

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

**In the Matter of:**

**CLAIMANT**

**and**

**INLAND REGIONAL CENTER, Service Agency**

**DDS No. CS0020794**

**OAH No. 2024090722**

**DECISION**

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on November 21, 2024, in San Bernardino, California.

Dana Hardy, Fair Hearings Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

Claimant's mother appeared on behalf of claimant, who was present.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on November 21, 2024.

## ISSUE

Is claimant eligible for regional center services pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act) under the category of Autism Spectrum Disorder (autism), intellectual developmental disorder (IDD),<sup>1</sup> or a condition that is closely related to IDD or requires treatment similar to a person with IDD (Fifth Category)?

## FACTUAL FINDINGS

### Background

1. Claimant is an 11-year-old boy who lives at home with his family. When he was an infant, he received services at the San Gabriel Pomona Regional Center (SGPRC) under the California Early Intervention Services Act (Government Code section 90000, et seq.) due to speech and language delays.

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<sup>1</sup> The Lanterman Act was previously amended to eliminate the term "mental retardation" and replace it with "intellectual disability," as reflected in the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5). The more current DSM-5, text revision (DSM-5-TR) no longer uses the term "intellectual disability" and instead refers to the condition as IDD. Many of the regional center forms have not been updated to reflect this change. Accordingly, for purposes of this decision, "mental retardation," "intellectual disability," and "IDD" mean the same thing.

2. On May 12, 2016, just before claimant turned three years old, which would render him ineligible for services under Early Start, SGPRC had a psychologist conduct a psychological evaluation to determine if claimant qualified for regional center services under the Lanterman Act. In addition to clinical observations, the psychologist conducted the Wechsler Preschool and Primary Scale of Intelligence, Fourth Edition (WPPSI) and the Vineland Adaptive Behavior Scales (Vineland). The report noted that claimant had made "significant" progress during his time in Early Start, and had "improved tremendously." On the WPPSI, claimant demonstrated a scattering of cognitive abilities across the various subsets, and achieved an overall full-scale IQ of 87, which is in the normal range of cognitive abilities. No concerns were raised regarding his adaptive skills, and the psychologist noted claimant presented as playful and engaging, exhibiting good eye contact, exhibiting normal behaviors, normal motor skills, and socialization within the normal range. Overall, claimant's adaptive skills were determined to be within the normal range. The psychologist concluded claimant was not eligible for regional center services but recommended claimant seek services through the school district to help him with speech and language delays. An eligibility team at SGPRC deemed claimant ineligible for regional center services.

3. Records from claimant's school district show claimant began receiving special education services under the category of speech and language impairment in 2016, and following a reassessment in 2019, claimant's eligibility was amended to include specific learning disability. Neither of these categories qualifies a person for regional center services.

4. In April of 2022, when claimant was eight years old and in third grade, claimant's school psychologist conducted a psychoeducational assessment. The psychologist observed:

[Claimant] came willingly with the examiner for testing. Rapport was easily established and maintained. [C]laimant presented as a friendly and polite student. He followed examiner directions and was cooperative and compliant throughout the testing session. [C]laimant's attention and concentration was adequate during the one-to-one assessment. He attempted all tasks presented and put forth good effort. [Claimant's] level of activity appeared appropriate. Overall, claimant appeared to enjoy the testing. He maintained a positive demeanor throughout the assessment.

On the Kaufman Brief Intelligence Test, Second Edition, claimant's cognitive skills were found to be in the average range. On the Wechsler Nonverbal Scale Of Ability, which measures the skills of using one's brain to think and solve problems using pictures, claimant tested in the average range. The Motor-Free Visual Perception Test Fourth Edition assesses an individual's visual perceptual ability with no motor involvement needed to make a response. On that assessment, claimant was found to be in the average range. The Developmental Test of Visual-Motor Integration is a test designed to assess the extent to which individuals can integrate their visual and motor abilities (eye-hand coordination). On that test, claimant scored within the average range. On the Cognitive Assessment System, Second Edition, the psychologist found claimant's overall working memory score within the average range. Claimant's scores

on the Wechsler Individual Achievement Test-Fourth Edition were scattered from low to high, and overall found to be in the average range. Claimant was found to meet continued eligibility criteria for special education services under the categories of speech and language impairment and specific learning disability.

5. The California Assessment of Student Performance and Progress (CAASPP) consists of assessments aligned with the state standards that outline the expectations for what students at various grade levels know and can do. With each assessment, students are expected to write clearly, think critically, and solve problems. Claimant tested below expected standards.

An Education Specialist Teacher Report dated May 9, 2022, contained the following observations of claimant during the assessment:

[Claimant] was friendly, inquisitive, and cooperative [during the assessment]. He maintained good eye contact. He remained seated throughout the testing sessions and was not fidgety. [Claimant] appeared alert and focused during the assessment sessions. His response style was thoughtful. He attempted each sub-test presented to him. When he did not understand a question or direction he asked for clarification. He appeared to put forth his best effort. Therefore, it is likely these scores represent a valid and accurate measure of [claimant's] current level of academic achievement.

6. On January 8, 2024, claimant's mother applied for regional center services.

7. On July 30, 2024, and again on October 9, 2024, an IRC multidisciplinary team comprised of a psychologist, a medical doctor, and a Program Manager determined that the records claimant provided did not show claimant had a substantial disability as a result of autism, IDD, cerebral palsy, epilepsy, or a condition that is closely related to IDD or requires treatment similar to a person with IDD. On that same date, IRC issued a Notice of Action stating claimant was ineligible for services under any category. Claimant's mother filed a timely appeal seeking review of that determination.

### **Diagnostic Criteria for Autism**

8. The American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision* (DSM-5 TR) identifies criteria for the diagnosis of autism spectrum disorder. The diagnostic criteria include persistent deficits in social communication and social interaction across multiple contexts; restricted repetitive and stereotyped patterns of behavior, interests, or activities; symptoms that are present in the early developmental period; symptoms that cause clinically significant impairment in social, occupational, or other important areas of function; and disturbances that are not better explained by intellectual disability or global developmental delay. An individual must have a DSM-5 TR diagnosis of autism spectrum disorder to qualify for regional center services based on autism.

### **Diagnostic Criteria for IDD**

9. The DSM-5-TR contains the diagnostic criteria used for IDD. The essential features of IDD are deficits in general mental abilities and impairment in everyday adaptive functioning, as compared to an individual's age, gender, and socio-culturally matched peers. Intellectual functioning is typically measured using intelligence tests.

Individuals with IDD typically have IQ scores in the 65-75 range (unless an individual is African American, in which case IQ results are not considered).<sup>2</sup> In order to have a DSM-5-TR diagnosis of IDD, three diagnostic criteria must be met. The DSM-5-TR states in pertinent part as follows:

[IDD] is a disorder with onset during the developmental period that includes both intellectual and adaptive functioning deficits in conceptual, social, and practical domains. The following three criteria must be met:

A. Deficits in intellectual functions, such as reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience, confirmed by both clinical assessment and individualized, standardized intelligence testing.

B. Deficits in adaptive functioning that result in failure to meet developmental and sociocultural standards for personal independence and social responsibility. Without ongoing support, the adaptive deficits limit functioning in one or more activities of daily life, such as communication,

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<sup>2</sup> Claimant was identified as African American in Dr. Singleton's report and appeared to be African American when he was present on the second day of hearing. Educational records also identified him as African American. As such, IQ results are not considered in rendering a DSM-5-TR diagnosis of IDD.

social participation, and independent living, across multiple environments, such as home, school, work, and community.

C. Onset of intellectual and adaptive deficits during the developmental period.

## **Diagnostic Criteria for Fifth Category**

10. The Lanterman Act states that regional center assistance may be provided to individuals with a disabling condition closely related to IDD or that requires similar treatment to an individual with IDD, but does not include other handicapping conditions that are “solely physical in nature.” (Welf. & Inst. Code, § 4512, subd. (a).) A disability involving the fifth category must also have originated before an individual turns 18 years old, must continue or be expected to continue indefinitely, and must constitute a substantial disability.

In *Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, the appellate court held that the Fifth Category condition must be very similar to IDD, with many of the same, or close to the same, factors required in classifying a person as meeting the criteria for IDD. Another appellate decision has also found that eligibility may not be based solely on a person’s adaptive functioning; it must include a cognitive component. (*Samantha C. v. State Department of Developmental Services* (2010) 185 Cal.App.4th 1486.) Further, while a person who suffers from mental health or other psychological conditions is not per se disqualified from regional center eligibility under the Fifth Category, the individual’s condition must still be similar to IDD or the individual must still require treatment similar to a person with IDD. (*Id.* at p. 1494.) In making those determinations, regional centers refer, in part, to the Association of Regional Center Agencies (ARCA) guidelines, discussed below.



## **FUNCTIONING SIMILAR TO A PERSON WITH IDD**

11. A person functions in a manner similar to a person with IDD 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. 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 or some other 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 IDD**

12. In determining whether a person requires treatment similar to a person with IDD, 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 IDD; persons requiring rehabilitation 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; and the type of educational supports needed to assist children with learning (generally, children with IDD need more supports, with modifications across many skill areas).

### **Testimony of Holly Miller-Sabouhi**

13. Dr. Miller-Sabouhi is a staff psychologist at IRC. Dr. Miller-Sabouhi holds a Ph.D. in psychology, a Master of Science degree in psychology, and a Bachelor of Arts in psychology. She has been a licensed psychologist since 2013. As a staff psychologist at IRC, a position she has held since 2016, Dr. Miller-Sabouhi conducts psychological evaluations of children, adolescents, and adults to determine eligibility for regional center services under the Lanterman Act. Prior to serving as a staff psychologist at IRC, Dr. Miller-Sabouhi worked as a clinical psychologist and clinical supervisor in different settings, where she conducted psychological evaluations of individuals, engaged in psychotherapy and family therapy services to adults and children, and conducted both counseling and trainings in the field of mental health services, among other things. Dr. Miller-Sabouhi has published in a peer-reviewed journal and received awards during her pre-doctoral study. Dr. Miller-Sabouhi is an

expert in the field of psychology, and specifically, in the assessment of individuals for regional center services under the Lanterman Act.

14. Dr. Miller-Sabouhi concurred with the prior eligibility determinations from SGPRC and IRC, which determined the records submitted did not support a finding that claimant was eligible for regional center services. She noted that the behaviors described in the records were not consistent with autism, and the cognitive abilities exhibited were not consistent with IDD. Further, claimant did not appear to have significant functional limitations in three or more areas of a major life activity, as appropriate for his age. Therefore, claimant was not substantially disabled.

15. Dr. Miller-Sabouhi explained that, although claimant may have speech and language delays qualifying him for special education, the diagnostic criteria under the Lanterman Act are more stringent, and the records did not show claimant meets the DSM-5-TR criteria for autism or IDD. Further, since claimant's cognitive abilities are well within the average range and he does not have a substantial disability, he does not meet Fifth Category criteria either.

16. Accordingly, Dr. Miller-Sabouhi determined claimant was not eligible for regional center services.

### **Claimant's Mother's Testimony**

17. Claimant's mother testified that she feels claimant has a disability because he struggles a lot and is below average. He consistently repeats himself, reads below his grade level, cannot write efficiently, and does not retain information. Claimant's mother would like claimant to receive additional testing that the school will not provide.

## LEGAL CONCLUSIONS

### Applicable Law

1. The Legislature enacted the Lanterman Act (Welf. & Inst. Code, § 4500 et seq.) to provide an array of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. The purpose of the Lanterman Act is twofold: To prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.)

2. Welfare and Institutions Code section 4501 outlines the state's responsibility for persons with developmental disabilities and the state's duty to establish services for those individuals.

3. The department is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.)

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 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. (*Ibid.*)

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

(a) “Developmental Disability” means a disability that is attributable to mental retardation<sup>3</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>3</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. Further, the DSM-5-TR no longer uses the term “intellectual disability” and instead refers to the condition as “intellectual developmental disorder,” however, the California Code of Regulations has not been updated to reflect this change, either.

(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.

7. Any person believed to have a developmental disability, and any person believed to have a high risk of parenting a developmentally disabled infant, and any infant at a high risk of becoming developmentally disabled shall be eligible for initial intake and assessment services in the regional centers. (Welf. & Inst. Code, § 4642, subd. (a)(1).) Initial intake includes, but is not limited to, providing information and advice about the nature and availability of services provided by the regional center and by other agencies in the community, and “shall also include a *decision* to provide assessment.” (*Id.* at subd. (a)(2) [emphasis added].)

8. In a proceeding to determine whether an individual is eligible for regional center services, the burden of proof is on the claimant to establish by a preponderance of the evidence that he or she meets the proper criteria. (Evid. Code, §§ 115; 500.)

## **Conclusion**

9. A preponderance of the evidence did not establish claimant is eligible for regional center services under any qualifying diagnosis. The DSM-5-TR criteria for



autism is very specific, and claimant's records do not show he meets the diagnostic criteria for autism. Similarly, although claimant may have some academic or cognitive challenges, he does not meet the DSM-5-TR criteria for IDD. Finally, a person seeking eligibility under the fifth category for a condition similar to IDD must have cognitive skills very close to someone who has IDD. Claimant's full scale IQ is too high for either condition. For the same reason, no evidence established that claimant requires treatment similar to a person with IDD. This conclusion was supported by the documentary evidence and testimony of Dr. Miller-Sabouhi, IRC's expert, and was unrefuted by any credible evidence.

10. Given that the records do not show claimant meets any diagnostic criteria for regional center services and does not have a substantial disability resulting from a qualifying condition, IRC is not required to conduct a psychological assessment. Rather, IRC is only required to render a decision regarding whether an assessment will be conducted as part of the intake process, which it did.

11. Accordingly, claimant's appeal must be denied.

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## **ORDER**

Claimant's appeal is denied. Claimant is not eligible for regional center services due to a substantial disability that resulted from autism, intellectual developmental disorder, cerebral palsy, epilepsy, a condition that is closely related to an intellectual disability, or a condition that requires treatment similar to a person with an intellectual disability.

DATE: November 25, 2024

KIMBERLY J. BELVEDERE

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 pursuant to 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.

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

**In the Matter of:**

**CLAIMANT**

**vs.**

**INLAND REGIONAL CENTER, Service Agency.**

**DDS No. CS0020794**

**OAH No. 2024090722**

**ORDER ON APPLICATION FOR RECONSIDERATION**

An Administrative Law Judge (ALJ) from the Office of Administrative Hearings (OAH) issued a decision in this matter on November 25, 2024. On November 25, 2024, Inland Regional Center (IRC) submitted a Request for Administrative Correction of Decision. The request will be deemed an application to OAH for reconsideration of the decision under Welfare and Institutions Code section 4713. OAH gave appropriate notice of the application to claimant, to which no response was received. The undersigned hearing officer did not hear the matter or write the decision for which reconsideration is requested.

A party may request reconsideration to correct a mistake of fact or law or a clerical error in the decision, or to address the decision of the original hearing officer

not to recuse themselves following a request pursuant to Welfare and Institutions Code section 4712, subdivision (g). Here, IRC seeks reconsideration based on a clerical error in the decision: specifically, the decision listed the incorrect name of IRC's representative at hearing.

## **ANALYSIS**

IRC identified a clerical error in the decision. Accordingly, the application for reconsideration must be granted and the decision will be modified as set forth in the Order.

## **ORDER**

The application for reconsideration of the final decision is GRANTED. The decision is modified as follows: On page 1 of the decision, "Dana Hardy" shall be replaced with "Jemina Ahir." A copy of this Order with the decision it modifies together are the final decision after reconsideration. The final decision after reconsideration shall be served on each party and a copy shall be provided to DDS.

DATE: December 3, 2024

ADAM L. BERG  
Presiding Administrative Law Judge  
Office of Administrative Hearings