

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2019020294

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter in San Bernardino, California, on March 28, 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.

The matter was submitted on March 28, 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 her eligible for regional center services under the fifth category?

## FACTUAL FINDINGS

### JURISDICTIONAL MATTERS

1. On January 7, 2019, IRC notified claimant's mother that claimant, a three-year-old-girl, was not eligible for regional center services because the records provided to IRC did not establish that she 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 February 1, 2019, claimant's mother filed a Fair Hearing Request on claimant's behalf appealing IRC's determination. In the Fair Hearing Request, claimant's mother contended that claimant has significant functional limitations in the areas of self-care, expressive and receptive language, learning, and mobility.

3. On February 13, 2019, according to a letter drafted by IRC, the parties held an informal telephonic meeting to discuss claimant's eligibility. Following the meeting, IRC adhered to its original determination finding claimant ineligible for regional center services.

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

4. Claimant suffers from Prader-Willi Syndrome (PWS). PWS is a rare genetic medical condition, as opposed to a developmental or neurological condition, that arises due to an abnormality of the 15<sup>th</sup> chromosome. There is no cure. PWS symptoms vary from individual to individual, but generally the condition is characterized by hypotonia

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<sup>1</sup> The description of Prader-Willi Syndrome 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.

(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 condition closely related to an intellectual disability<sup>2</sup> that requires similar treatment needs 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

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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 (IQ) scores in the 65-75 range.

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. 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. 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. Intellectual functioning is determined by standardized tests. A person has significant sub-average intellectual functioning if the person has an IQ of 70 or below. 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. (ARCA Guidelines, citing Cal. Code Regs., tit. 22, § 54002.) If a person's IQ 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 deficits related to intellectual limitations that are expressed by an inability to perform essential tasks within adaptive domains or by an inability to perform those tasks with adequate judgement. 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

7. 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 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

8. The ARCA Guidelines refer to California Code of Regulations, title 17, sections 54000 and 54001 regarding whether a person has a 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.

## EVIDENCE PRESENTED BY IRC

9. Holly Miller, Psy.D., is a staff psychologist at IRC. She obtained her Doctor of Psychology in 2009, and already held a Master of Science in Psychology and Bachelor of Arts in Psychology. Dr. Miller has served in a variety of positions, including clinical supervisor where she was in charge of the mental health services provided by the County of Riverside Department of Public Social Services. She served in various internships, all of which involved conducting or assisting in psychological assessments. She has published scholarly works in two peer-reviewed professional journals and has won awards in her field. Dr. Miller also 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. Miller 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. Miller reviewed documents provided by claimant, which included claimant's Early Start Individualized Family Services Plan (IFSP) dated March 16, 2018; a report from an entity called Sunny Days dated March 30, 2016; a progress report dated January 7, 2019; an evaluation completed at Rady's Children's Hospital dated October 17, 2018; claimant's Individualized Education Plan (IEP); and a psychoeducational assessment completed by claimant's school district dated December 18, 2018. Dr. Miller'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, medication management, diet control, 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 IQ 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 qualified for Early Start services due to fine motor delay. Claimant receives special education services under the categories "other health impairment" and "Speech and Language Impairment" as a result of her PWS diagnosis. None of claimant's school records show claimant has ever suffered from a substantial cognitive deficit as a result of any of her medical diagnosis, and claimant has never received special education services as a result of a diagnosis of intellectual disability.

According to claimant's IEP, she is an adventurous and compassionate child. Claimant loves to play with dolls and read books. Claimant can identify some of her body parts. Claimant is able to scribble and imitate vertical pen strokes. Claimant did not participate in color, shape, and sorting activities, but did demonstrate understanding the concept of "more" when discussing numbers. Claimant's expressive and receptive language was observed to be poor. Claimant's adaptive skills were tested as in the low range. The school recommended claimant receive specialized academic instruction, speech and language therapy, occupational therapy, and physical therapy. However, the IEP specifically did not find claimant eligible for special education services because of an intellectual disability.

According to the Psychoeducational and Speech and Language Evaluation, claimant shows substantial variability among her cognitive and adaptive skills. Multiple tests were administered, including the Differential Ability Scale – Second Edition (DAS-II); Cognitive Assessment of Young Children (CAYC); Adaptive Behavior Assessment System – Third Edition (ABAS-3); the Developmental Assessment of Young Children – Second Edition (DAYC-2); and various questionnaires and interviews. The DAS-II assesses cognitive skills in young children. The test was discontinued because of claimant's poor attention. On the CAYC, which also tests cognitive ability and is an alternative to the DAS-II, claimant scored in the poor range. However, it was noted that claimant had a limited attention span and thus, the tests results should be viewed as a minimum indication of claimant's cognitive abilities. The DAYC-2 is a popular test to administer to young children to test cognition, social and emotional development, physical development, and adaptive behavior. Claimant scored below average. On the ABAS-3, which tests adaptive skills, claimant's scores across all subsets varied from extremely low, to low, to below average. This type of variability is not what one would expect to see in a child with an intellectual disability; rather, the deficits would be expected to be consistent across all subsets.

The report from Sunny Days indicated claimant does not have any substantial impairments consistent with a person who has an intellectual disability. Claimant loves to participate in her Early Intervention sessions and engages with a variety of different toys and activities. She enjoys reading books, playing with play dough, arts, crafts, toys, and music. Claimant will point to pictures in books when requested. Claimant can spontaneously name objects. Claimant imitates activities using a substitute object to represent a real one (i.e. uses a short for a doll's blanket). Claimant can also match objects to a corresponding picture. Claimant says "yes" or "no" in response to questions. Claimant points to pictures when the objects in the picture are named. Claimant can



point to body parts when asked. Claimant does know about 15 spontaneous words and knows the names of her playmates. Claimant understands the concept of taking turns and can recognize when persons are happy or sad. Claimant can avoid common dangers (i.e. a hot stove). Claimant plays dress up. Claimant can sip liquid from a straw, independently eat with a spoon, wash her hands, open a door, wipe her nose, and clean her face. Claimant also did not demonstrate any substantial deficits in fine motor or gross motor skills.

Similarly, the assessment completed at Rady's Children's Hospital did not show claimant functions similar to a person with an intellectual disability or requires treatment similar to a person with an intellectual disability. On the Bayley Scales of Infant and Toddler Development, Third Edition, claimant's cognitive and motor skill scores fell in the borderline range, and her language fell in the low average range. All of these scores are well above what one would normally see in a person with an intellectual disability. On the Vineland Adaptive Behavior Scale, Third Edition, which is based on parent reporting, claimant's communication as shown to be in the high borderline range, her motor skills were in the low range, and her daily living skills were in the low borderline range; however, overall, her score fell within the borderline range. All of these scores are well above what one would normally see in a person with an intellectual disability. On the Child Behavior Checklist, which assesses social and emotional behavior, claimant was found to be "within typical limits" across all 12 testing areas.<sup>3</sup> Overall, the psychologist diagnosed claimant with Global Developmental Delay, secondary to PWS Syndrome. Dr.

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<sup>3</sup> The tested areas include: emotionally reactive, anxious/depressed, somatic complaints, withdrawn, sleep problems, attention problems, aggressive behavior, depressive problems, anxiety problems, autism spectrum problems, attention deficit hyperactivity problems, and oppositional defiant problems.

Miller explained that this diagnosis is typically given in children under 5 years of age where they do not meet the diagnostic criteria for intellectual disability but have delays secondary to a medical condition. Global Developmental Delay is not a condition that qualifies a person for regional center services.

Overall, claimant exhibits strengths and weaknesses but overall she does not show consistent delay across all areas. Claimant 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. Claimant's speech and language difficulties appear to be secondary to her medical condition as opposed to a developmental disability.

The records also show that, while claimant received some assistance through special education *services* (speech and language therapy, physical therapy, occupational therapy, and specialized instruction), she 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 three-year-old.

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

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

## EVIDENCE PRESENTED BY CLAIMANT'S MOTHER

10. Claimant's mother testified that claimant was diagnosed with PWS when she was three weeks old. Claimant's mother does not feel the testing provided throughout the records, especially the DAYC-2, adequately tested claimant's cognitive skills. Claimant has severe deficits in expressive and receptive language, and does not function at the same adaptive levels that her older sibling functioned at when claimant's sibling was three years old. Claimant's mother said claimant will often fall because of low muscle tone and can be unstable. The inability to control food is the greatest challenge. They must lock up food to ensure claimant does not have access to it. Claimant also does not do things on her own and her self-direction skills are poor. Claimant has a short attention span and although she participates in activities, she grows tired of them relatively quickly.

Claimant's mother submitted a detailed document describing what she believed render claimant "substantially disabled." In the area of self-care, claimant's mother said that claimant requires support for all her self-care needs. Contrary to what the Sunny Days report reflected, claimant's mother said claimant does not understand common dangers. Claimant soils herself and must still wear a diaper. Claimant uses utensils to eat but spills. Claimant cannot pack a snack without eating it. Claimant requires support with dressing herself. Claimant requires assistance brushing her teeth. Claimant makes a mess washing her hands. Claimant lacks strength and balance so she cannot play on a playground like other children. Claimant has a limited vocabulary and is easily distracted, which affects her ability to learn.

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

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

It is very common for people afflicted with PWS to show scattered cognitive and adaptive scores. PWS is a lifelong affliction, however, with proper management, many of the symptoms of PWS can be managed or significantly reduced. Claimant exhibits classic symptoms of PWS, including many physical challenges. Claimant requires structure and routine. Claimant has low tolerance and is easily frustrated. Claimant exhibits behaviors which are oppositional, defiant, and argumentative.

Ms. Dane said that PWS causes claimant to have learning problems because she needs things broken down for her and material must be presented to her in small, discrete tasks. Claimant's judgement is also impaired, which affects her executive functions (planning, organizing, regulating emotions, and self-monitoring). PWS also affects claimant's receptive and expressive language, and unlike her same-aged peers, claimant requires more assistance with self-care. Ms. Dane described claimant's self-care challenges consistent with the description provided by claimant's mother.

Ms. Dane said, therefore, PWS definitely meets the criteria for substantial handicap and claimant should qualify for regional center services.

## 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:

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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.

(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. 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 under the fifth category.

#### Claimant Does Not Function Similar to a Person With An Intellectual Disability

8. Dr. Miller's expert testimony was credible and un rebutted by any other equivalent expert, and was supported by the documentation provided. Claimant's records show she suffers from some cognitive and adaptive functioning, attributable to her PWS, a medical condition. 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 consistent over time. Claimant also has never been served in special education under the category of intellectual disability; to the contrary, she 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 and the ARCA Guidelines.

#### Claimant Does Not Require Treatment Similar to a Person With an Intellectual Disability

9. 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, as well as occupational therapy, and specialized classroom instruction. Persons with intellectual disabilities – or a myriad of mental and physical disabilities - often receive speech and language therapy as well as occupational 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 – not just that he or she benefits from “services” similar to those of a person with intellectual disability.

Regional center services and supports targeted at improving or alleviating a developmental disability may be considered “treatment” of developmental disabilities. Welfare and Institutions Code section 4512, subdivision (b), details the kinds of services and supports may be listed in a consumer’s individual program plan, which includes, but is not limited to: “diagnoses, evaluation, *treatment*, personal care, day care, domiciliary care, special living arrangements, physical, occupational and speech therapy, training, education, supported and sheltered employment, mental health services ...” The designation of “treatment” as a separate item is clear indication that it is not a synonym for “services and supports.”

In *Samantha C. v. State Dept. of Developmental Services* (2010) 185 Cal.App.4th 1462, no attempt was made to distinguish treatment under the Lanterman Act as a discrete part or subset of the broader array of services provided to those seeking fifth category eligibility. The appellate court made reference to individuals with an intellectual disability and with fifth category eligibility both needing "many of the same kinds of treatment, such as services providing help with cooking, public transportation, money management, rehabilitative and vocational training, independent living skills training, specialized teaching and skill development approaches, and supported employment services." (*Samantha C., supra*, 185 Cal.App.4th at p. 1493 This broader characterization of "treatment" cannot properly be interpreted as allowing individuals with difficulties in adaptive functioning, and who require, for example, assistance with public transportation, vocational training or money management, to qualify under the fifth category without more. Thus, while fifth category eligibility has separate condition and needs-based prongs, the latter must still consider whether the individual's condition has many of the same, or close to the same, factors required in classifying a person as intellectually disabled. (*Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119.)

In this case, a preponderance of the evidence did not establish that claimant needs treatment similar to a person with an intellectual disability.

#### Substantial Disability

10. Even assuming claimant met the diagnostic criteria for the fifth category (i.e. that she functioned similar to or required treatment similar to a person with an intellectual disability), 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 three-year-old. Whether claimant may someday be unable to live independently or be economically self-sufficient are speculative and do not apply to a

three-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 her older sibling or other same-aged peers, does not qualify as a "significant functional limitation." The records are objective and chocked full of information showing that claimant is able to function quite well, although she may be slower to do so than most children her age. Claimant also appears to have an attention deficit, which contributed to some of the lower scores she achieved throughout the testing process. Deficits in attention that affect a person's ability to learn do not render someone substantially disabled; it was also noted that although some of claimant's cognitive and adaptive scores were low, they represented her *minimum* abilities because of her inattentiveness during the testing process.

## CONCLUSION

11. While PWS is certainly a difficult condition to manage – and one that affects the individual in many areas of his or her 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 she did, she does not meet the regulatory criteria for substantial disability.

## ORDER

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

DATED: April 8, 2019

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KIMBERLY J. BELVEDERE

Administrative Law Judge

Office of Administrative Hearing

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.**