

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

In the Matter of:

CLAIMANT

and

SAN DIEGO REGIONAL CENTER, Service Agency

DDS No. CS0025952

OAH No. 2025040654

DECISION

Debra D. Nye-Perkins, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference and telephone on June 23, 2025.

Erik Peterson, Appeals and Resolutions Manager, represented San Diego Regional Center (SDRC).

Claimant's adoptive mother represented claimant, who was not present.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on June 23, 2025.

ISSUE

Is claimant eligible for regional center services under the Lanterman Developmental Disabilities Services Act of 1969 (Lanterman Act) due to autism spectrum disorder (ASD or autism), intellectual developmental disorder¹ (IDD), epilepsy, cerebral palsy, or a disabling condition closely related to, or that requires treatment similar to, a person with IDD (fifth category)?

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is a six-year-old girl living with her adoptive parents, including her adoptive mother, who is also her biological half-sister. Claimant's adoptive parents sought services for claimant pursuant to the Lanterman Act.

¹ The Lanterman Act was amended long ago 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, and during testimony, all of the terms were used interchangeably. Accordingly, for purposes of this decision, as well as all admissible documentary evidence, "mental retardation," "intellectual disability," and "IDD" mean the same thing.

2. On January 15, 2025, an SDRC multidisciplinary eligibility team comprised of a psychologist, medical doctor, and intake service coordinator reviewed the records pertaining to claimant, including a December 5, 2024, psychological evaluation performed by Beatriz Netter, Ph.D. After review of all records provided, SDRC made a determination on January 15, 2025, that claimant is not eligible for services based on any developmental disability allowed under the Lanterman Act.

3. By letter dated January 17, 2025, SDRC notified claimant's adoptive parents of its decision to deny eligibility to claimant because claimant "is not substantially disabled by an intellectual disability, autism, cerebral palsy, epilepsy, or a condition closely related to intellectual disability/requiring treatment similar to that required for individuals with intellectual disability."

Diagnostic Criteria for Autism, IDD, Fifth Category, Epilepsy, and Cerebral Palsy, and Definition of Substantial Disability

4. Claimant did not specify which category of developmental disability qualifies claimant for services under the Lanterman Act. Accordingly, this case proceeded focused on whether claimant is eligible for regional center services under any available category.

Diagnostic Criteria for Autism

5. The American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revised* (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

6. 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 intelligence quotient (IQ) scores in the 65-75 range (unless an individual is African American, in which case IQ results are not considered). 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:

[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, 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

7. 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 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.

8. 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 be 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.

9. 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).

Diagnosis of Cerebral Palsy or Epilepsy/Seizures

10. The diagnosis of cerebral palsy or epilepsy is made by a qualified medical physician. Notably, claimant has not specifically alleged that she suffers from a diagnosis of either cerebral palsy or epilepsy/seizures and no records in support of either diagnosis were offered.

Substantial Disability

11. In addition to having a qualifying diagnosis (i.e., autism, intellectual disability, epilepsy, cerebral palsy, or the fifth category), a person must also be substantially disabled as a result of that diagnosis in three or more areas of a major life activity, pursuant to California Code of Regulations, title 17, section 54000. These areas are: communication (must have significant deficits in both expressive and receptive language), learning, self-care, mobility, self-direction, capacity for independent living, and economic self-sufficiency. The ARCA Guidelines also refer to California Code of

Regulations, title 17, sections 54000 and 54001, regarding whether a person has a substantial disability.

SDRC Evidence

12. SDRC presented the testimony of three witnesses at hearing, as well as numerous documents received into evidence. The following factual findings are made based on the testimony of those three witnesses and related documents received in evidence.

TESTIMONY OF JOEANN RANDALL

13. JoeAnn Randall currently works as a Coordinator of Intake Services at SDRC, a position she has held for the past seven years. Ms. Randall explained the intake process for a determination of whether a person is eligible for services at SDRC. She explained that her role is to assist the eligibility team with the acquisition and review of documents and materials necessary for a determination to be made regarding eligibility. She stated that the eligibility team is a group of individuals responsible for the review of documents and information to make the eligibility determination. The eligibility team consists of a physician, a psychologist, a coordinator of intake services, and possibly a person familiar with services offered by SDRC. In this case the eligibility team consisted of Ms. Randall, a physician named Theodora Nelson, M.D., and a psychologist named Sherry Casper, Ph.D.

14. Ms. Randall testified that the eligibility team met and reviewed all of the documents provided, which included a psychological evaluation of claimant conducted on December 5, 2024, by Dr. Netter for the purpose of assisting in the determination of eligibility for SDRC services; SDRC Social Summary from an in-person intake interview conducted on July 9, 2024, by Nicole Parham, Service Coordinator; a Health

and Education Passport for claimant dated November 14, 2022, from the Shasta County Health and Human Services Agency Children's Services; La Mesa-Spring Valley Schools Multidisciplinary Assessment Report dated November 28, 2023, for claimant; test results from a Wechsler Individual Achievement Test, Fourth Edition (WIAT4) for claimant from testing conducted on November 6, 2023; San Diego Unified School District Individualized Education Program (IEP) document dated May 15, 2024; East County SELPA IEP Information/Eligibility evaluation document dated November 28, 2023; and La Mesa-Spring Valley Schools Occupational Therapy Initial Assessment for claimant dated November 1, 2023.

15. Ms. Randall testified that after the eligibility team reviewed all the documents, they met on January 15, 2025, and determined that claimant does not have a substantial disability and does not have a diagnosis of a qualifying developmental disability of ASD, IDD, fifth category, epilepsy/seizures, or cerebral palsy. As a result of the determination, SDRC sent a letter to claimant dated January 17, 2025, informing claimant of that determination.

TESTIMONY OF THEODORA NELSON, M.D.

16. Theodora Nelson, M.D., is a California-licensed physician and received her M.D. degree in 1991. She completed her fellowship in Developmental and Behavioral Pediatrics in 2018. Since 2018 she has worked for SDRC as a physician consultant as part of the eligibility team for the determination of whether an individual is eligible for services at SDRC. Dr. Nelson's role in the eligibility determination process is to review medical records for a determination of whether the individual suffers from cerebral palsy or epilepsy/seizures. Dr. Nelson also works along with a psychologist on the eligibility team, who is responsible for a determination of whether the individual

suffers from a diagnosis of ASD, IDD, or fifth category, and if such a diagnosis exists then determination of whether that developmental disability is substantially disabling.

17. Dr. Nelson reviewed the medical records claimant provided, which consisted essentially of the Health and Education Passport dated November 14, 2022, from the Shasta County Health and Human Services Agency Children's Services from when claimant was in foster care. Those documents included medical records and clinical notes regarding claimant's health information. Dr. Nelson's review of those documents showed that claimant had never been diagnosed with cerebral palsy or epilepsy/seizures, and had no indication of any symptoms related to those developmental disorders. Accordingly, Dr. Nelson concluded that claimant does not have a qualifying condition of cerebral palsy or epilepsy/seizures. Her finding was reflected in the January 17, 2025, letter from SDRC informing claimant that she is not eligible for SDRC services.

TESTIMONY OF SHERRY CASPER, PH.D.

18. Sherry Casper, Ph.D., has been a licensed psychologist in California since 2005. She obtained her Ph.D. in 2002 and has been endorsed by the State of California as an infant, family, childhood mental health specialist since 2018. Dr. Casper has worked for over 20 years with children and specializes in autism, developmental disorders, trauma, family therapy, and applied behavioral analysis. Dr. Casper worked for SDRC as a Coordinator of Autism Services from 2002 to 2008. She currently owns and operates her own company providing services to children and families. Since November 2024, she has worked as a consultant for SDRC, including work for determination of eligibility for SDRC services on an eligibility team.

19. Dr. Casper testified that as part of the eligibility determination process, she reviews all medical and psychological information available to SDRC, including educational reports, psychological reports, and self-reports from family. She did so in this matter. Dr. Casper stated that she reviewed the December 5, 2024, psychological evaluation of claimant by Dr. Netter looking for any indication of a diagnosis of ASD or IDD or any developmental disability. Specifically, she looked for claimant's cognitive functioning and any testing that had been done, as well as any behavioral observations by Dr. Netter of claimant. Dr. Casper testified that all the intellectual testing, including the Woodcock-Johnson IV Test of Cognitive Abilities, Wechsler Preschool and Primary Scale of Intelligence Fourth Edition (WPPSI-IV), and WIAT4 test scores, showed that claimant's intellectual scores were in the normal range. Furthermore, she looked for testing regarding a diagnosis of ASD and found that claimant's scores on the Autism Diagnostic Observation Schedule Second Edition, Module 3 (ADOS-2) scores, as well as Childhood Autism Rating Scale Second Edition - High Functioning (CARS 2-HF), and Vineland Adaptive Behavior Scales Third Edition (Vineland-3) all showed that claimant did not have ASD or any other developmental disability.

20. Dr. Casper also reviewed Dr. Netter's psychological evaluation report for behavioral observations made by Dr. Netter. Those observations showed that claimant responded appropriately to social overtures, established rapport, maintained appropriate eye contact, and otherwise had no indication of any behavior consistent with a diagnosis of ASD.

21. Dr. Casper also reviewed all of the various school documents listed above. None of those documents provided a diagnosis of ASD or IDD for claimant, and all of those documents indicated claimant had an average IQ. Nothing in those

documents indicated that claimant has a developmental disability. However, Dr. Casper noted that claimant has a significant trauma history, including exposure in utero to drugs, a history of neglect, and claimant was severely injured while under the care of her biological mother. Dr. Casper testified that there is a significant overlap of symptoms between trauma and ASD. However, she looks primarily to see if claimant can establish relationships with other children, which claimant has done. She stated those relationships “are rocky but [claimant] has interest in social interaction.” By comparison, children with ASD tend to be very withdrawn with no interest in social interaction. Children with trauma tend to have difficult relationships, but they still want to socially interact. In this matter, none of the documents reviewed provided any indication that claimant suffers from ASD, IDD, or a condition requiring treatment similar to IDD.

22. Dr. Casper concluded that after her review of all information provided, claimant does not have a qualifying condition of ASD, IDD, or fifth category. This opinion was reflected in the January 17, 2025, letter to claimant denying eligibility for SDRC services.

Claimant’s Adoptive Mother’s Testimony

23. Claimant’s adoptive mother, who is also claimant’s half-sister, has had custody of claimant since 2022. Claimant turns seven years of age in July 2025. Claimant was referred to SDRC for services by a social worker during the time claimant was in foster care. Claimant’s adoptive mother testified that she has been very frustrated in seeking care for claimant because claimant suffers from conditions resulting from her trauma. Claimant’s adoptive mother is simply “trying to figure it out” and believes that nobody wants to “be responsible” for claimant. She is frustrated that she has “no support” for claimant.

24. Claimant's adoptive mother simply disagreed with SDRC's findings that claimant is not eligible for services but was unable to articulate any particular reason why she disagreed with the findings. It is clear that claimant's adoptive mother has the best interests of claimant at heart and is frustrated with determining how to care for claimant.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. 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.)

Applicable Statutory and Regulatory Authority

2. The Legislature enacted the Lanterman Act (Welf. & Inst. Code, § 4500 et seq.) to provide a pattern 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.)

3. 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.

4. The Department of Developmental Services (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.)

5. 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.*)

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

(a) "Developmental Disability" means a disability that is attributable to mental retardation², cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related

² 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.

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:

(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.

7. 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.

Evaluation

8. A preponderance of the evidence did not establish that claimant is eligible for regional center services under any qualifying category. No evidence was presented, nor was it specifically claimed, that claimant was eligible under the categories of epilepsy, or cerebral palsy. Furthermore, a preponderance of the

evidence did not establish that claimant is eligible for regional center services under a qualifying diagnosis of autism, intellectual developmental disorder, or the fifth category. Credible testimony from Dr. Nelson and Dr. Casper demonstrated that claimant simply does not suffer from a qualifying diagnosis based on the records provided in this matter. While it is clear that claimant has suffered significant trauma causing her to have difficulty, that trauma is not a qualifying diagnosis to receive SDRC services.

9. Claimant's adoptive mother was sincere in her frustration on how to obtain the proper support for claimant and is trying to obtain the proper services for claimant. However, based on all the evidence provided claimant simply failed to meet her burden to establish that she qualifies for services by SDRC under the Lanterman Act.

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 developmental disorder, or a condition that requires treatment similar to a person with an intellectual developmental disorder. SDRC's denial is affirmed.

DATE: July 7, 2025

DEBRA D. NYE-PERKINS
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.