

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

In the Matter of:

CLAIMANT

and

INLAND REGIONAL CENTER, Service Agency.

DDS No. CS0025369

OAH No. 2025030977

DECISION

Alan R. Alvord, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on June 16, 2025, by videoconference.

Hilberto Echeverria, Jr., Fair Hearings Representative, represented service agency Inland Regional Center (IRC).

Claimant's mother represented claimant.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on June 16, 2025.

SUMMARY

Claimant received early intervention services through age three, and school district services from age three to age five. Now at five years old, claimant seeks ongoing regional center services. The evidence showed that claimant does not qualify for regional center services, and the regional center's decision denying services is affirmed.

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is five years old. He was determined eligible for Early Start services due to a high-risk birth and developmental delays. In 2023, at three years old, IRC granted provisional eligibility to continue services and supports. Claimant requested permanent eligibility after age 5 under the Lanterman Developmental Disability Services Act (Lanterman Act).
2. IRC issued a Notice of Action on March 6, 2025, notifying claimant that it determined he was not eligible for regional center services. Claimant filed an appeal of the decision on March 20, 2025.
3. IRC received and reviewed additional records and, on April 7, 2025, after an informal meeting, issued a letter confirming its decision to deny eligibility. This hearing followed.

Claimant's Early History

4. Claimant was born with prenatal exposure to alcohol and methamphetamine. He had a positive neonatal toxicity screen. He was in neonatal intensive care for one month due to methamphetamines and a chlamydia infection. Notes indicated his birth mother was under the influence of drugs during birth. He was placed in the foster care program and his birth mother's sister was his foster mother. She also cared for his two biological sisters.

Early Start Assessment and Services

5. At one month, mother was concerned about excessive drooling with tongue position and no smiling. At 9 months old, claimant was showing additional signs of developmental delays. IRC Early Start staff evaluated him. On the Developmental Assessment of Young Children, second edition (DAYC-2) he showed a 25 percent delay in social/emotional, 25 percent delay in motor skills, 25 percent delay in cognitive skills, 65 percent delay in receptive communication, and 50 percent delay in expressive communication. He was qualified for the Early Start Program due to developmental delays and high-risk conditions.

6. IRC and mother developed an Individualized Family Support Plan (IFSP) on February 11, 2021. The plan authorized 60 minutes of specialized instruction per week.

7. In July 2021, the specialized instruction provider, Bright Horizons, issued a semi-annual report. Claimant scored in the average range for cognitive, social emotional, gross motor, and adaptive behavior; in the below average range for fine motor (23rd percentile) and language reception (23rd percentile); and in the poor range (7th percentile) for language expression.

8. In a January 2022 Bright Horizons assessment, claimant showed improvement. He was found to be in the average range for cognitive, expressive language, social emotional, gross motor, and fine motor, and below average in adaptive behavior (19th percentile), and receptive language (16th percentile).

9. Claimant's IFSP was updated in February 2022, at age 21 months. Services were increased to 60 minutes of specialized instruction twice per week.

10. A Bright Horizons assessment in July 2022 showed further improvement. He scored in the average range on all tested skills, except expressive language, which was below average at the 16th percentile.

11. In February 2023, claimant's IFSP was updated. Parent concerns included claimant's temper, biting, throwing items, screaming, and hyperactivity. The IFSP noted that claimant's maternal aunt, who had been his foster parent since his birth, had adopted him. Specialized instruction services for 60 minutes twice per week were continued.

12. Claimant exited the Early Start Program in April 2023 at age 3.

Transition to School District Services

13. In January 2023, at age 2 years, 9 months, the family began the process of enrolling claimant in the local school district for early childhood programs that would begin at age 3. The school district held an individualized education plan (IEP) meeting in April 2023. The IEP report noted claimant had delays in articulation that may be affecting his overall communication intelligibility. He qualified for school district services under the speech language impairment (SLI) category, with no

secondary qualifying category. The school district authorized 30 minutes of group speech and language therapy services four times per month.

14. The school district held an IEP team meeting with mother in January 2024. His qualifying condition remained SLI. The speech and language service frequency remained four 30-minute group sessions per month.

15. In January 2025, the school district held another IEP team meeting for claimant's transition to kindergarten. The report noted claimant was at grade level for reading, writing, and math. He made excellent progress in speech and language goals. He remained qualified for services under SLI. The team agreed that claimant would exit the speech services and attend a regular day class at school.

Evaluation for Continued Regional Center Services

16. IRC ordered a psychological assessment to determine claimant's qualification for continued regional center services. Veronica A. Ramirez, Psy.D., licensed clinical psychologist, performed the assessment on April 4, 2023.

17. Dr. Ramirez administered the Childhood Autism Rating Scale (CARS-2), the Vineland Adaptive Behavior Scales (Vineland), conducted a parent interview, observed claimant, and reviewed records.

18. Claimant's scores on the CARS-2 placed him in the minimal to no symptoms range for autism. His Vineland composite score for adaptive behaviors placed him in the moderately low range.

19. Dr. Ramirez concluded that claimant's behavioral presentation was not consistent with a diagnosis of autism spectrum disorder. She noted that it was too early to assess for attention deficit hyperactivity disorder, but he should be monitored

because there were some features presented. She was unable to assess intellectual functioning because claimant did not have the attention span to participate. She recommended intellectual testing be performed in the future. She noted that intellectual disability disorder was not a concern because his cognitive scores on the DAYC-2 in January 2023 were in the average range.

20. In April 2025, IRC conducted an interdisciplinary team meeting to consider claimant's eligibility for continued regional center services. The team included a psychologist, a physician, and a program manager. The team reviewed the available records and Dr. Ramirez's report. The team concluded that claimant did not qualify for regional center services under any of the Lanterman Act qualifying conditions.

21. Additional records were provided to IRC and the eligibility team again met in May 2025. The team determined that the additional records do not establish the presence of a Lanterman Act qualifying condition or substantial disability.

Lenee N. Khent, Ph.D., Testimony

22. Lenee N. Khent, Ph.D., licensed clinical psychologist, testified for IRC. She is a staff psychologist for the regional center.

23. Dr. Khent testified that, although claimant showed early signs of developmental delay and high-risk, the assessments showed that he had mastered many skills and had emergent skills in other areas. The Bright Horizons reports and school district assessments did not show any concerns for symptoms consistent with autism spectrum disorder, intellectual disability disorder, cerebral palsy, epilepsy, or a condition similar to intellectual disability disorder requiring similar treatment.

Claimant's Evidence

24. Claimant's mother stated that she believed it was clear that claimant was being helped through the school district. She saw big improvements since he has attended school. She declined to give any testimony supporting claimant's appeal and she stated that she was "ok" with claimant not being eligible for regional center services.

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 have not been updated to current language and understanding, and still use the term “mental retardation,” instead of the term “Intellectual Disability Disorder.”)

(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 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.

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.

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 of 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, and 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 hypoactivity 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 Diagnostic and Statistical Manual of Mental Disorders, 5th ed. text revision (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 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 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. Claimant was born with prenatal exposure to drugs, alcohol, and a sexually transmitted infection. He was fortunate to have been fostered, and later adopted, by a loving and caring parent who has advocated effectively for his well-being and development. He received early intervention services focused on his unique needs. The services, along with his mother's hard work, were effective in helping claimant overcome his early developmental delays. He now presents as a fairly typical five year old who may need additional services and supports through school.

14. The evidence did not establish that claimant has any of the substantially disabling conditions that would qualify him for ongoing regional center services.

ORDER

The regional center's denial of claimant's request for eligibility is affirmed.

DATE: June 23, 2025

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 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.