant deficits in both expressive and receptive language), learning, self-care, mobility, self-direction, capacity for independent living; and economic self-sufficiency. Given that claimant is aged seven, the capacity for independent living and economic self-sufficiency areas are not considered.



## EVIDENCE PRESENTED BY IRC

14. Ruth Stacy, Psy.D., is a licensed clinical psychologist and has worked for IRC for 28 years. She has worked as a staff psychologist for the past three-and-a-half years, and in the past, worked as a senior counselor. Her duties as a staff psychologist include reviewing records and documentation, performing comprehensive intellectual assessments, and evaluating individuals' eligibility for regional center services. Dr. Stacy obtained her Doctor of Psychology in 2008, and already held a Master of Arts in Counseling Psychology, a Master of Arts on Sociology, and Bachelor of Arts in Psychology and Sociology. Dr. Stacy has extensive experience in the assessment and diagnosis of individuals seeking to obtain regional center services under the Lanterman Act, and in serving on the multi-disciplinary team for IRC to review the cases of those seeking services. Dr. Stacy is an expert in the diagnosis of intellectual disability, and in the determination of whether a person qualifies for regional center services under intellectual disability or the fifth category.

Dr. Stacy reviewed documents provided by claimant, which included claimant's Individualized Education Program (IEP) documents, a letter from Emily Dame, Executive Director of the Prader-Willi California Foundation, a Psychoeducational Assessment Report dated November 1, 2018, and a summary of Wechsler Preschool and Primary Scale of Intelligence, Fourth Edition, testing of claimant performed in China in January 2017. Dr. Stacy's testimony and the records are summarized below.

PWS is not a condition that qualifies an individual for regional center services. PWS may require some services similar to a person with an intellectual disability, however, those afflicted with PWS typically require treatments such as behavioral therapy, physical therapy for low muscle tone, growth hormone therapy for muscle tone, diet control because individuals suffering from PWS never feel full from eating and

frequently forage for food, constant supervision, and mental health services. These are not treatments typical for someone with an intellectual disability.

A person who is found eligible for regional center services under the fifth category will typically have an I.Q. of 70 or below, and have corresponding challenges in adaptive and cognitive functioning. The deficits in cognitive and adaptive skills are also typically consistent over time and do not vary widely. The deficits also must not be secondary to a medical or psychiatric condition. Further, psychologists typically refrain from making long-term predictions about a child's cognitive and adaptive function where the child is very young, given that they have (1) not yet reached their full developmental potential, and (2) not enough time has passed to see if they have consistent developmental challenges over time.

Claimant receives special education services under the categories "other health impairment" and "Speech and Language Impairment" as a result of his PWS diagnosis. None of claimant's school records show claimant has ever suffered from a substantial cognitive deficit as a result of his medical diagnosis, and claimant has never received special education services under the category of intellectual disability.

According to claimant's IEP dated November 1, 2018, and the IEP Amendment dated January 17, 2019, claimant was evaluated in both English and Mandarin Chinese utilizing an interpreter due to his limited exposure to English. Claimant's communication skills in the areas of vocabulary, language, voice, fluency, and pragmatics was observed to be in the average range. Claimant's was noted to have significant behavioral issues, including eloping from class, biting, scratching, hitting, frustration, and other aggressive behaviors. The school recommended claimant receive specialized academic instruction with a behavioral intervention plan and speech and language services. However, the IEP specifically did not find claimant eligible for special education services because of an intellectual disability.

According to the Psychoeducational Assessment Report dated November 1, 2018, claimant's cognitive and adaptive skills fall in the low average range. Multiple tests were administered, including the Naglieri Nonverbal Ability Test (NNAT), Form B; The Beery-Buktenica Developmental Test of Visual Motor Integration and Visual Integration, Sixth Edition (VMI-6); Alpern-Boll Developmental Profile, Third Edition (ADP-3); Achenbach Teacher's Report Form; and Achenbach Child Behavioral Checklist. The NNAT assesses cognitive skills in young children without the use of language and this test was administered to claimant because his first language is not English. On the NNAT test, claimant scored in the low average range. The ADP-3 was a questionnaire completed by claimant's mother. The ADP-3 results for claimant showed he scored in the low average range for social-emotional, cognitive, communication, adaptive behavior, and physical skills. Dr. Stacy noted that claimant's low average scores in adaptive functioning are far higher than those scores seen for qualifying individuals for regional center services, which require a substantial deficit in adaptive functioning.

Additionally, an academic assessment of claimant was performed using the Woodcock-Johnson IV Tests of Achievement. The results of that academic testing showed that claimant's scores ranged from less than 40 to 98, ranging from very low to average. Dr. Stacy noted that claimant's math scores were in the average range, and his reading scores were significantly lower, but she would expect to see that from a person still learning English as those questions require an understanding of English. Dr. Stacy noted that claimant's math skills were strong with the exception of the applied problems questions, which are word based questions requiring an understanding of English. This type of variability is not what she would expect to see in a child with an intellectual disability; rather, the deficits would be expected to be consistent across all subsets. Dr. Stacy also noted that claimant's adaptive behavior was assessed using observations and interviews during this psychoeducational assessment. The results showed that claimant

was able to care for his own needs and functions adequately with supervision; specifically, he can dial and initiate a telephone call, wash himself acceptably without help, use the restroom independently, wash his hands, throw away his trash, pick up items as needed, is responsible for routine chores around the house including washing cars and doing dishes.

Dr. Stacy reviewed the letter from Emily Dame of the Prader-Willi California Foundation. Dr. Stacy noted that while the letter summarized the conditions associated with PWS and provided a list of criteria for eligibility for services at the regional center, the letter concluded that claimant was eligible for services without consideration for the fact that a PWS diagnosis is purely physical and medical in nature and does not necessarily require the same treatment as intellectual disability. Dr. Stacy also noted that the letter provided no explanation for how Ms. Dame concluded that claimant was eligible for services other than to list the complications of PWS generally.

Finally, Dr. Stacy reviewed a Mandarin Chinese document provided at the hearing by claimant's mother. The document was primarily written in the Mandarin Chinese language, but had some English scattered throughout the document providing indications that it was a summary of intellectual functioning testing of claimant in January 2017 by use of the Wechsler Preschool and Primary Scale of Intelligence, Fourth Edition, administered in Mandarin Chinese. Dr. Stacy explained that in the United States, these types of summaries are not provided to the test subject or their family because these are raw scores that require interpretation by the test administrator to have meaning. She further explained that the document showed that claimant had an overall I.Q. score of 71. However, she explained that if you look at the subtest scores that make up that overall I.Q. score, there is a large range of scores varying from 67 to 86, which provides a 19-point gap between those scores. Dr. Stacy explained that when there is such a large difference between the lowest and highest score on subtests, then the

overall I.Q. score is invalid as a result and the subtest scores are given more weight. Dr. Stacy further explained that in such cases, you need an expert to explain the scores based on testing conditions and other factors for them to have meaning. Additionally, she stated that the testing in China was done in January 2017 and the more recent NNAT test would be given more weight because it is a more recent test.

Dr. Stacy testified that while PWS is a medical disease that causes a variety of symptoms, including difficulty with language processing, psychiatric behaviors, and mood problems, not every person with PWS will have intellectual disability. She stated that individuals with PWS have I.Q. scores that range from the 60s to the mid-90s ranging from intellectual disability to normal intelligence. She stressed that testing indicates that claimant has low average intelligence and not intellectual disability or a condition requiring the same or similar treatment as a person with intellectual disability. Overall, claimant does not show consistent delay across all areas and is not served in school under the special education category of intellectual disability. Claimant's scores in the various batteries of cognitive and adaptive testing are higher than what one would expect with a person who has an intellectual disability. The records also show that, while claimant receives some assistance through special education *services* (speech and language therapy and behavioral intervention services), he does not receive treatment similar to a person with an intellectual disability, as set forth in the ARCA Guidelines.

Finally, even assuming claimant required treatment similar to a person with an intellectual disability, the records do not show claimant has significant functional limitations in three or more areas of a major life activity, for a seven-year-old. Dr. Stacy explained that while claimant may have some adaptive deficits, those deficits are not significant functional limitations and are not caused by intellectual disability.

Accordingly, Dr. Stacy concluded that claimant is not eligible for regional center services at this time.<sup>4</sup>

#### EVIDENCE PRESENTED BY CLAIMANT'S MOTHER

15. Claimant's mother testified on behalf of claimant and also submitted a letter summarizing her reasons why she believes claimant is eligible for regional center services. Claimant's mother's testimony and letter are summarized below.

Claimant was diagnosed with PWS in 2017 when he was five years of age. He is currently in the first grade in elementary school. Claimant's mother believes her son is eligible for services at IRC because he has intellectual functioning problems, as well as adaptive problems. Claimant has had symptoms similar to intellectual disability since he was very young, and he has been unable to meet the typical milestones as other children in the areas of cognitive function, intellectual development, behaviors, self-help skills, social awareness, comprehension, judgment, safety awareness, metabolism, growth, and appetite. She stated that claimant has difficulty understanding both Mandarin Chinese and English because of his intellectual functioning. Claimant's mother stated that claimant has many behavioral problems, as well as physical problems associated with PWS and he has required extensive surgeries to help him live a normal life. She stated that because claimant has PWS, he will always require constant supervision and will never be able to live independently.

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<sup>4</sup> Dr. Stacy explained that, as claimant matures in age, there may come a time when he will exhibit cognitive and/or adaptive deficits that could render him eligible for regional center services. Due to claimant's young age, however, he has not displayed the consistent deficits over the developmental period thus far to show he would qualify for regional center services under the fifth category.

Claimant's mother submitted the January 2017 raw test results in Mandarin Chinese for the Wechsler Preschool and Primary Scale of Intelligence, Fourth Edition, administered in Mandarin Chinese. She believes those test results show that claimant's overall I.Q. score of 71 renders him eligible for IRC services under the fifth category under the ARCA Guidelines. Claimant's mother explained that claimant's PWS causes him to have a multitude of symptoms, including behavioral problems, mental problems, and other health issues. She believes that he has difficulty understanding both English and Mandarin Chinese because of his intellectual functioning and believes that he would benefit greatly from the services offered by IRC. She stressed that claimant will have another I.Q. test in May 2019 and she believes that the results of that test will show that claimant is eligible for IRC services.

Accordingly, claimant's mother believes claimant should qualify for regional center services.

16. Emily Dame is the Executive Director for the nonprofit organization known as the Prader-Willi California Foundation. Ms. Dame testified at the hearing and wrote a letter in support of claimant. The following is a summary of her testimony and letter.

PWS is a lifelong affliction, however, with proper management, many of the symptoms of PWS can be managed or significantly reduced. Children with PWS don't have the same motor skills as other children and also have a high pain tolerance. Claimant exhibits classic symptoms of PWS, including many physical and behavioral challenges. Claimant requires structure and routine. Claimant has low tolerance and is easily frustrated. Claimant exhibits behaviors which are oppositional, defiant, and argumentative.

Ms. Dame said that PWS causes claimant to have learning problems because he needs things broken down for him and material must be presented to him in small, discrete tasks. Claimant's judgement is also impaired, which affects his executive

functions (planning, organizing, regulating emotions, and self-monitoring), and prevents him from making his own health and safety decisions. PWS also affects claimant's receptive and expressive language and unlike his same-aged peers, claimant requires more assistance with self-care. Ms. Dame described claimant's self-care challenges consistent with the description provided by claimant's mother. Ms. Dame explained that children with PWS do not know when to stop eating because they never feel full and as a result may rupture their stomach from overeating. As a result, these children require constant monitoring. Ms. Dame stated that the January 2017 testing of claimant in China showed he had an overall I.Q. score of 71, and his adaptive skills are also impaired, and therefore claimant is eligible for services because he requires the same treatment provided to a person with an intellectual disability. Ms. Dame admitted on cross-examination that she did not provide any standardized measures or comprehensive assessment of claimant for her conclusion that claimant is eligible for IRC services. She also admitted that her opinion is based on her knowledge of PWS generally and not from interpreting documents specifically related to claimant.

Ms. Dame concluded that because the condition of PWS definitely meets the criteria as a substantial disability requiring the same treatment as a person with intellectual disability, claimant should qualify for regional center services.

17. Jun Lan is a Service Coordinator for the San Gabriel Pomona Regional Center (SGPRC) and is also the Director of the Youth and Children's Ministry at the House of Joy Christian Church, where claimant and his mother attend church. Ms. Lan testified at the hearing and wrote a letter in support of claimant. The following is a summary of her testimony and letter.

Ms. Lan has been a Service Coordinator for SGPRC for 13-and-a-half years. Her duties include coordination of services for SGPRC clients and providing assessments for individual program plans for clients. Ms. Lan is not involved at all with the evaluation of



individuals for a determination of eligibility for SGPRC services. Ms. Lan works with claimant on a weekly basis as the director of youth services at claimant's church. Ms. Lan teaches bible study and activities with claimant. Claimant requires a lot of supervision and assistance at church. Claimant communicates primarily in Chinese, but his speech is extremely hard to understand in any language. Claimant has significant behavioral problems and is easily frustrated. Claimant walks without checking for traffic and is unaware of potential danger. Claimant cannot follow instructions without specific prompts. Ms. Lan stated that she has quite a few clients at SGPRC diagnosed with PWS and many are "higher functioning" than what she observes with claimant. Ms. Lan was surprised that claimant was not receiving regional center services, and believes that claimant has symptoms "similar to an individual having [intellectual disability] or other mental disabilities." Ms. Lan believes that claimant's personal hygiene is not good and he lacks adaptive skills. Ms. Lan believes that claimant will benefit from regional center services, including behavioral intervention services. Ms. Lan admitted that she did not perform any comprehensive assessment of claimant beyond her own observations of him on a weekly basis.

## LEGAL CONCLUSIONS

### BURDEN OF PROOF

1. In a proceeding to determine eligibility, the burden of proof is on the claimant to establish he or she meets the proper criteria. The standard is a preponderance of the evidence. (Evid. Code, §§ 115, 500.)

### STATUTORY AUTHORITY

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

3. Welfare and Institutions Code section 4501 provides:

The State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge. Affecting hundreds of thousands of children and adults directly, and having an important impact on the lives of their families, neighbors and whole communities, developmental disabilities present social, medical, economic, and legal problems of extreme importance ...

An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community. To the maximum extent feasible, services and supports should be available throughout the state to prevent the dislocation of persons with developmental disabilities from their home communities.

4. Welfare and Institutions Code section 4512, subdivision (a), defines developmental disability as a disability that "originates before an individual attains 18 years of age; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that individual." A developmental disability also includes "disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability." (*Ibid.*) Handicapping conditions that are "solely physical in nature" do not qualify as developmental disabilities under the Lanterman Act.

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

(a) "Developmental Disability" means a disability that is attributable to mental retardation<sup>5</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:

(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

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<sup>5</sup> Although the Lanterman Act has been amended to eliminate the term "mental retardation" and replace it with "intellectual disability," the California Code of Regulations has not been amended to reflect the currently used terms.

become seriously impaired as an integral manifestation of the disorder.

(2) Solely learning disabilities. A learning disability is a condition which manifests as a significant discrepancy between estimated cognitive potential and actual level of educational performance and which is not a result of generalized mental retardation, educational or psycho-social deprivation, psychiatric disorder, or sensory loss.

(3) Solely physical in nature. These conditions include congenital anomalies or conditions acquired through disease, accident, or faulty development which are not associated with a neurological impairment that results in a need for treatment similar to that required for mental retardation.

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

(a) "Substantial disability" means:

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

(2) The existence of significant functional limitations, as determined by the regional center, in three or more of the

following areas of major life activity, as appropriate to the person's age:

- (A) Receptive and expressive language;
- (B) Learning;
- (C) Self-care;
- (D) Mobility;
- (E) Self-direction;
- (F) Capacity for independent living;
- (G) Economic self-sufficiency.

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

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

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

## EVALUATION

7. A preponderance of the evidence does not show claimant is eligible for regional center services.

Dr. Stacy's expert testimony was credible and unrebutted by any other equivalent expert, and was supported by the documentation provided. Claimant's records show he suffers from some cognitive and adaptive functioning deficits, attributable to his PWS, a medical condition. The records show that claimant has low average cognitive functioning and has some adaptive deficits, but those are not substantial deficits. The records show that claimant has higher cognitive functioning (low average) than a person with an intellectual disability. A person with an intellectual disability or who functions like a person with an intellectual disability typically exhibits cognitive and adaptive deficits across all areas, and the deficits remain consistent over time. Claimant's cognitive and adaptive abilities vary widely, however, as opposed to being consistently low over time. Claimant also has never been served in special education under the category of intellectual disability; to the contrary, he is served under "other health impairment" and "speech and language impairment." Thus, claimant does not function similar to a person with an intellectual disability, within the meaning of applicable law.

A person may also be found eligible for regional center services under the fifth category, despite not functioning similar to a person with an intellectual disability, if he or she requires "treatment similar to" a person with an intellectual disability. Claimant does receive speech and language services, specialized classroom instruction, and behavioral intervention services. Persons with intellectual disabilities often receive

speech and language therapy and specialized classroom instruction. There is a distinction, however, between services received by an individual and the treatment received in order to render a person eligible under the fifth category. In other words, to be eligible under the fifth category, a claimant must establish he or she requires "treatment similar to" a person with an intellectual disability. Establishing that claimant merely uses "services" similar to those of a person with intellectual disability is not sufficient. A preponderance of the evidence did not show that claimant requires treatment similar to a person with an intellectual disability.

Finally, a person seeking eligibility under the Lanterman Act who fits within the criteria for the fifth category must be substantially disabled. Even assuming claimant fell within the fifth category, neither the records provided nor the testimony provided show claimant has significant functional limitations in three or more major life activities, as appropriate for a seven-year-old. Whether claimant may someday be unable to live independently or be economically self-sufficient are speculative and those categories are not considered for a seven-year-old. Further, the fact that claimant requires assistance with some adaptive skills, is slower to achieve developmental milestones than same-aged peers, or is not functioning adaptively in a similar manner as his same-aged peers, does not demonstrate he has a "significant functional limitation." The records are objective and full of information showing that claimant is able to function quite well, although he may be slower to do so than most children his age. The records show that claimant is able to dial and initiate a telephone call, wash himself acceptably without help, use the restroom independently, wash his hands, throw away his trash, pick up items as needed, and be responsible for routine chores around the house including washing cars and doing dishes.

In sum, while PWS is certainly a difficult condition to manage, and one that affects claimant in many areas of his life, the factors that qualify a person for regional

center services are quite clear. On this record, it was simply not established that claimant, at present, functions similar to or requires treatment similar to a person with an intellectual disability, and even if he did, he is not substantially disabled.

## ORDER

Claimant's appeal from the Inland Regional Center's determination that he is not eligible for regional center services and supports based on a diagnosis of intellectual disability or the fifth category is denied.

DATED: April 23, 2019

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DEBRA D. NYE-PERKINS

Administrative Law Judge

Office of Administrative Hearings

## NOTICE

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