

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

In the Matter of:

CLAIMANT

and

WESTSIDE REGIONAL CENTER, Service Agency.

DDS No. CS0029239

OAH No. 2025080551

DECISION

Shanda Connolly, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in El Segundo at the Westside Regional Center (WRC) on December 11, 2025.

Claimant's mother (mother) and father (father) represented claimant, who was not present at the hearing. (Claimant and her parents are not identified by name to protect their privacy.) Sonia Tostado, Appeals Specialist, represented WRC.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on December 11, 2025.

ISSUE

Whether claimant is fully eligible at this time for regional center services based on a developmental disability under the Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code section 4500 et seq. (Lanterman Act). (All further statutory references are to the Welfare and Institutions Code unless otherwise stated.)

EVIDENCE PRESENTED

The documentary evidence at hearing consisted of: WRC Exhibits 1 through 17 and Claimant Exhibits A through G. The testimonial evidence at hearing was provided by Karesha Gayles, Psy.D., a WRC psychologist, Ms. Tostado, mother, and father.

FACTUAL FINDINGS

1. Claimant, a four-year-old male, asserts: 1) he is eligible for regional center services because he has intellectual disability or a "fifth category" condition, i.e., a disabling condition closely related to intellectual disability or requiring treatment similar to that required for individuals with intellectual disability; and 2) he is substantially disabled in three or more areas. The parties agree that, although claimant was originally referred to WRC for autism spectrum disorder (ASD), claimant does not have cerebral palsy, epilepsy, or ASD.

2. On July 11, 2025, WRC issued a Notice of Proposed Action informing claimant that he is only provisionally eligible for regional center services, which will expire on his fifth birthday. Claimant will turn five years old on April 19, 2026. On August 8, 2025, mother and father appealed WRC's decision.

3. This hearing ensued.

Diagnostic Criteria

4. There are two conditions at issue in this case: intellectual disability and fifth category. The ALJ takes official notice of the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition Text Revision (DSM-5) as a highly respected and generally accepted tool for diagnosing mental and developmental disorders to evaluate intellectual disability. The fifth category is not analyzed in the DSM-5; it is a creation of the Lanterman Act.

INTELLECTUAL DISABILITY AND BORDERLINE INTELLECTUAL FUNCTIONING

5. 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:

1. Deficits in intellectual functioning, 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.
2. Deficits in adaptive functioning that result in failure to meet developmental and social-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.

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

(DSM-5, p. 33.)

6. To meet the diagnostic criteria for intellectual disability, the deficits in adaptive functioning must be directly related to the individual's intellectual impairments. Onset is during the developmental period. 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, p. 39-40.)

7. The DSM-5 states 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, this involves a score of 65-75. (70 +/- 5)." (DSM-5, p. 37.) At the same time, the DSM-5 recognizes 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." (*Ibid.*)

FIFTH CATEGORY

8. What is often referred to as the fifth category is not a diagnosis recognized by the DSM-5, but instead was created pursuant to the Lanterman Act. Under the Lanterman Act, a person can be eligible for regional center services if he has disabling conditions found to be closely related to intellectual disability or require treatment similar to that required for individuals with an intellectual disability, but the handicapping conditions should not include those solely physical in nature.

Claimant's Background

9. Claimant lives within WRC's service catchment area with his mother, father, and sister. Claimant is currently receiving Early Start services at WRC based on a determination of provisional eligibility.

10. Claimant is in transitional kindergarten at El Marino Language School in Culver City, and previously attended preschool at Terra Montessori and Culver City Center for Early Education.

11. Claimant was born full-term with an unremarkable delivery and had no prenatal exposure to harmful substances. Claimant began using words around seven months, and began walking at 13 months. At age three, claimant was referred to WRC due to concerns he might have ASD.

Evaluations

2024 WRC ASSESSMENT

12. On October 17, 2024, Viviana Sosa, Intake Coordinator at WRC performed a psychosocial assessment of claimant to determine whether he was

eligible for regional center services. Claimant's parents reported he was not fully toilet trained, became angry when there is a change in his routine, had difficulty with redirection, and experienced some sensory issues. Claimant was receiving speech therapy, and he had been recommended to receive occupational therapy for his sensory issues. Based on her assessment, Ms. Sosa recommended that claimant receive a psychological evaluation to further consider his eligibility.

13. On December 13 and 17, 2024, when claimant was three years and seven months old, WRC arranged for claimant to be assessed by Diedre Cook, Psy.D., a clinical psychologist. Dr. Cook reviewed records, performed a clinical interview, consulted with claimant's speech therapist, and administered the Weschler Preschool Primary Scale Interview, 4th (WPPSI-IV), Vineland Adaptive Behavior Scales, 3d (VABS-3), and Autism Diagnostic Interview – Revised (ADI-R).

14. Dr. Cook noted that her records review included an October 4, 2024 speech and language evaluation from Leeanne S. Mallel, a speech therapist at the UCLA pediatric speech pathology clinic, who indicated claimant had age-appropriate word articulation and pragmatic skills.

15. Dr. Cook also consulted with Emily Minkow, claimant's speech therapist since October 2024, who stated that claimant has receptive and expressive language delays. According to Ms. Minkow, claimant uses verbal language to have his needs met and to engage with others socially. Claimant can follow one-step commands but his understanding decreases when more complex phrases are used. Ms. Minkow reported claimant does not show any repetitive physical or verbal behaviors, insistence on sameness or other forms of rigidity, or unusual responses to sensory information.

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16. Based on the WPPSI-IV administered by Dr. Cook, claimant obtained a Full Scale I.Q. (FSIQ) score of 77, indicating borderline cognitive abilities. The VABS-3 showed claimant's communication, daily living skills, and social interaction skills to be in the moderately low range. However, Dr. Cook noted that, in view of her observations and information from previous records, claimant's VABS-3 communication and socialization scores may overestimate his actual abilities. The ADI-R, a test for ASD in children and adults, revealed scores that did not fall within the ADI-R classification of autism. Dr. Cook diagnosed claimant with borderline intellectual functioning and language disorder, and recommended that claimant receive occupational therapy, continue speech therapy, participate in psychological therapy, and share her report with the Individualized Education Program (IEP) team at claimant's school district.

17. According to a WRC Early Start Eligibility Sheet (Eligibility Sheet) dated February 12, 2025, in Question 3, claimant was found provisionally eligible for Early Start services based on a condition similar to or requiring treatment similar to Borderline Intellectual Functioning. A response to Question 3 stated "[n]o 3 areas of substantial handicap, only language & self direction." (Ex. 7, p. A34.) Question 5, which set forth follow-up recommendations, stated that claimant should be referred to In-Home Supportive Services and re-tested prior to the age of five. (*Ibid.*) In response to Question 6, which set forth areas of substantial disability, the following boxes were checked: expressive and receptive language, learning, and self-direction. (*Ibid.*) The Eligibility Sheet was signed by WRC's eligibility team, which included a physician and two psychologists.

18. On July 11, 2025, WRC sent claimant's parents a letter informing them the WRC eligibility team determined claimant was provisionally eligible for regional

center services because he had “significant functional limitations in at least two areas of major life activity.” (Ex. 4, p. A16.) The letter further explained:

The provisional eligibility means that [claimant] is showing some delays that are concerning but he does not actually have a diagnosis at this time that meets the regional center criteria for ongoing eligibility. Because the provisional eligibility status expires on your child’s 5th birthday, 90 days prior to your child’s 5th birthday they will be reassessed for Lanterman Eligibility. At that point in time, your child will need to be diagnosed with a Regional Center qualifying developmental disability If the results of the reassessment indicate that your child does not meet Regional Center Lanterman eligibility requirements, your child’s case will be then exited from the Regional Center system.

(Ibid.)

CULVER CITY UNIFIED SCHOOL DISTRICT PSYCHOEDUCATIONAL ASSESSMENT

19. On December 2, 2024, at age three years and seven months, as part of his IEP evaluation, claimant was assessed by Christine Orozco, a school psychologist, Larisa Chudnovskaya, a speech and language pathologist, Amie Eder, claimant’s special education teacher, Tiffany Fu Yu, an occupational therapist, and Amy Thiel, RN, a school nurse. The IEP meeting with parents was on January 15, 2024, and the findings of the assessment and IEP meeting were set forth in a Confidential Psychoeducational Assessment Report. The IEP team based its assessment on the following: parent

questionnaire; parent interview; assessment observations; classroom observations on December 10, 2024, December 17, 2024, and December 19, 2024; teacher interview; records review; a battery of tests, including tests for language, behavior, anxiety, communications, and speech; clinical observation of functional classroom skills; and unstructured clinical observations of sensory processing.

20. Overall, claimant was observed to be in good health. The testing found that claimant's "most reliable cognitive skills are within the average range," and he presented with the typical cognitive skills for him to actively participate in appropriate educational activities. (Ex. 10, p. A80.) Claimant had average scores for verbal comprehension, nonverbal reasoning, and visual perceptual matching, and had above average scores for visual perceptual matching and fine motor coordination in copying. (Ex. 10, A63.) Claimant had appropriate levels of self-control and attention necessary for an educational environment, but was not consistently participating in social interactions with peers and adults and did not speak during most of his school day. Claimant was observed to independently navigate the environment and take care of his personal needs, including feeding, putting on shoes and his jacket, and toileting. Claimant presented with average receptive language skills, slightly below average expressive language skills, and age-appropriate pragmatic language skills.

21. Claimant did not meet the eligibility criteria for special education services based on autism or speech and language impairment. Claimant met the eligibility criteria for special education services based on emotional disability due to the presence of anxiety-based behaviors impacting claimant's ability to communicate verbally across settings.

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IEP PROGRESS REPORT

22. According to a March 21, 2025 IEP progress report (Exhibit 11), claimant's areas of needs were in receptive and expressive language. Claimant's goals were to demonstrate understanding of prepositions by following a directive or labeling the preposition in four out of five opportunities, and to greet and respond to a greeting verbally and/or non-verbally with a fist bump or wave. The progress report noted that claimant responded non-verbally to greetings with adults in about three out of five opportunities by making a fist for the adult to fist bump, and was generally making progress.

Claimant's Evidence

23. To support their contention that claimant should be deemed fully eligible for regional center services, claimant's parents submitted several letters from service providers regarding their findings and observations. In a September 23, 2025 letter from Ms. Minkow, the lead speech language pathologist at Therapy Place 4 Kids, Ms. Minkow stated she provided claimant speech-language therapy services twice a week from October 2024 through January 2025. Ms. Minkow explained that claimant's treatment plan addressed receptive and expressive language and executive functioning skills. Ms. Minkow noted that although claimant sometimes used verbal spoken language, he relied primarily upon gestures to communicate. Ms. Minkow explained that claimant's language delays "directly impact his ability to succeed in both academic and community environments." (Ex. F, p. B16.) Ms. Minkow recommended for claimant to seek a variety of services twice per week, including clinic-based speech and language therapy, as well as opportunities for parent collaboration to ensure carryover and reinforcement of skills in the home environment.

24. In an October 7, 2025 letter, Guadalupe Aguila, claimant's transitional kindergarten teacher the El Marino Language School, expressed her concerns regarding claimant's development and functioning in the classroom. Ms. Aguila explained that claimant required extensive one-on-one support to participate successfully in classroom activities, and exhibited developmental delays that significantly affected his ability to communicate, interact socially, and express his emotions. Due to his delays, claimant was unable to verbally demonstrate his learning progress. Ms. Aguila identified the following additional areas of concern: difficulty following simple, one-step instructions; limited peer interaction; preference for the same activities with limited flexibility; failure to eat meals at school all day long; need for ongoing support with fine motor skills; and failure to go to the bathroom without one-to-one support.

UCLA Records

25. On October 4, 2024, Ms. Mallel performed a speech evaluation of claimant, based on the referral by Holly Dieu, M.D., a UCLA pediatrician, and Dr. Dieu's diagnosis of Mixed Receptive Expressive Language Disorder. Ms. Mallel administered the Clinical Evaluation of Language Fundamentals, Preschool 3d Edition (CELF-3), a standardized test to evaluate claimant's language skills, and performed an oral motor examination, parent interview, and informal assessment. Ms. Mallel found that claimant presented with delayed receptive and expressive language abilities based on formal and informal assessments, although claimant's articulation and pragmatic abilities appeared to be within normal limits. Ms. Mallel recommended one-on-one speech therapy to improve claimant's receptive and expressive language skills so that claimant can follow directions and formulate clear, cohesive sentences to express his basic wants and needs.

26. In a June 10, 2025 letter from Lauren Waldron, MD, claimant's UCLA pediatric neurologist, Dr. Waldron asserted her belief that claimant qualified for regional center services based on the following diagnoses: Borderline Intellectual Functioning, Mixed Receptive Expressive Language Disorder, and Selective Mutism. Dr. Waldron noted that "[t]hese diagnoses were made by licensed psychologists, speech pathologists, and developmental specialists based on standardized and validated diagnostic assessments of cognitive functioning, as well as clinical observation." (Ex. 12, p. A90.) According to Dr. Waldron, claimant's Borderline Intellectual Functioning is a lifelong condition, and his Mixed Receptive Expressive Language Disorder and Selective Mutism are chronic conditions that may be lifelong. Dr. Waldron explained that these diagnoses interfered with claimant's daily functioning, including his "ability to perform age appropriate ADLS and IADLS, self-direction/motivation/ and initiative, maintaining personal safety, and process socially and emotionally." (Ex. 12, p. A90.) In addition, Dr. Waldron contended claimant required more adult guidance than normally expected for a child of his age to maintain safety, navigate transitions, understand and follow directions, and maintain social relationships. According to Dr. Waldron, these conditions further decrease claimant's ability to access his school curriculum and make age appropriate educational and developmental gains.

27. In a second letter dated October 21, 2025, Dr. Waldron provided the basis for her opinion that claimant was eligible for the SDP. According to Dr. Waldron, claimant met the Lanterman Act's criteria for substantial disability in three of the seven categories: receptive and expressive language, self-direction, and learning. Dr. Waldron reiterated that claimant had diagnoses of Borderline Intellectual Functioning and Mixed Receptive Expressive Language Disorder.

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28. In her October 21, 2025 letter, Dr. Waldron asserted that claimant had a substantial disability in learning based on the WRC Eligibility Sheet where the eligibility team checked the "learning" box. (See Factual Finding 17.) Dr. Waldron stated WRC's finding claimant has a substantial disability in learning "remains accurate and has been further substantiated through continued clinical observation and assessment." (Ex. D, p. B12.) Dr. Waldron asserted that standardized cognitive assessments showed claimant had significantly below average intellectual functioning, which impacted his ability to process complex information, understand abstract concepts, and apply learned skills across different contexts. In addition, according to Dr. Waldron, claimant's delays caused him to struggle with foundational academic concepts, including: following multi-step directions, pre-literacy skills development, number recognition and basic mathematical concepts, and retaining newly taught information from one session to the next. Dr. Waldron cited clinical observations from The WaveMind Clinic by Danielle Cornacchio, Ph.D., and Rachel Zukerman, Ph.D., which documented claimant's learning challenges, such as that he "appears to have trouble orienting or sustaining attention to question prompts" and "struggled to engage in structured activities during camp and required repeated reminders and prompts to remain on task." (Ex. D, p. B13.) In addition, the WaveMind Clinic team observed claimant paused for a long time before answering questions and often provided irrelevant responses, which impaired his ability to build upon previous learning and make developmental progress. (Although Dr. Waldron referred to observations made by the WaveMind Clinic team, she did not attach any written notes or findings made by it.)

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Testimony

DR. GAYLES

29. Dr. Gayles testified that she reviewed the entirety of records in this case and agreed with the findings of the WRC eligibility team that claimant was provisionally eligible for regional center services based on the fifth category because he had borderline intellectual functioning and was substantially disabled in two areas, language and self-direction. Dr. Gayles explained that for claimant to be considered eligible for regional center services after he turned five, claimant needed to demonstrate he was substantially disabled in one of the three remaining categories, i.e., learning, self-care, and mobility, and claimant has not demonstrated significant deficiencies in these areas.

30. In explaining why she believed claimant had no substantial disability in the category of learning, as Dr. Waldron asserted, Dr. Gayles noted that claimant's IEP indicated claimant did not have a learning disability and the school district had found claimant eligible for special education services based on emotional disability, not a learning disability.

31. Dr. Gayles noted that the IEP found average and above average cognitive skills. Dr. Gayles explained that, based on the inconsistencies between Dr. Cook's findings that claimant had borderline cognitive abilities and the school district's findings regarding claimant's cognitive abilities, WRC would arrange for claimant to receive updated standardized cognitive testing 90 days prior to his fifth birthday, as well as adaptive testing (i.e., VABS- 3 or ABAS-3), to determine if claimant would be fully eligible for regional center services after his fifth birthday.

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32. Dr. Gayles explained that the Eligibility Sheet's three boxes checked on Question 6 for areas of substantial disability (i.e., expressive and receptive language, learning, and self-direction) were the areas that the eligibility team considered. The checked boxes did not indicate claimant presented with a substantial disability in learning, as Dr. Waldron asserted. Dr. Gayles further explained that Question 3 of the Eligibility Sheet clarifies that claimant was found provisionally eligible for regional center services based on a finding of only two areas of substantial disability (i.e., language and self-direction).

33. Dr. Gayles asserted that Dr. Waldron's opinions that claimant was substantially disabled in the area of learning were not adequately supported. Dr. Gayles noted that although Dr. Waldron referred to "[s]tandardized cognitive assessments" that demonstrated below average intellectual capacity (Exhibit D, p. B13), Dr. Waldron did not clarify what instruments were used or whether she or someone else administered them. In addition, although Dr. Gayles noted that the developmental delays described by Ms. Aguila in her October 7, 2025 letter could suggest a learning disability, they were not determinative of a learning disability.

Ms. TOSTADO

34. Ms. Tostado explained that she is knowledgeable regarding intake procedures and the process of how claimants are evaluated for eligibility. Ms. Tostado acknowledged that there had been several email communications between Ms. Garcia and claimant's parents regarding qualifying for the SDP. However, those communications appear to be a mistake, as claimant is only provisionally eligible for regional center services at this time and therefore not eligible for the SDP.

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FATHER

35. Father believes claimant qualifies under the fifth category and meets four areas of substantial disability: expressive and receptive language, self-direction, learning, and self-care. Father testified that claimant cannot perform basic self-care tasks, such as using the bathroom or eating meals at school. Claimant also is unable to communicate about how and what he is learning.

36. Father stated that he provided Dr. Waldron with a copy of Dr. Cook's report and the school's IEP from 2024.

37. Father testified that claimant receives services once a week in the classroom consisting of a combination of speech and occupational therapy. Claimant's parents have requested a new IEP meeting to address their additional concerns regarding claimant's delays, but the school has yet to provide one.

38. Father asserted that WRC's email communications for nearly six months, suggested that claimant was fully eligible for regional center services, and he believed they were enrolling claimant in the SDP. Those emails discussed claimant's participation in the SDP, and included an SDP checklist, a flyer about the SDP, and other information about services that needed to be included in claimant's Person-Centered Plan (PCP). At WRC's suggestion, claimant's parents hired an independent facilitator (IF) to assist with this process.

39. Claimant's parents never saw claimant's Eligibility Sheet until November 2025. Claimant's parents maintained the Eligibility Sheet is internally inconsistent, because it notes that claimant has three areas of substantial disability (expressive and receptive language, learning, and self-direction) according to Question 6, but notes that claimant is only provisionally eligible for fifth category disability based on two

areas of substantial disability (language and self-direction). Father asserted that this document indicates that claimant has a substantial learning disability.

MOTHER

40. Mother believes claimant qualifies for regional center services under the fifth category. Mother would like claimant to have the support and services he needs and deserves.

LEGAL CONCLUSIONS

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 3.

2. Because claimant is the party asserting a claim, he bears the burden of proving, by a preponderance of the evidence, that he is eligible for government benefits or services. (See Evid. Code, §§ 115 and 500.) Claimant has not met his burden of proving he is eligible for regional center services in this case.

Legal Conclusions Pertaining to Eligibility Generally

3. The Lanterman Act, at section 4512, subdivision (a)(1), defines developmental disabilities as follows:

“Developmental disability” is 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. . . . [T]his 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 (CCR), section 54000, subdivision (c), specifies those conditions that are not considered developmental disabilities. The excluded conditions 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 [intellectual disability], 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].

5. To prove the existence of a developmental disability within the meaning of section 4512, a claimant must show that he has a "substantial disability." CCR section 54001 defines "substantial disability" to mean:

(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.

6. The fifth category is not defined by statute or by regulation. In *Mason v. Office of Administrative Hearings* (2001) 89 Cal. App.4th 1119, 1129, the California Court of Appeal provided general guidance: "The fifth category condition must be very similar to [intellectual disability], with many of the same, or close to the same, factors required in classifying a person as [intellectually disabled]. Furthermore, the various additional factors required in designating an individual developmentally disabled and substantially handicapped must apply as well." It is therefore important to consider factors required for a diagnosis of intellectual disability when assessing fifth category eligibility.

7. Also taken into consideration when determining whether a person has a substantial disability are the Association of Regional Center Agencies guidelines (ARCA Guidelines). (Ex. 19.) To show learning is an area of substantial disability, the ARCA Guidelines state that "[t]he individual must be substantially impaired in the ability to acquire and apply knowledge or skills to new situations even with special intervention." (*Id.*, p. A107.) In addition, the following areas should be considered: general intellectual ability; academic achievement levels; retention by both short and long-term memory; and reasoning.

8. Section 4512, subdivision (a)(2)(A) provides: "A child who is under five years of age shall be provisionally eligible for regional center services if the child has a disability that is not solely physical in nature and has significant functional limitations in at least two of the following areas of major life activity, as determined by a regional center and as appropriate to the age of the child: (i) Self-care; (ii) Receptive and expressive language; (iii) Learning; (iv) Mobility; and (v) Self-direction."

9. According to Section 4512, subdivision (A)(4), “[a] child who is provisionally eligible pursuant to paragraph (2) shall be reassessed at least 90 days before turning five years of age. The child shall meet the definition set forth in paragraph (1) to continue to be eligible for regional center services at five years of age.”

Legal Conclusions Specific to this Case

10. Based on the findings of the WRC eligibility team and the testimony of Dr. Gayles, claimant at this time is only provisionally eligible for regional center services because claimant presents with a fifth category condition and demonstrated only two areas of substantial disability, language and self-direction. (Factual Findings 17, 29.) Ms. Tostado reasonably explained that the communications between claimant’s parents and WRC regarding the possibility of claimant’s participation in the SDP were in error, as claimant was not eligible for the SDP due to his provisional eligibility status. (Factual Finding 34.)

11. Claimant’s evidence from Dr. Waldron, Ms. Aguila, and Ms. Minkow was insufficient to show that claimant had a substantial disability in learning in order for him to be fully eligible for regional center services. Dr. Waldron’s findings that claimant was substantially disabled in the category of learning were less persuasive than the findings by the WRC eligibility team and Dr. Gayles that the evidence did not support a substantial disability in learning, because it was not clear what testing Dr. Waldron was relying upon in reaching her conclusion. (Factual Finding 33.) Although father provided the January 10, 2024 IEP and Dr. Cook’s report to Dr. Waldron, Dr. Waldron did not state that she relied on those documents, and neither Dr. Cook’s report nor the IEP states that claimant has a substantial learning disability. (Factual Findings 16, 21, 28, 35.)

12. There were inconsistencies between Dr. Cook's findings that claimant has borderline cognitive abilities and the school district's findings that claimant has average and above average cognitive abilities. Consequently, WRC will arrange for claimant to receive updated standardized cognitive testing 90 days prior to his fifth birthday, as well as adaptive testing (e.g., the VABS- 3 or ABAS-3), in order to determine if claimant would be fully eligible for regional center services after his fifth birthday. (Factual Finding 31.) This additional testing is required by statute. (Legal Conclusion 9.)

13. As set forth in Factual Findings 1 through 40 and Legal Conclusions 1 through 12, claimant did not establish that he has a developmental disability that makes him more than provisionally eligible for services under the Lanterman Act.

ORDER

WRC's determination that claimant is not fully eligible and only provisionally eligible for regional center services at this time is sustained. Claimant's appeal of the determination that he is not fully eligible for regional center services is denied.

DATE:

SHANDA W. CONNOLLY

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.