

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

**In the Matter of:**

**CLAIMANT**

**and**

**INLAND REGIONAL CENTER, Service Agency**

**DDS No. CS0020970**

**OAH No. 2024100108**

**DECISION**

Alan R. Alvord, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on November 13, 2024, by videoconference.

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

Claimant represented herself.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on November 13, 2024.

## **ISSUE**

Is claimant eligible for regional center services under the Lanterman Developmental Disabilities Act (Lanterman Act) as a result of an intellectual disability, autism, cerebral palsy, epilepsy, or a fifth category condition that constitutes a substantial disability?

## **SUMMARY**

Claimant, a 57-year-old female, applied for regional center services. The regional center determined there was no evidence supporting her eligibility. She appealed the determination. The evidence in this case supported the regional center's determination. Claimant is not eligible for regional center services.

## **FACTUAL FINDINGS**

### **Jurisdiction**

1. Claimant applied for eligibility with IRC. On September 20, 2024, IRC issued a Notice of Action denying claimant's eligibility. Claimant filed a fair hearing request on September 26, 2024. This hearing followed.

### **Claimant's History and Concerns**

2. Claimant is a 57-year-old female. She is divorced. She lives with her adult son, one of her six children. She seeks regional center services to help her with activities of daily living because she struggles to complete these tasks on her own.

3. Claimant attended elementary school in Pennsylvania. She received special education services with a diagnosis of learning disability. At age 38, a psychiatrist in Pennsylvania diagnosed her with major depressive disorder and continued treatment with antidepressant medication and psychotherapy. In 2009, at age 42, a psychologist in Pennsylvania diagnosed her with major depression and mild mental retardation, which was the clinical language used at the time. That condition is now called intellectual disability. Claimant believes she qualifies for regional center services due to the diagnosis of intellectual disability disorder (IDD).

### **IRC's Records Review**

4. Holly Miller-Sabouhi, Psy.D., Licensed Clinical Psychologist, is a member of the IRC eligibility team and performed a records review to determine claimant's eligibility.

### **PREVIOUS ELIGIBILITY APPLICATIONS AND DETERMINATIONS**

5. Claimant applied for eligibility with IRC in 2017. Dr. Miller-Sabouhi was part of the eligibility team and reviewed the records at that time. Dr. Miller-Sabouhi testified that the records did not show claimant had any of the qualifying conditions for regional center services. IRC denied eligibility on July 18, 2017. Claimant applied again in 2020. Dr. Miller-Sabouhi was not part of that eligibility team. The team reviewed all available records and determined that there was no evidence of a qualifying condition for regional center eligibility. IRC denied eligibility on February 12, 2020.

## **EDUCATIONAL RECORDS**

6. Claimant provided IRC with educational records from elementary school and high school. The records show that she received special education services with a diagnosis of learning disability. A report from May 1980, when claimant was 13 years old, shows a Wechsler Intelligence Scale for Children (WISC-R) was given. Claimant's full scale IQ score was 77, with a verbal IQ of 79 and performance IQ of 78, which are in the very low range. Dr. Miller-Sabouhi testified that this score does not support a diagnosis of intellectual disability.

7. A special education record dated April 20, 1980, stated that claimant had good sight word vocabulary and comprehension is fair to good depending on the subject matter. The report noted that she does not retain multiplication facts and needs constant review of the basic operations. It also stated she is a shy and cooperative child who seems socially immature, very rarely speaks unless called upon, and puts forth a great deal of effort to complete assignments. Dr. Miller-Sabouhi testified that these observations are not consistent with someone with intellectual disability. She also testified that there was no evidence of any autistic-like behaviors, epilepsy, cerebral palsy, or a condition similar to intellectual disability; the records showed she had a learning disability, a condition that is excluded from qualification for regional center services.

## **2009 PSYCHOLOGICAL EVALUATION**

8. On May 16, 2009, Salvatore J. Presti, Ph.D., licensed clinical psychologist and school psychologist, performed a psychological evaluation to assist in vocational counseling in Pennsylvania. Claimant was 42 years old at the time. The report stated that claimant dropped out of school in ninth grade and later had six children. Her past

employment included working for the Philadelphia Inquirer where she placed inserts in newspapers, cleaning at Veterans Stadium, a supervisor for bathroom cleaning for the Phillies baseball team, and a cashier at Walmart.

9. Dr. Presti administered the Wechsler Adult Intelligence Scale-IV. Claimant's full scale composite score was 65, with a verbal composite score of 66, perceptual reasoning composite score of 75, working memory composite score of 66, and processing speed composite score of 74. Dr. Presti also administered the Wide Range Achievement Test-IV, on which claimant received a reading standard score of 68, spelling standard score of 77, and arithmetic standard score of 67. Dr. Presti diagnosed claimant with major depression and mild mental retardation.

10. Dr. Miller-Sabouhi testified that Dr. Presti's report did not show that he applied all the factors required at that time to reach a diagnosis of mild mental retardation. She explained that in 2009, as today, a diagnosis of mild mental retardation requires evidence of onset during the developmental period before age 18. The diagnosis also requires significant deficits in adaptive functioning. Dr. Miller-Sabouhi noted that Dr. Presti did not perform any standardized tests for adaptive functioning and his report did not reflect any assessment of claimant's adaptive skills. She testified that the diagnosis of mild mental retardation seemed solely based on the low/borderline intelligence testing scores and not based on other required information. Dr. Miller-Sabouhi therefore questioned the value of the mild mental retardation diagnosis.

11. Dr. Miller-Sabouhi testified that the jobs claimant was reported to have held, especially cashier and bathroom cleaning supervisor, are not consistent with intellectual disability. Those jobs require abilities beyond those of a person with intellectual disability.

12. Dr. Miller-Sabouhi testified that the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision (DSM-5-TR), published by the American Psychiatric Association, establishes the criteria used to decide if a person meets a qualifying condition for eligibility. She testified that she did not find Dr. Presti's report supportive of an IDD diagnosis because there was no evidence of onset during the developmental period, and no evidence of deficits in adaptive functioning, which are required for a DSM-5-TR diagnosis of IDD.

### **2009 VINELAND II ADAPTIVE BEHAVIOR SCALE**

13. In August 2009, Ileana Rodriguez, administered the Vineland II Survey to claimant for the purpose of registering her for mental retardation services and supports and job coaching in Pennsylvania. Claimant was 42 years old.

14. Dr. Miller-Sabouhi testified that the credentials of the person administering the Vineland were not clear from the documents. An interview with claimant was the only source of information for the Vineland responses. Claimant's scores were all in the low/moderately low range. She testified that these scores were inconsistent with other information in the documents. In addition, there was no evidence that these deficits in adaptive functioning had an onset during the developmental period; they were inconsistent with some of the school records. Therefore, Dr. Miller-Sabouhi testified that the record did not show the onset of a substantial disability before age 18.

### **2016 INDIVIDUAL SUPPORT PLAN**

15. In 2016, when claimant was 49 years old, the Pennsylvania Department of Public Welfare prepared an Individual Support Plan for claimant. It appeared claimant had been receiving support in Pennsylvania since 2009. The plan stated that claimant

is independent when completing adaptive living skills. She is able to manage money independently, takes medication without assistance, does not require protection from heat sources, electrical outlets, or sharp objects, can contact 911 and give self-identifying information in an emergency, understands how to react to a smoke detector signal, understands proper safety precautions when navigating in traffic and crossing streets, regularly uses public transportation without supervision or assistance, is able to use cooking appliances, prepare meals, and performs basic kitchen tasks without supervision.

16. Dr. Miller-Sabouhi testified that these skills show a level of adaptive function beyond that of a person with IDD and show a higher level of function than the 2009 Vineland II scores would suggest.

17. Dr. Miller-Sabouhi testified that these adaptive skills show claimant does not have a substantially disabling IDD. In addition, there was no evidence of autism, cerebral palsy, epilepsy, or a condition similar to IDD.

### **PSYCHOLOGICAL AND PSYCHOSOCIAL FACTORS AFFECTING CLAIMANT'S ADAPTIVE ABILITY**

18. Dr. Miller-Sabouhi testified that there was information in the record showing claimant suffers from anxiety and depression, and experiences mood swings. Family factors were also evidence, including claimant's boyfriend/husband's drug use and incarceration. These factors can affect claimant's ability to function during periods of increased anxiety or depression flare up, and then her adaptive function can improve when the symptoms remit. She testified that adaptive functioning deficits associated with IDD, or another developmental disability, are consistent in the person and do not increase and decrease with variations in anxiety and depression.

## **DR. MILLER-SABOUIH'S FINDINGS**

19. Based on her review of all available records, Dr. Miller-Sabouhi did not find evidence of substantially disabling IDD, autism, cerebral palsy, epilepsy, or a condition similar to IDD. Therefore, she determined that claimant is not eligible for regional center services.

20. Dr. Miller-Sabouhi also testified that the record did not support IRC performing any further diagnostic tests to determine claimant's eligibility because the record shows claimant's level of functioning in adulthood. There are many reasons a person's functioning can decrease during adulthood, including, anxiety and depression. There was no evidence that substantially disabling IDD was present before age 18, so doing any additional testing now would not help establish eligibility.

## **Claimant's Testimony**

21. Claimant testified that she does not understand many things. She was struggling to understand what was being discussed at the hearing. She qualified for support services in Pennsylvania and believes she is qualified to receive them in California. She would like to receive supports for completing housework and shopping. She has difficulty with math and has a hard time handling money. She is willing to cooperate with the regional center to take any testing or assessments they want to give her.



## **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 State of California accepts responsibility for persons with developmental disabilities. Developmental disabilities present social, medical, economic, and legal problems of extreme importance. An array of services should be established that is sufficiently complete to meet the needs and choices of each person with developmental disabilities at each stage of life and to support their integration into the mainstream life of the community. (Welf. & Inst. Code § 4501.)

3. 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.

4. 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.

5. 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**

6. 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.)

## **Diagnostic Criteria to Establish Qualifying Conditions**

7. Intellectual disability disorder, also known as intellectual disability, formerly called mental retardation, requires evidence on onset before age 18, and includes both intellectual and adaptive functioning deficits. Three criteria must be met: (1) deficits in intellectual functions such as reasoning, problem solving, planning, abstract thinking, judgment, confirmed by both clinical assessment and standardized intelligence testing; (2) deficits in adaptive functioning that result in failure to meet developmental and socio-cultural standards for personal independence and social responsibility that, without support, limit functioning in one or more activities of daily life, across multiple environments; and (3) onset of intellectual and adaptive deficits during the developmental period.

8. To be eligible for regional center services based on autism spectrum disorder, a claimant must meet those diagnostic criteria. The criteria include persistent deficits in social communication and social interaction across multiple contexts, as manifested by all of the following, currently or by history: (1) deficits in social-emotional reciprocity; (2) deficits in nonverbal communicative behaviors used for social interaction; and (3) deficits in developing, maintaining, and understanding relationships. In addition, the criteria require evidence of restricted, repetitive patterns of behavior, interests, or activities as manifested by at least two of the following, currently or by history: (1) stereotyped or repetitive motor movements, use of objects, or speech; (2) insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior; (3) highly restricted, fixated interests that are abnormal in intensity or focus; or (4) hyper- or hyporeactivity to sensory input or unusual interest in sensory aspects of the environment. The symptoms must be present in the early developmental period and must cause clinically significant impairment in social, occupational, or other important areas of current functioning. In addition, the criteria require that the disturbances are not better explained by intellectual developmental disorder or global developmental delay.

9. 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.

10. The fifth category is not defined in the 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-TR 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.)

11. In 2002, in response to the *Mason* case, the Association of Regional Center Agencies (ARCA) approved the *Guidelines for Determining 5<sup>th</sup> 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 was 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." 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.

12. 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.

## **Evaluation**

13. The Lanterman Act and regulations establish criteria that a claimant for regional center services must meet to be eligible. The documents that the regional center eligibility team reviewed, and that were given in evidence in this case, do not demonstrate that claimant had a diagnosis of IDD that was substantially disabling and that began before age 18. The evidence before age 18 shows claimant struggling in school due to a learning disability. While claimant received a diagnosis of mild mental



retardation at age 42, that diagnosis is suspect because it omitted two required criteria: onset during the developmental period, and adaptive functioning deficits. That diagnosis qualified claimant to receive services and supports in Pennsylvania under a different government program that apparently did not have the same strict requirements as the Lanterman Act in California.

14. There was no evidence of behaviors or deficits consistent with a diagnosis of autism, or of symptoms consistent with cerebral palsy or epilepsy. There was no evidence that claimant has a fifth category condition.

## **ORDER**

Claimant's appeal of IRC's determination that she is not eligible for regional center services is denied. The regional center's determination is affirmed.

DATE: November 19, 2024

ALAN R. ALVORD

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 reconsideration pursuant to subdivision (b) of Welfare and Institutions Code section 4713 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.