

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

In the Matter of:

CLAIMANT

and

TRI-COUNTIES REGIONAL CENTER, Service Agency

DDS No. CS0023086

OAH No. 2024120790

DECISION

Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on May 29, 2025, by videoconference.

Claimant was represented by Scott Taylor, attorney at law; Claimant did not appear. His name is not used to preserve his privacy.

Donald R. Wood, Wood & Finck, represented Tri-Counties Regional Center (TCRC or Service Agency).

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on May 29, 2025.

ISSUE

Is Claimant eligible for services under the Lanterman Developmental Disabilities Services Act (Lanterman Act), California Welfare and Institutions Code, section 4500 et seq. (All statutory references are to the Welfare and Institutions Code, unless otherwise noted.) The parties' focus was whether Claimant is eligible due to Intellectual Disability, which is an eligible condition.

EVIDENCE RELIED ON

In making this Decision the ALJ relied on TCRC exhibits 1 through 11, and the testimony of Blanca Zepeda and Christina Aguirre-Kolb, Ph.D. (After the hearing, the ALJ identified the TCRC Position Statement as Exhibit 12.)

FACTUAL FINDINGS

Procedural History

1. Claimant is a 43-year-old man who is currently in the custody in the San Luis Obispo County Jail, pending criminal proceedings against him. The San Luis Obispo County Superior Court referred Claimant to the Service Agency to determine if Claimant was eligible for services under the Lanterman Act; the referral appears to have been made in September 2024. (See Ex. 4.)

2. An Intake Assessment was conducted by Blanca Zepeda, Intake Coordinator for the Service Agency, along with an associate on October 9, 2024. (Ex. 5.) Claimant later underwent a psychological assessment, performed by Kristin Read

Campos, Ph.D., a licensed clinical psychologist, on October 22 and 24, 2024. Dr. Campos did not diagnose Claimant with an eligible condition. (Ex. 6.)

3. On November 13, 2024, TCRC issued a Notice of Action (NOA) denying eligibility for services, on the grounds that Claimant did not have a developmental disability. (Ex. 2.) The NOA stated Claimant did not have any of the five disabilities that are eligible conditions, and he was not shown to have a disability that was significantly disabling in multiple areas of life activities. The NOA was sent to the Superior Court along with a Notice of Denial of Eligibility dated November 14, 2024. (Ex. 1.) OAH records indicate that Claimant appealed the denial of eligibility on December 18, 2024. The OAH records also show a hearing was set for February 6, 2025, but the hearing was continued at the Service Agency's request, which request was agreed to by Claimant, who executed a time waiver. As a result, the hearing was continued to May 29, 2025.

4. All jurisdictional requirements have been met.

Background

5. Claimant is one of four siblings who were raised by their mother in the vicinity of Sacramento; he has a twin. During the intake assessment and the psychological assessment, he reported that he had been in special education as a student, stating he had a history of Attention Deficit Hyper-Activity Disorder (ADHD). Claimant also said he had a learning disability, and he mentioned dyslexia. Claimant reported he struggled with suicidal ideation and had attempted suicide. (See Ex. 6, p. A25; Ex. 5, pp. A19, A20.)

6. In June 2024, Claimant was evaluated by a forensic psychiatrist at the behest of the Superior Court, to determine Claimant's ability to comprehend the

criminal proceedings against him, and to assist his attorney in his defense. (Ex. 9.) Claimant reported to the psychiatrist, David Fennell, M.D., E.J.D., that he had been in special education, and he reported difficulty with reading and writing, estimating he could read at a fourth-grade level, and he further claimed a diagnosis of ADHD. Claimant stated he suffered a traumatic brain injury in 1994 when he was hit on the head, such that he lost consciousness. In 1994 he was hospitalized due to his suicidal ideation. (*Id.*, p. A 46.)

7. Claimant was incarcerated between 2008 and 2023, and he was then paroled to Nipomo, California. He is a registered sex offender. He was charged with a parole violation, which has led to his current incarceration.

The Intake Assessment

8. Blanca Zepeda has been the Service Agency's Intake Coordinator for approximately nine years. She and a colleague conducted an intake assessment at the jail on October 9, 2024. The intake assessment report is found at Exhibit 5.

9. Ms. Zepeda testified that Claimant gave good information to her during the intake assessment, making good eye contact and answering questions in a straightforward manner. He reported he could perform self-care, had held jobs, and had been riding his bicycle from Nipomo to Santa Maria. He was able to answer questions. Claimant talked about a learning disability as a youth and stated he had had an Individual Education Plan (IEP), though records of such a plan have not been found. He reported he did not graduate from high school.

10. Ms. Zepeda testified that based on her experience, she did not perceive that Claimant suffered from a developmental delay. She perceived no gross motor

problems, and he exhibited social behavior. She also saw no evidence of autism, in part, because of his good eye-contact and ability to respond to questions.

11. Claimant filled out and signed a questionnaire where he stated his suspected disability was Intellectual Disability; he indicated such by checking off a box to indicate that malady. He did not claim epilepsy, autism, cerebral palsy or other significant delay, which he could have done by checking off one or more other boxes. (Ex. 3, p. A13.) The questionnaire, Exhibit 3, communicates significant information in a clear hand.

Assessment by Dr. Campos

12. When interviewed by Dr. Campos, Claimant stated he had trouble understanding the court proceedings and he wanted to be evaluated for “mental retardation” which was, diagnostically, the forerunner of Intellectual Disability. Claimant reported a history of ADHD. (Ex. 6, p. A25.)

13. Dr. Campos reviewed court records, and the questionnaire filled out by Claimant during his intake assessment, Exhibit 3. She could not review any school records, or records from prior treatment, as they were unavailable.

14. Dr. Campos assessed Claimant’s intellectual functioning with the Comprehensive Test of Nonverbal Intelligence, Second Edition, known as the “CTONI-2.” His score on the Nonverbal Full-Scale Index was 97, well into the average range (100 is the mean on the test), and falling in the 42nd percentile. He scored in the above average range on the Geometric Scales. Claimant’s score on the Pictorial Scales was below average, a score of 84, and at the 14th percentile. Dr. Campos concluded that Claimant’s overall average cognitive functioning was inconsistent with Intellectual Disability. (Ex. 6, p. A32.)

15. Noting that no childhood records were available to support Claimant's statements that he had learning disabilities in reading and writing in school, Dr. Campos used the Wide Range Achievement Test, Fifth Edition (WRAT-5) to assess Claimant's academic skills. Dr. Campos screened for word reading, spelling, and math computation. Claimant's scores in all three areas were in the average range, with his score on math computation falling in the 68th percentile. Dr. Campos concluded that without historical documentation, there was insufficient evidence Claimant suffers from a learning disability. (Ex. 6, p. A33.)

16. Dr. Campos utilized the Adaptive Behavior Assessment System, 3rd Edition (ABAS-3) to assess adaptive functioning. Claimant was the reporting party. His overall score was a 68, in the extremely low range. Dr. Campos believes this underestimated Claimant's capacity for independent living. As an example, he reported problems with reading his own name or menus, but he was able to read during testing. (Ex. 6, p. A34.)

17. Dr. Campos concluded that Claimant's performance on the WRAT-5 was consistent with the nonverbal intelligence scores found with the CTONI-2, and that the CTONI-2 scores, being in the average range, were inconsistent with a diagnosis of Intellectual Disability. Dr. Campos diagnosed ADHD by history. (Ex. 6, pp. A26, A36.)

Testimony of Dr. Aguirre-Kolb, Ph.D.

18. Dr. Aguirre-Kolb is a clinical psychologist who has been a school psychologist and has worked with developmentally disabled children. She estimated she has "hundreds" of assessments behind her. She is currently Clinical Director at TCRC.

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19. Dr. Aguirre-Kolb reviewed Claimant's eligibility and generated a report that is found at Exhibit 7. She reviewed various records, including documents generated by law enforcement, the intake assessment, and the report written by Dr. Campos'. She testified consistently with her report, which concludes Claimant is not eligible for services.

20. Dr. Aguirre-Kolb cited Claimant's score from the CTONI-2, which showed he had an average IQ. She testified that with Intellectual Disability, the IQ score is typically 70 or below, in the second percentile. Dr. Aguirre-Kolb also cited the WRAT-5 results, which placed Claimant in the average range of achievement.

21. Dr. Aguirre-Kolb found no substantial disabilities; to be eligible for services a person must have a developmental disability that substantially disables a person in three of seven areas enumerated in the Lanterman Act. First, she could find no evidence that Claimant was substantially disabled in terms of self-care; she opined that at Claimant's age a substantial disability would manifest itself in hygiene problems which were not noted in the intake interview. Nor could she find Claimant was substantially disabled in the area of expressive and receptive language. She noted he is verbal, as evidenced by the transcript of a phone conversation he had from the jail, and Claimant's ability to interact with Ms. Zepeda during the intake interview. (The phone transcript is found at Exhibit 11.)

22. Dr. Aguirre-Kolb opined Claimant is not substantially disabled in terms of learning, as evidenced by his scores on the WRAT-5, and she could find no substantial disability in the area of mobility. In the area of self-direction Dr. Aguirre-Kolb posited that Claimant's ADHD may impinge upon that area, but she noted that ADHD is not an eligible condition. Further, she did not find substantial disability in the area of capacity for independent living, pointing out that Claimant was able to obtain a driver's license,

which persons who suffer from a developmental disability have trouble doing. As to economic self-sufficiency, there was no evidence of substantial disability prior to age 18.

23. Dr. Aguirre-Kolb opined that Claimant does not suffer from an eligible condition, i.e., Intellectual Disability, Autism, or a condition similar to Intellectual Disability or that can be treated in a manner similar to treatment for Intellectual Disability.

Diagnostic Criteria

24. Official notice is taken of a standard text, the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, commonly known as the DSM-5. It is relied upon by mental health practitioners and others for diagnostic criteria.

25. (A) The DSM-5 defines Intellectual Disability as “a disorder with onset during the developmental period that includes both intellectual and adaptive functioning deficits in conceptual, social, and practical domains.” (DSM-5, p. 33.) The following three criteria must be met to establish that a person suffers from Intellectual Disability:

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 socio-cultural 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, 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.

(B) Thus, the definitive characteristics of Intellectual Disability include deficits in general mental abilities (Criterion A) and impairment in everyday adaptive functioning, in comparison to an individual's age, gender, and socio-culturally matched peers (Criterion B). To meet the diagnostic criteria for Intellectual Disability, the deficits in adaptive functioning must be directly related to the intellectual impairments described in Criterion A. Onset is during the developmental period (Criterion C). A diagnosis of Intellectual Disability should not be assumed because of a particular genetic or medical condition. Any genetic or medical diagnosis is a concurrent diagnosis when Intellectual Disability is present. (DSM-5, pp. 39-40.)

26. The authors of the DSM-5 have indicated that "[i]ntellectual functioning is typically measured with individually administered and psychometrically valid, comprehensive, culturally appropriate, psychometrically sound tests of intelligence. Individuals with intellectual disability have scores of approximately two standard deviations or more below the general population mean, including a margin for measurement error (generally +5 points). On tests with a standard deviation of 15 and a mean of 100, such as the CTONI-2, this involves a score of 65-75 (70 ± 5)."

(DSM-5, p. 37.) At the same time, the authors of the DSM-5 recognize that "IQ test scores are approximations of conceptual functioning but may be insufficient to assess reasoning

in real-life situations and mastery of practical tasks.” Thus, “a person with an IQ score above 70 may have such severe adaptive behavior problems in social judgment, social understanding, and other areas of adaptive functioning that the person’s actual functioning is comparable to that of individuals with a lower IQ score.” (*Id.*)

27. According to the DSM-5, “[a]daptive functioning is assessed using both clinical evaluation and individualized, culturally appropriate, psychometrically sound measures. Standardized measures are used with knowledgeable informants (e.g., parent or other family member; teacher; counselor; care provider) and the individual to the extent possible. Additional sources of information include educational, developmental, medical, and mental health evaluations.” (*Id.*) Whether it is intellectual functioning or adaptive functioning, clinical training and judgment are required to interpret standardized measures, test results and assessments, and interview sources.

Other Matters

28. Claimant did not offer any evidence that would support a finding that he suffers from a developmental disability as that is defined by the Lanterman Act.

29. Ms. Zepeda and Dr. Aguirre-Kolb were credible in their testimony, both in terms of their demeanor and the content of their testimony.

LEGAL CONCLUSIONS

Jurisdiction

1. Jurisdiction exists to conduct a fair hearing in the above-captioned matter, pursuant to section 4710 et seq., based on Factual Findings 1 through 4.

Legal Conclusions Pertaining to Eligibility Generally

2. Section 4512, subdivision (a)(1), provides:

“Developmental disability” means a disability which originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. . . . 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.

3. (A) Regulations developed by the Department of Developmental Services, pertinent to this case, are found in title 17 of the California Code of Regulations (CCR).¹ At CCR section 54000 a further definition of “developmental disability” is found which mirrors section 4512, subdivision (a).

(B) Under CCR section 54000, subdivision (c), some conditions are excluded. The excluded conditions are:

- (1) Solely psychiatric disorders where there is impaired intellectual or social functioning which originated as a result

¹ All references to the CCR are to title 17.

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 intellectual disability.

4. Section 4512, subdivision (l), provides:

“substantial disability” means the existence of significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person:

(1) Self-care.

- (2) Receptive and expressive language.
- (3) Learning.
- (4) Mobility.
- (5) Self-direction.
- (6) Capacity for independent living.
- (7) Economic self-sufficiency.

5. To establish eligibility, Claimant must prove, by a preponderance of the evidence, that he suffers from an eligible condition, i.e., Intellectual Disability, Cerebral Palsy, Autism, Epilepsy, or disabling conditions found to be closely related to Intellectual Disability or to require treatment similar to that required for individuals with an Intellectual Disability. This Conclusion is based on section 4512, subdivision (a), and Evidence Code section 500. He must also prove that he has a substantial disability as a result of an eligible condition, within the meaning of section 4512, subdivision (l).

6. There is no evidence that Claimant suffers from Cerebral Palsy, Epilepsy, or Autism. The issue in the case is whether he suffers from Intellectual Disability, or if he is eligible under the fifth category, though little discussion of that category occurred.

7. The weight of the evidence establishes Claimant is not suffering from Intellectual Disability or a condition closely related to it or that requires treatment similar to that provided to persons with Intellectual Disability. His average IQ score and average academic achievement, as measured by the WRAT-5, bar a finding of Intellectual Disability. Furthermore, there is no evidence that such condition developed

before he was 18 years of age. Finally, he cannot show his is substantially handicapped in at least three of the seven life areas.

ORDER

Claimant's appeal from the determination by the Service Agency that he is not eligible for services under the Lanterman Act is denied, and he shall not receive services from the regional center.

DATE:

JOSEPH D. MONTOYA

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.