

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of the Eligibility of:

CLAIMANT

and

INLAND REGIONAL CENTER, Service Agency

OAH No. 2023040093

DDS No. CS0003952

DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference and telephone on June 13, 2023.

Claimant's mother represented claimant who was not present.

Hilberto Echevarria, Jr., Fair Hearing Representative, represented Inland Regional Center (IRC).

Oral and documentary evidence was received. The record remained open for claimant to submit additional documents and for another day of hearing to be set. However, IRC notified OAH that claimant would not be submitting additional records

and no additional hearing time was requested. Accordingly, the record was closed and the matter was submitted for decision on July 13, 2023.

ISSUES

Is claimant eligible for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) as a result of epilepsy, cerebral palsy, autism, an intellectual developmental disorder (intellectual disability), or a disability closely related to an intellectual disability or that requires treatment similar to that required for individuals with an intellectual disability (the "fifth category"), that constitutes a substantial disability?

Is IRC required to perform an evaluation of claimant to determine eligibility or is a records review sufficient?

SUMMARY

Claimant failed to show by a preponderance of the evidence that he had a qualifying developmental disability. Although he had and has many substantial disabilities, none are due to a qualifying diagnosis. His substantial disabilities are due to diagnoses specifically excluded by the Lanterman Act or due to non-qualifying diagnoses. IRC need not perform an evaluation of claimant to determine eligibility; the records review IRC performed was sufficient. IRC's denial of claimant's request for eligibility is affirmed. Claimant is not eligible for regional center services.

FACTUAL FINDINGS

Jurisdictional Matters

1. On March 1, 2023, IRC notified claimant he was not eligible for regional center services.¹ IRC made this decision based on records it reviewed and decided that no further intake services beyond the records review were warranted.

2. On March 24, 2023, claimant's mother/authorized representative filed an Appeals Request, and the matter was set for hearing.

Claimant's Assertion for Eligibility and Request for an Evaluation

3. Claimant is currently a 40-year-old male. He is a fraternal twin who was born prematurely, requiring him to spend three weeks on a respirator for undeveloped lungs and undergo transfusions for jaundice. He asserted he was eligible for regional center services, but did not specify under which category. Accordingly, all categories will be evaluated in this decision.

¹ A December 19 2022, Inter Regional Center Transmittal from Westside Regional Center referenced claimant and notified IRC that "Our consumer moved to your area" on an unknown date. The case status was listed as: "D-Closed-Not Determined." No explanation for this was offered at hearing and no documents indicating claimant had ever been a regional center consumer were offered.

Diagnostic Criteria for Autism Spectrum Disorder

4. IRC introduced excerpts from the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition*, (DSM-5)² which contained the diagnostic criteria that must be met in order to make a diagnosis of autism. To be eligible for regional center services based on autism spectrum disorder, a claimant must meet that diagnostic criteria. The criteria include: persistent deficits in social communication and social interaction across multiple contexts; restricted, repetitive patterns of behavior, interests, or activities; symptoms that are present in the early developmental period; symptoms that cause clinically significant impairment in social, occupational, or other important areas of current functioning; and disturbances that are not better explained by intellectual disability or global developmental delay. There is no requirement of formal testing, rather the diagnostic criteria may be found “currently or by history.”

Diagnostic Criteria for Intellectual Disability

5. IRC offered excerpts from the DSM-5 that contained the three diagnostic criteria that must be met in order to make a diagnosis of intellectual disability.³

² The upcoming text revision of the DSM-5, the DSM-5-TR, revised the diagnosis of autism spectrum disorder, including text changes throughout the disorder’s description, to reflect updated literature and advances in knowledge, with the most noticeable change being to the diagnostic criteria, specifically criterion A. No evidence was offered that these revisions changed IRC’s determination.

³ The DSM-5-TR now uses the term intellectual developmental disorder, and made changes to the criterion, but no evidence was offered that these revisions changed IRC’s determination.

Criterion A: deficits in intellectual functions; Criterion B: deficits in adaptive functioning; and Criterion C: the onset of these deficits during the developmental period. An individual must have a diagnosis of intellectual disability to qualify for regional center services. Intellectual functioning is typically measured using intelligence tests. Individuals with intellectual disability typically have IQ scores in the 65-75 range.

The “Fifth Category”

6. Under the “fifth category” the Lanterman Act provides assistance to individuals with “disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability” but does not provide services for “other handicapping conditions that are solely physical in nature.” (Welf.& Inst. Code, § 4512, subd. (a).) Along with the other four qualifying conditions (cerebral palsy, epilepsy, autism spectrum disorder, and intellectual disability), a disability involving the fifth category must originate before an individual attains 18 years of age, must continue or be expected to continue indefinitely, and must constitute a substantial disability.

The fifth category is not defined in the DSM-5 or DSM-5-TR. In *Mason v. Office of Administrative Hearings* (2001) 89 CalApp.4th 1119, 1129, the court held that the fifth category was not unconstitutionally vague and set down a general standard: “The fifth category condition must be very similar to mental retardation, with many of the same, or close to the same, factors required in classifying a person as mentally retarded. Furthermore, the various additional factors required in designating an individual developmentally disabled and substantially handicapped must apply as well.” (Of note, the DSM-5 uses the term “intellectual disability,” the condition previously referred to as “mental retardation.” The cases were decided when the term

mental retardation was in use and contain that term in their decisions. For clarity, that term will be used when citing to those holdings.)

On March 16, 2002, in response to the *Mason* case, the Association of Regional Center Agencies (ARCA) approved the *Guidelines for Determining "5th Category" Eligibility for the California Regional Centers* (Guidelines). (Of note, the ARCA guidelines have not gone through the formal scrutiny required to become a regulation and were written before the DSM-5 or DSM-5-TR were in effect and are not entitled to be given the same weight as regulations.) In those Guidelines, ARCA noted that eligibility for Regional Center services under the fifth category required a "determination as to whether an individual functions in a manner that is similar to that of a person with mental retardation **OR** requires treatment similar to that required by individuals with mental retardation." (Emphasis in original.) The Guidelines stated that *Mason* clarified that the Legislative intent was to defer to the professionals of the Regional Center Eligibility Team to make the decision on eligibility after considering information obtained through the assessment process. The Guidelines listed the factors to be considered when determining eligibility under the fifth category.

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

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

Epilepsy and Cerebral Palsy

7. Epilepsy and cerebral palsy are medical conditions requiring medical diagnoses. No records were introduced demonstrating that claimant had ever been diagnosed with either condition.

Expert Witness Testimony

8. Holly Miller-Sabouhi, Psy.D., is a staff psychologist at IRC. Dr. Miller-Sabouhi received her Bachelor of Arts degree in psychology from the University of California, Riverside. She received both her Master of Science in Psychology and her Doctor of Psychology from the University of La Verne. She has published articles and received the Student Diversity Award from the University of La Verne and the Educational Award for Clinical Psychologists from the County of Los Angeles Department of Mental Health. Her curriculum vitae sets forth her education, training, post-doctoral and clinical experience.

Dr. Miller-Sabouhi testified in this hearing, explaining the eligibility determination process and why the records IRC reviewed did not establish that

claimant had a qualifying developmental disability. Dr. Miller-Sabouhi further explained that IRC is not required to perform an evaluation of an individual; a records review is sufficient when the records do not suggest the presence of a qualifying developmental disability. In this case, IRC did not perform an evaluation of claimant because his records did not demonstrate that he had a qualifying developmental disability. No expert testimony refuted Dr. Miller-Sabouhi's opinions that claimant was not eligible for regional center services.

Claimant's Mother's Testimony

9. Claimant's mother described her son's many struggles, and how he did not graduate from high school. He was being bullied and eventually was attacked when he fought back, and both he and the attacker were expelled. The district recommended that claimant complete his studies at night school, but he did not. Eventually claimant's mother paid for claimant to take an examination to obtain his high school diploma. However, he told her he had someone else take the exam for him. So even though he has a high school diploma, he did not really earn it.

Claimant's mother explained how it seems clear to her from looking at the records that claimant has a developmental disability, especially as his fraternal twin sister is a regional center consumer. Claimant's mother wishes someone could interview claimant to make that determination. Although her son has a recent diagnosis of schizophrenia, this should not rule him out as eligible for regional center services. She described two family members who also have schizophrenia but are regional center clients because they have epilepsy. Thus, schizophrenia should not rule her son out. She described how many services for him either lapse or are not provided because he does not know how to complete the paperwork. Claimant needs help to take care of himself and meet his daily needs.

Documents Introduced at Hearing

10. The records IRC reviewed to make its determination were introduced at hearing. Dr. Miller-Sabouhi testified about the documents, and claimant's mother testified regarding the documents, claimant's history and his condition. That testimony is incorporated in the findings reached below.

11. A September 17, 1986, Preschool Progress Report prepared when claimant was four years old, documented areas of his motor development, adaptive behavior, academic concept development, social development, and emotional development which were satisfactory and those which needed improvement. Nothing in this document established eligibility for regional center services.

12. Claimant's kindergarten progress report documented listening and learning issues, but nothing in the report established eligibility for regional center services.

13. A November 16, 1987, Pupil Placement Summary and Individualized Education Program (IEP) indicated that claimant was referred to special education in September 1987. He qualified "as a speech impaired student due to difficulty in verbal language - expressive language, voice and articulation." He received speech services but remained in "regular education" with "designated instruction and services." Nothing in this document established eligibility for regional center services.

14. Claimant's 1989 IEP, when he was in kindergarten, documented that tension in claimant's esophagus caused "vocal fry and hoarseness," but there was no damage to his vocal cords. The document referenced the speech goals addressed. Nothing in this document established eligibility for regional center services.

15. 1990 records from St. John's Hospital documented an "Educational Evaluation" performed over the course of three days in June by a Ph.D. and an Educational Psychologist Intern. Claimant was in first grade and had "a very poor school year." There were questions as to whether claimant should promote to the next grade. The purpose of the evaluation was to determine claimant's "present levels of academic functioning, strengths and weaknesses, and a recommendation for the coming school year, 1990-91." Several achievement and motor tests were administered and claimant's behaviors were observed. He was noted to be polite and cooperative, but had difficulty following directions and the examiner had to repeat instructions. As a result of the testing, it was determined that claimant appeared to "be experiencing some difficulty in the area of learning" and "difficulty sustaining his attention." Claimant's skills were at both the mid-first grade and end of first grade level and it was recommended that repeating first grade would "likely stabilize his academic skills." Nothing in this document established eligibility for regional center services.

16. A December 10, 1990, California State University, Northridge, School of Education, Diagnostic Summary of Reading Performance, documented claimant's history, assessments performed, his cooperation, difficulties following direction, and his trouble focusing. It was recommended that claimant continue with the reading clinic, practice reading aloud, further develop his writing skills, choose books at the appropriate grade level, and be given exercises in school to develop his auditory discrimination. It was also noted that claimant would benefit from some type of daily tutoring. Nothing in this document established eligibility for regional center services.

17. A spring 1991 Summary of Progress from California State University, Northridge, recommended that claimant be dismissed from the program because his "specific needs will most likely be met if he were enrolled in a program specifically

designed to deal with overall learning disabilities.” Nothing in this document established eligibility for regional center services.

18. Claimant’s 1991 IEP documented he was eligible for services under the “Learning Disability” criteria. His present level of performance was noted. Nothing in this document established eligibility for regional center services.

19. Claimant’s 1991 math, reading, and language scores were in the slightly above average and average ranges with one score, math computation, being in the low average range. No determination of claimant’s learning needs could be made because of incomplete information, documenting that claimant’s mother requested termination of the assessment. Nothing in these documents established eligibility for regional center services.

20. Several school records, which included IEPs, contained a 1992 Follow-Up History from the school psychologist who summarized claimant’s slow progress and concluded “there was no indication that special education would correct [claimant’s] pace or ability to learn.” Another 1992 note documented that claimant “does not appear to meet eligibility as a learning disabled child at this time.” Nothing in these documents established eligibility for regional center services.

21. A June 1992 Year End Report from claimant’s school, at the completion of second grade, documented that claimant was generally good-natured but did show anger and frustration at times. He also tended to rush through his assignments but improved by year-end. He was noted to be a gifted athlete and good student, who had trouble focusing at times, and had challenges with fine motor subjects. Nothing in this document established eligibility for regional center services.

22. A Summary of Educational Evaluation prepared by an educational therapist when claimant was in third grade, documented testing done over two days in October 1992. After completing that testing, the therapist recommended claimant attend a special day class in the district; use a task analysis, behavior modification strategy; use contracts for learning academic and social skills; begin the pre-vocational goals in areas of time, money, verbal pragmatics, and problem-solving skills; utilize his verbal mediation strategies to help him pre-plan and complete tasks; and a neurological evaluation for Attention Deficit Hyperactive Disorder was "highly recommended." Nothing in this document established eligibility for regional center services.

23. A January 18, 1993, neuropsychological evaluation by a licensed clinical psychologist/Ph.D. documented testing conducted over three days. It included a summary of claimant's history, noting his premature birth, speech, language and remedial reading services provided, and his repeating both kindergarten and first grade. Claimant had been referred for a neuropsychological evaluation by the educational therapist. The psychologist reviewed records, observed claimant, and administered numerous cognitive, learning, and achievement tests. Claimant's full-scale IQ was in the borderline range, he had difficulty with receptive understanding and expressing himself, but displayed a wide range of social understanding. He exhibited a strength on the fund of knowledge subtest but did not do as well on the vocabulary subtest. Many of his answers were consistent with an auditory processing learning disability and a visual-spatial learning disability. Claimant worked persistently but demonstrated impulsivity. The psychologist noted that many of the low scores claimant achieved on tests did not demonstrate his true breadth of knowledge and often when questions were rephrased, he frequently answered them correctly. The psychologist's summary stated that despite intensive remedial instruction, beginning

in preschool, claimant had been unable to maintain grade level performance. While his general intellectual ability tests were in the borderline range, there were indications of a higher potential. Although claimant processed material quickly, he did not appear to process it accurately. The test results suggested that claimant's "premature birth and stressed infancy affected his intellectual and achievement levels." While his scores were consistent with borderline functioning, there were exceptions that indicated a higher potential. An analysis of the test results indicated learning disabilities in both verbal and visual processing modalities, which would likely produce a high level of frustration. It was recommended that claimant be placed in a small classroom, receive educational therapy, continue with psychotherapy, and that these results be communicated to claimant's pediatrician in order for that physician to consider the possibility of dysfunction of the right cerebral hemisphere. A larger neurological investigation might also be warranted in view of claimant's apparent attentional difficulties. An evaluation of oculomotor tracking ability was also suggested. Nothing in this report established eligibility for regional center services.

24. A 1993 Speech and Language Evaluation was performed when claimant was in third grade at his parents' request. Claimant was noted to be friendly and polite, but fidgety. Based on the formal testing performed, informal observation of claimant, and consultation, it appeared claimant was experiencing mild deficits in expressive language but there did not appear to be a significant discrepancy between his ability to express himself and his cognitive abilities. Accordingly, "placement in a specifically language-based classroom is not warranted." Nothing in this report established eligibility for regional center services.

25. The only goal identified on claimant's 1993 IEP was behavior and the short term objective was for claimant to develop impulse control. Nothing in this IEP established eligibility for regional center services.

26. Claimant's fourth grade Progress Report documented his areas of strength, areas where he showed growth, and areas that needed improvement. Most of his learning skills and social skills needed improvement. He had demonstrated strength or growth in most of his academic areas. Nothing in this report established eligibility for regional center services.

27. Claimant's 1995 IEP, when claimant was in fifth grade, noted that he was reading at fourth grade level, had difficulty with punctuation and sentence structure, and spent two-thirds of his day in a special day class. Claimant qualified for special education services "due to processing deficits in visual, spatial and auditory proficiency." Claimant "enjoyed the testing but was unable to maintain sustained attention because of many distractions." He demonstrated "a very significant discrepancy" between receptive language and expressive language. Nothing in this IEP established eligibility for regional center services.

28. A December 1996 psychoeducational evaluation performed at the request of claimant's IEP team to determine his reading and written language skills, took place when claimant was in seventh grade. Testing revealed that claimant's general cognitive ability was within the low average range of intellectual functioning. His verbal and nonverbal reasoning abilities were in the low average range. He had processing problems in visual and auditory short-term memory and attention. Nothing in this document established eligibility for regional center services.

29. Claimant's 1997 IEP, when claimant was in seventh grade, noted difficulties with reading, writing, mathematics, and focusing. An IEP addendum documented a meeting held to discuss claimant's current placement and behavior. He was defiant, refusing to follow directions, or correct his work. His behavior was "confrontational and impulsive," and "severe at this time." Claimant qualified for special education services under the category of specific learning disability. An occupational therapy evaluation was noted and claimant would be integrated for physical education. The IEP team recommended that claimant be in math, science, English, history, and study skills special day classes. Nothing in these documents established eligibility for regional center services.

30. A 1997 Pupil Placement Summary, when claimant was in seventh grade, documented his present placement in special day classes. He was to be mainstreamed 44 percent of the day and an extended school year was authorized. His eligibility for services was under the specific learning disability category. Nothing in this document established eligibility for regional center services.

31. January 14, 1998, Assessment Report of Language/Speech/Hearing functions documented that claimant's auditory processing and production skills were within the age and grade level expectations. Speech services were not recommended. Nothing in this document established eligibility for regional center services.

32. A December 10, 1998, Health Assessment documented claimant's physical conditions and medication he was taking. Nothing in this document established eligibility for regional center services.

33. A January 5, 1999, psychoeducational assessment, when claimant was in ninth grade, was conducted over two days by the school psychologist as part of

claimant's triennial assessment. Claimant's auditory processing and production skills were within age and grade level expectations, so speech services were not recommended. Claimant was a very good athlete with several trophies in different sports. Claimant attended classes in both the resource program and the general education division. At the end of the school year it was decided that claimant would move from the special day classes to a resource service program placement in high school. Based on the cognitive testing performed, claimant's cognitive ability was within the low average range of intellectual functioning. His verbal and nonverbal reasoning abilities were in the low average range and processing problems were documented in visual and auditory short-term memory and attention. The examiner concluded, based upon the testing performed, that claimant had a mild discrepancy between his ability and achievement in written language but there was evidence of educationally significant disorders with his attention/concentration and visual and auditory memory. Claimant's "handicapping condition" was specific learning disability. Nothing in this document established eligibility for regional center services.

34. A June 23, 2000, letter from Drake Institute of Behavioral Medicine, addressed to "Parent/Patients" notified them that it had retained a "highly regarded speech and language therapist" as a consultant to help patients affected by Attention Deficit Disorder and Attention Deficit Hyperactivity Disorder. The letter described the evaluation that would be performed and the program that would be recommended for individuals who have those disorders. This evaluation and program had been recommended to claimant. Nothing in this document established eligibility for regional center services.

35. A 2012 MRI of claimant's brain was normal. The MRI had been performed when claimant was 29 years old for a "new onset problems processing words and

isolation from friends. Evaluate for brain tumor.” Nothing in this report established eligibility for regional center services.

36. July 5, 2013, emergency department records documented that claimant, who was 30 years old, was admitted on a 5150 hold⁴ “for aggressive behavior and delusions and hallucinations.” Claimant was hearing voices and had to follow those orders. Claimant’s admitting diagnoses were psychosis and personality disorder. He was medically cleared and transferred to the psychiatric department for a 5150 hold. Records from the psychiatric facility documented that claimant was admitted on July 5, 2013, and discharged on July 8, 2013. Claimant’s admitting diagnoses were psychotic disorder not otherwise specified, and rule out schizophrenia - first break. His discharge diagnoses were schizophrenia, paranoid type, chronic; and rule out autism. Of note, “rule out autism” is not a diagnosis of autism. The psychiatric records contained the following, as written in original:

[Claimant] was driven to [the emergency room] by his mother, concerned about increasingly bizarre behavior. Upon arrival to the [emergency room] parking lot, he proclaimed himself to be the son of Frank Sinatra with plans to open a casino.

⁴ Welfare and Institutions Code section 5150 allows an adult who is experiencing a mental health crisis to be involuntarily detained for a 72-hour psychiatric hospitalization when determined to be a danger to others, to himself or herself, or gravely disabled.

[Claimant] is quite paranoid and simply refuses to answer most questions or if he does, denies any knowledge. His mother described a new euphoria and extroverted side to him when she arrived. Staff contacted [claimant's] father who reported that he noticed his son has been acting oddly lately - more isolative, slightly disorganized. [Claimant] reported that there was no mental illness in family though father reported that [claimant's] twin sister has schizophrenia and a maternal aunt, has Bipolar illness. Both parents describe their son as socially isolated, bullied in his teens at school, and having had at least one period of depression when he virtually lived in his room - avoiding human contact. He had just broken up with an internet [girlfriend] from Australia. He wouldn't allow the parents to even meet her. He did well for a while in retail sales, then became overwhelmed and was let off. His next retail sales job included answering phones - it was too much for him. His parents support him with a condo in LA (Visiting their condo here), but he receives food stamps and [general relief]. In his 20s, he was arrested, but only briefly in jail. He had been stealing or vandalizing with a school friend - his mother doesn't recall.

The mental status examination noted that claimant's behavior was evasive, his psychomotor activity was fidgeting, he had no abnormal movements, his speech was minimal and slow, his mood was nervous, his affect was constricted, and his thought process was disorganized and thought blocking. He denied suicidal or homicidal ideas,

his delusions were paranoid and grandiose, he denied hallucinations or responding to internal stimuli. His concentration was poor, his immediate recall was fair, and his recent memory was poor. He was alert and oriented. His fund of knowledge was below expected. His intelligence estimates were average. His insight, judgment, and impulse control were all poor. His challenges were an inability to live independently and failure to follow up with outpatient services. The reason to admit claimant for inpatient treatment was:

[Claimant] clearly displays disorganized thoughts impairing his ability to function. Given the significant family [history], including both Schizophrenia and Bipolar illnesses, [claimant's] inability to function well socially or maintain independence and absence of other etiologies, this may be part of schizophreniform presentation. Need to consider manic episode as he may have had earlier severe depressive episode (not unusual as initial illness for either diagnosis. [sic] Both parents present with a "flavor" of both.

Claimant underwent psychosocial, drug, alcohol, behavioral, suicide, medical, and nursing assessments. Claimant denied any medical problems, but admitted he drinks too much. He refused medications while hospitalized. Nothing in these records established eligibility for regional center services. In fact, the regulations specifically prohibit eligibility for conditions that are solely psychiatric in nature, further supporting IRC's determination.

37. Records from another psychiatric facility in May 2015 documented that claimant, then 32 years old, was admitted through the hospital on a 5150 hold after allegedly attacking his mother and being aggressive in their home. Claimant "has a

long history of chronic and persistent mental illness.” His admitting diagnoses were undifferentiated schizophrenia and marijuana abuse. He was positive for marijuana on admission, which “seems to have been a precipitant of his agitation.” He adamantly refused medication. The records documented that during the hospital course:

[Claimant] was at all times quiet, polite, and on the periphery. He did not really participate very actively. What is pertinent is that he demonstrated no aggressiveness, no danger to self or others, no desire to harm anyone, and really did not want to stay in the hospital. He was offered [medication]. He did sign the consent and took one or two doses but stated he does not want to take it anymore. His mother told my office that she would like him on [medication] [Claimant] adamantly refuses any psychiatric medication. Obviously, his insight is very poor, his denial strong, and he does not seem to think he has any problems. However, he clearly states he does not want to harm anybody, and he simply wants to go home with his mother and sister.

Claimant was discharged the day after admission with diagnoses of chronic undifferentiated schizophrenia, acute exacerbation, and marijuana abuse exacerbating his schizophrenia. Social services would provide referrals to a community mental health center closest to claimant’s home. He had been referred to a facility before, “but his follow-up and compliance are not good.” Nothing in these records established eligibility for regional center services and solely psychiatric conditions are not developmental disabilities per the regulations.

38. Hospital records from September 2015 documented claimant's repeated visits to a third hospital complaining of abdominal and head pain. He reported feeling "demons" in his stomach and asked for an MRI and x-rays. Claimant was initially advised to retain and treat with a primary care physician, but was eventually admitted on a 5150 hold for a psychiatric evaluation when he became a "frequent visitor" at the emergency department. Nothing in these records established eligibility for regional center services, and solely psychiatric conditions are not developmental disabilities per the regulations.

LEGAL CONCLUSIONS

Burden and Standard 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 of proof is a preponderance of the evidence. (Evid. Code, § 115.)

Statutory and Regulatory Authority

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

3. Welfare and Institutions Code section 4501 states:

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 follows:

"Developmental disability" means 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. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an

intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.

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

(a) "Developmental Disability" means a disability that is attributable to mental retardation, 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. (Note: The regulations still use the term "mental retardation," instead of the term "Intellectual Disability.")

(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 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 psychosocial 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.

Applicable Case Law

7. The Lanterman Act and implementing regulations clearly defer to the expertise of the Department of Developmental Services and regional center professionals and their determination as to whether an individual is developmentally disabled. General, as well as specific guidelines are provided in the Lanterman Act and regulations to assist regional center professionals in making this difficult, complex determination. (*Ronald F. v. State Department of Developmental Services* (2017) 8 Cal. App. 5th 84, 94–95, citations omitted.)

Evaluation

8. The Lanterman Act and the applicable regulations set forth criteria that a claimant must meet in order to qualify for regional center services. The documents introduced in this hearing do not demonstrate that claimant has a diagnosis of either autism or intellectual disability that constitutes a substantial disability, or that he qualifies under the fifth category, which is defined as a disability closely related to an intellectual disability, or that requires treatment similar to that required for individuals with an intellectual disability, that constitutes a substantial disability. He does not have cerebral palsy or epilepsy. Although claimant had a history of learning disabilities and other diagnoses, and currently has emotional and psychiatric conditions, none of them are qualifying conditions. While his mother's testimony was sincere and genuine, and

she has clearly spent claimant's lifetime seeking services and supports for him, her testimony did not establish eligibility for regional center services.

Moreover, IRC's role is to assess individuals for eligibility for services based on a qualifying developmental disability. IRC performs this role by reviewing records and, when necessary, performing evaluations. In cases like this one, where the records do not indicate the individual has a qualifying developmental disability, a records review is sufficient and an evaluation need not be performed.

On this record, claimant's appeal must be denied.

ORDER

Claimant's appeal from IRC's determination that he is not eligible for regional center services is denied. IRC's determination that he is not eligible for regional center services is affirmed.

Claimant's appeal that he should be evaluated is denied. IRC's eligibility decision based only upon a records review is affirmed.

DATE: July 14, 2023

MARY AGNES MATYSZEWSKI
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Each party is bound by this decision. Either party may request a reconsideration under Welfare and Institutions Code section 4713, subdivision (b), within 15 days of receiving the decision, or appeal the decision to a court of competent jurisdiction within 180 days of receiving the final decision.