

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

RICHARD S.

Claimant,

vs.

VALLEY MOUNTAIN REGIONAL
CENTER,

Service Agency.

OAH No. N 2005120644

DECISION

Administrative Law Judge Catherine B. Frink, State of California, Office of Administrative Hearings, heard this matter in Stockton, California on February 8, 2006.

Richard S. (claimant) was present and was represented by his mother, Rachel A..

Gary L. Westcott, Ph.D., Clinical Psychologist, represented the service agency, Valley Mountain Regional Center (VMRC).

The matter was submitted on February 8, 2006.

PARTIES AND JURISDICTION

On November 4, 2005, VMRC issued a Notice of Proposed Action (NOA) in which it proposed to discontinue services to claimant, effective November 1, 2005, on the grounds that claimant had been found ineligible for regional center services pursuant to California Code of Regulations,¹ title 17, section 54000. Claimant and his mother appealed VMRC's action and filed a Fair Hearing request, dated November 7, 2005, that was received by VMRC Intake Services on December 1, 2005. Claimant continues to receive regional center services pending the outcome of this appeal.

¹ Erroneously referred to in the NOA as Welfare and Institutions Code section 54000.

All prehearing jurisdictional requirements have been met. Jurisdiction for this proceeding exists.

ISSUE

Does claimant have an eligible condition, as defined by Welfare and Institutions Code section 4512, subdivision (a),² which would permit him to continue receiving regional center services?

FACTUAL FINDINGS

1. Claimant was born on May 20, 1982, and is now 23 years old. He has never been diagnosed with cerebral palsy, epilepsy, or autism.

2. Claimant is the third of five children. According to claimant's mother, claimant was deprived of oxygen at birth, which she blames for delays in behavior that she has observed since shortly after his birth. Claimant began receiving special education services in kindergarten, and remained in special education through elementary school, middle school, and high school.

3. Claimant was given a psychological evaluation by Dan Lochman, M.S., school psychologist, Stockton Unified School District (SUSD), on October 16-17, 1991, as part of a special education triennial assessment. Claimant was age 9 years, five months, and was enrolled as a fourth grader at Taylor School in Stockton at the time of the evaluation. In a Psychological Consultation Report dated October 17, 1991, Mr. Lochman noted in his review of school records that claimant was first placed in the Resource Specialist Program (RSP)³ for learning handicaps (LH), with DIS⁴ speech, in October 1988. Claimant experienced limited success in RSP, which required placing him in a special day class (SDC)⁵ for communication handicap (CH), in June 1989, where he continued with speech therapy. In June 1990, claimant exited the CH program and was placed once again in the LH program. He remained in the SDC and continued articulation therapy. At the time of the evaluation, claimant was in the LH-SDC program.

Mr. Lochman administered the Wechsler Intelligence Scale for Children – Third Edition (WISC-III), the Visual-Aural Digit Span Test (VADS), and the Developmental Test of Visual and Motor Integration (VMI)

Mr. Lochman noted that claimant was cooperative with the testing procedure, and he believed the assessment was a valid representation of claimant's learning ability. On the

² All statutory references are to the California Welfare and Institutions Code, unless specified otherwise.

³ RSP is a pull-out program which coordinates with placement of the student in a regular education classroom.

⁴ Designated Instruction and Services, also known as related services, necessary for a student to benefit from special education.

⁵ SDC is a self-contained classroom with a special education teacher, in which all of the students receive special education services.

WISC-III, a verbal and nonverbal measure of general ability, claimant received a verbal Intelligence Quotient (IQ) score of 59, a performance IQ score of 69, and a full scale IQ score of 61. Claimant achieved the following subtest scores:

<u>Verbal Scales</u>		<u>Performance Scales</u>	
Information	5	Picture Completion	4
Similarities	4	Picture Arrangement	3
Arithmetic	1	Block Design	10
Vocabulary	3	Object Assembly	1
Comprehension	1	Coding	6
Digit Span	5		

On the VADS, a measure of perceptual-motor integration, sequencing, and recall of symbols, claimant achieved results indicating adequate visual-oral and oral-written integration, and difficulty with fine motor coordination (writing), aural-oral, and visual-written integration. On the VMI, a measure of visual-motor perceptual integration, claimant obtained a standard score of 75, with an age equivalency of six years.

In his written report, Mr. Lochman stated that claimant's performance on the WISC-III placed him in the intellectually deficient range of cognitive ability. He noted that claimant approached the low average level of cognitive ability in the area of perceptual organization, and demonstrated average ability for tasks requiring whole-to-part perception and spatial visualization. Claimant was functioning at a first grade level in the areas of handwriting, copying, detail errors, reading comprehension, and paper and pencil mathematics; he would be expected to perform at below first grade level in test taking, concept formation, following oral directions, and written communication. Mr. Lochman concluded that claimant was appropriately placed in the SDC.

4. On January 6, 1995, at age 12, claimant underwent a psychoeducational evaluation, conducted by Sidney Bazett, M.A., school psychologist, SUSD, as part of a triennial review of special education services. Claimant was in the seventh grade at Webster Middle School, where he was placed in a LH-SDC at the time of the evaluation.

Mr. Bazett reviewed school records, conducted a teacher interview, and administered the following tests to claimant: Woodcock-Johnson Tests of Achievement—Revised (WJ-R); VMI; House-Tree-Person (HTP); and WISC-III. In a report dated January 6, 1995, Mr. Bazett noted that claimant put forth a good effort and “it is believed that these results provide a fair indication of [claimant's] ability.”

On the WJ-R, a test of academic achievement, claimant achieved the following standard scores: Broad Reading—77; Broad Mathematics—75; Broad Written Knowledge—75; Knowledge—74. These scores placed claimant at about the third grade in academic achievement.

On the WISC-III, claimant received a verbal IQ score of 71, a performance IQ score of 80, and a full scale IQ score of 73; with standard scores of 69 in verbal comprehension and 82 in perceptual organization. Claimant achieved the following subtest scores:

<u>Verbal Scales</u>		<u>Performance Scales</u>	
Information	6	Picture Completion	7
Similarities	5	Picture Arrangement	5
Arithmetic	7	Block Design	8
Vocabulary	3	Object Assembly	7
Comprehension	3	Coding	7
Digit Span	6		

Claimant demonstrated cognitive ability at the low average to borderline range, with his verbal scores substantially lower than his performance scores. Mr. Bazett noted that claimant's scores were almost 10 points higher than those of his assessment in 1991.

On the HTP, a projective measure of self-concept, claimant's drawing suggested a poorly developed self-concept. On the VMI, claimant achieved a standard score of 87, or an age equivalent of 7 years, 11 months. According to the report, "[t]his is an area of strength for [claimant] and suggests a higher ability level than his other scores support." Based on claimant's WISC-III subtests, as well as conversation with claimant, Mr. Bazett noted that claimant "has very weak language expression and comprehension skills."

Mr. Bazett concluded that claimant's current scores were higher than previous testing in both the intelligence testing and achievement tests. He appeared to be appropriately placed in a SDC and demonstrated growth in that placement.

5. In July of 1997, at age 15, claimant was referred to VMRC for a determination of initial eligibility. The Interdisciplinary (ID) team included Alan Roman, Intake Coordinator; Gary Westcott, Ph.D., Clinical Psychologist; and a physician, Dr. Morrison. The ID team began an Interdisciplinary Eligibility Review (IER) on September 26, 1997. The IER report form indicates that the ID team considered a July 1997 intake assessment, and the reports of psychological testing in 1991 and 1995 from SUSD. Under "Comments," Mr. Roman noted, "most recent testing seems not to indicate MR. Additional testing needed? Category 5? Or not eligible?" Noting variable test history from 1991 and 1995, Dr Westcott requested an updated IQ test.

6. Claimant was referred to James A. Wakefield, Jr., Ph.D., for a psychological evaluation on October 31, 1997. Claimant was age 15 years, 5 months and in the tenth grade at the time of the evaluation. Dr. Wakefield prepared a report, dated October 31, 1997. The report does not reflect that Dr. Wakefield reviewed any of the prior testing from SUSD. Dr. Wakefield administered the following tests to claimant: WISC-III; Peabody Picture Vocabulary Test—Revised (PPVT-R); Bender Gestalt; and Wide Range Achievement Tests—Revised (WRAT-R). Dr. Wakefield observed claimant during testing, and concluded that claimant "gave a good effort on the tests, and the results are considered valid."

On the WISC-III, claimant received a verbal IQ score of 63, which was weaker than his performance (nonverbal) IQ score of 75. The full scale IQ score of 67 placed claimant in the mildly retarded range of intellectual development. Claimant achieved the following subtest scores:

<u>Verbal Scales</u>		<u>Performance Scales</u>	
Information	3	Picture Completion	10
Similarities	6	Picture Arrangement	6
Arithmetic	4	Block Design	7
Vocabulary	3	Coding	1
Comprehension	1		
Digit Span	10		

Claimant demonstrated cognitive ability at the mildly retarded range, with his verbal scores weaker than his performance scores. On the verbal tests, claimant's comprehension of social rules and expectations was his weakest area, and his auditory short-term memory was his strongest.

On the PPVT-R, a test of receptive vocabulary, claimant's vocabulary was at the level expected of a child aged 7 years 10 months. On the Bender-Gestalt, a test of perceptual-motor development, claimant was able to copy a series of geometric figures at a level expected of a child aged 8 years 6 months to 8 years 11 months. On the WRAT-R, claimant's reading was at the borderline range for his age, and his arithmetic was deficient. He achieved standard scores of 78, grade equivalent "end of fifth" in reading, and 58, grade equivalent "beginning fourth" in arithmetic.

Dr Wakefield concluded that claimant's "current intellectual ability indicates Mild Mental Retardation (317) with stronger non-verbal than verbal abilities. He recommended continued placement in a special education classroom with a small number of other students.

7. The ID team considered the October 31, 1997 report of Dr. Wakefield and, notwithstanding the disparity in test results between 1991 and 1997, the ID team determined in November of 1997 that claimant was eligible for regional center services on the basis of mild mental retardation. The ID team made the following recommendations:

1. Monitor IEP.⁶
2. Respite as appropriate.
3. Explore BIS.⁷

⁶ Individualized Education Program, prepared and implemented by the school district.

⁷ Behavior Intervention Services.

8. Claimant and his mother met with a VMRC Service Coordinator to prepare an Individual Program Plan (IPP) for claimant. The IPP implemented by the parties included parent vendored respite services (provided by claimant's aunt), but did not include BIS.

9. On May 12-13, 1999, claimant underwent a psychoeducational evaluation conducted by John Householder, School Psychologist, Lodi Unified School District, as part of a special education triennial review. Claimant was age 16 years, 11 months, and in the eleventh grade, at the time of the evaluation. Mr. Householder prepared a report, dated May 17, 1999, which reflects that claimant continued to be served within a SDC-LH class setting with DIS speech and language services, at Bear Creek High School.

Mr. Householder reviewed a previous assessment conducted by Viet Nguyen on May 20, 1996. In 1996, claimant obtained the following scaled scores on the Wide Range Assessment of Memory and Learning (WRAML): Verbal Memory Index—64; Visual Memory Index—84; Learning Index—91; General Memory Index—74. He achieved a scaled score of 82 on the VMI.

Mr. Householder administered the following tests: WRAML; Test of Visual-Perceptual Skills (non-motor), Upper Level-Revised; Test of Auditory-Perceptual Skills, Upper Level; and the Beery-Buktenica Developmental Test of Visual-Motor Integration. On the WRAML, claimant obtained the following scaled scores: Verbal Memory Index—68; Visual Memory Index—95; Learning Index—107; General Memory Index—86. All of claimant's scores were improved from those obtained in 1996. Claimant's Visual Memory Index and Learning Index were in the average range, and his General Memory Index was low average. Claimant's score on the Verbal Memory Index was below average, demonstrating weaknesses within the area of short term auditory memory and auditory sequencing. Mr. Householder noted "a significant discrepancy between [claimant's] Verbal Memory Index and his Visual Memory Index indicating that [claimant] is better adept at memorization that requires visual as opposed to verbal skills."

On the Test of Visual-Perceptual Skills (non-motor), Upper Level-Revised, a measure of claimant's ability to process visually presented materials, claimant scored in the average or high average range in all areas. On the Test of Auditory-Perceptual Skills, Upper Level, a measure of claimant's ability to process auditory or verbal information, claimant scored in the borderline or average range on the subtests, with demonstrated weakness in the areas of short term auditory sequencing, auditory word memory, and auditory sentence memory. On the Beery-Buktenica Developmental Test of Visual Motor Integration, an assessment of fine-motor and sensory motor integration skills, claimant obtained a scaled score of 95, which placed him in the average range. Mr. Householder summarized his findings as follows:

[Claimant] has been previously identified as a student with a specific learning disability and has been served within a special day class setting since grade school. The current results indicate that he continues to perform within the "Average" range of cognitive ability with significant weaknesses with the area of

short term auditory memory and general auditory memory for content.

10. As part of the May 1999 triennial review, claimant's Present Levels of Educational Functioning were assessed using the WJ-R, WRAT-3,⁸ and VMI. His VMI standard score was 95. In reading, claimant achieved a standard score of 81 on the WJ-R, with a grade level equivalent of 5.6; he achieved a standard score of 84 on the WRAT-3, with a grade level equivalent of 7. His overall scores were lower due to low comprehension scores. In mathematics, claimant achieved a standard score of 80 on the WJ-R, with a grade level equivalent of 6.2; he achieved a standard score of 79 on the WRAT-3, with a grade level equivalent of 5. He was able to perform calculations at the 7.1 grade level, but scored poorly in memorization of multiplication facts and solving applied problems. In language (written, spelling, receptive, expressive, vocabulary), claimant achieved a standard score of 68 on the WJ-R, with a grade level equivalent of 4.2; he achieved a standard score of 59 on the WRAT-3, with a grade level equivalent of 2. Claimant's spelling and punctuation scores were very low, which reduced his overall language score. The report noted that "[claimant] may change his bad habits if he consistently worked during class." Under "Self Help/Daily Living (school adjustment), the report states, "[Claimant] does not bring school supplies nor does he participate in instruction—do or return homework." The report further noted that claimant had poor attendance, and did not appear to have many friends at school.

11. Claimant's IEP, dated May 19, 1997, listed the following rationale for services: "Continues to qualify for special education due to significant discrepancy between ability and achievement. This is thought to be due to weaknesses within auditory processing." It was recommended that he continue in a SDC for social studies, English, mathematics, and science, and that he receive DIS speech services 40 minutes per week.

12. According to claimant's mother, claimant did not like to attend school and was habitually truant, despite her efforts to walk him to the bus stop and watch him board the school bus. Some of the students at school made fun of the way he talked and called him names. He had trouble understanding what he was supposed to be doing, and what was expected of him. He did not follow directions. Claimant dropped out of high school in 2000, and did not complete the twelfth grade. Claimant continues to live at home with his mother and two older brothers, one of whom is disabled following an automobile accident. Claimant does not have a California driver's license.

13. Claimant began drinking alcohol at about age 20. He currently drinks to excess, because he is bored and feels useless. He does not help around the house. Claimant is not employed. He worked as a laborer in a warehouse for about three months, when he was 18 years old, but quit after three months due to poor working conditions. Claimant's mother worries about what will happen to him if she is no longer able to take care of him.

⁸ Wide Range Achievement Test-Revision Three.

14. Claimant testified at hearing in his own behalf. He “stuck to himself” while at school, and had a hard time asking for help. He enjoyed math, but did not like reading and writing. He has applied for jobs, but he believes his lack of a high school diploma hurts his chances for employment. He likes fixing cars, and he enjoys playing video games.

15. Claimant’s case came to the attention of Dr. Westcott in the fall of 2005, as a result of a court referral. Dr. Westcott reviewed claimant’s VMRC file, as well as the 1999 test data obtained from the Lodi Unified School District. When Dr. Westcott noted the discrepancy in test scores between the 1999 triennial evaluation and the 1997 psychological evaluation by Dr. Wakefield, Dr. Westcott arranged for a further evaluation of claimant, to clarify claimant’s ongoing eligibility for regional center services.

16. VMRC referred claimant to Dr. Arnold E. Herrera, Ph.D., clinical and forensic psychologist, to assess his current level of intellectual and adaptive functioning as part of the eligibility determination process. Claimant and his mother met with Dr. Herrera on September 30, 2005. Claimant was age 23 years, 4 months at the time of the evaluation. Dr. Herrera interviewed claimant and his mother to obtain background information. In addition, Dr. Herrera performed a mental status examination and behavioral observation. Dr. Herrera administered the Wechsler Adult Intelligence Scale—Third Edition (WAIS-III), the WRAT-3, and the Vineland Adaptive Behavior Scales (VBAS).

Dr. Herrera prepared a report on October 7, 2005. Dr. Herrera noted that claimant’s involvement in special education regarded learning problems, not general cognitive delay, and that claimant left high school in the twelfth grade. During his interview with claimant, claimant admitted that he had an alcohol abuse problem, which Dr. Herrera summarized as follows:

[Claimant] began drinking in his late teens or early twenties. During the week he will have several beers per day, sometimes a six-pack, and on the weekends he stated, “I add hard stuff.” He denied drug usage. When he is inebriated he has been known to punch holes in walls at home. Today [claimant] was fairly forthright, indicating that at times he could be drunk or near that state for the whole month. He has not been in a rehab program but indicated that he would consider this.

Dr. Herrera noted that claimant’s employment history was very limited. When asked how he spent his time, claimant said he watches television and works out. He claimed that one of the reasons he drinks is that he has nothing to do.

Dr. Herrera observed claimant’s behavior during the evaluation. He found that claimant was cooperative and soft-spoken, and he answered questions in complete sentences which, in Dr. Herrera’s opinion, indicated the absence of mental retardation. His reasoning ability was also not indicative of mental retardation. When asked how a poem and a statue might be similar, he stated, “artifacts, both art.” According to Dr. Herrera, “he also knew that

Cleopatra was a queen in Egypt, that Shakespeare wrote *Hamlet*, and that Einstein developed the theory of relativity. Claimant quickly completed nonverbal tasks, and his fine motor dexterity was good. He displayed problems with math and reading.

On the WAIS-III administered by Dr. Herrera, claimant received a verbal IQ score of 78, a performance IQ score of 86, and a full-scale IQ score of 80, indicating low average intelligence. According to Dr. Herrera, “[claimant’s] Performance IQ of 86 trended toward average, which is likely the best estimate of his underlying intelligence.” Claimant achieved the following subtest scores:

<u>Verbal Scales</u>		<u>Performance Scales</u>	
Vocabulary	6	Picture Completion	10
Similarities	8	Coding	5
Arithmetic	4	Block Design	9
Digit Span	6	Picture Arrangement	8
Information	7	Matrix Reasoning	8
Comprehension	7		

On the WRAT-3, claimant achieved a standard score of 76 in reading, versus a score of 58 in arithmetic. His reading skills were at the fifth grade level, while arithmetic abilities were at the third grade level. Claimant achieved an adaptive behavior composite of 73 on the VABS with standard scores of 79 in communication, 77 in socialization, and 82 in daily living.

In his summary of psychometric findings, Dr. Herrera noted that claimant’s verbal abilities were slightly lower than nonverbal skills, but that “the verbal score was pulled down by a low score in math, which appears to relate to a learning disability.” Analysis of the verbal subtest scatter revealed a pattern consistent with learning dysfunction, i.e. a mildly delayed score in arithmetic (4) versus a subtest score in similarities (8) “which trended toward average.” Analysis of nonverbal subtest scores likewise suggested learning dysfunction; claimant had a selectively low score in coding (5) in contrast to average or low average scores on all remaining nonverbal measures. Academic delay was confirmed by the WRAT-3, with his reading ability was deemed to be at the fifth grade level, and math ability at the third grade level. Claimant’s adaptive abilities, as measured by the VABS, were in the low average range, except for socialization, which was in the borderline range. According to Dr. Herrera’s report,

The Socialization score was depressed by his encounters with the law, alcohol abuse, and limited work history, but he can be socially appropriate. The Daily Living Skills score [82] may be a low estimate of his actual abilities. As mentioned, he spends a great deal of time at home watching television, and his alcohol abuse problem interferes with vocational and adaptive functioning.

Dr. Herrera concluded:

Today on a standardized test of intelligence [claimant] displayed at least low average abilities, and adaptive skills were low average or trended in that direction. Academic delay was confirmed. However, mental retardation is not present or functioning similar to. [sic]

17. The ID team reconsidered claimant's eligibility for regional center services on October 10, 2005. The ID team considered the September 30, 2005 evaluation of Dr. Herrera, and determined claimant was not eligible for regional center services, as summarized in the statement of Dr. Westcott:

This consumer was found eligible in the past on the basis of mild mental retardation. There is, however [sic] a variable test history, and testing accomplished by the schools after the initial eligibility evaluation by VMRC, but not reviewed by the VMRC clinical eligibility team, suggested that cognitive ability is above the mentally retarded level. The file was recently reviewed by the undersigned as part of a process brought about by court issues. That review led the undersigned to note that there is no autism, cerebral palsy, or epilepsy present and, in view of the last school testing suggesting ability above the mentally retarded range, to request that a current testing of cognitive ability be obtained. That has been done and the psychological testing by Dr. Herrera clearly demonstrates that neither mental retardation, functioning similar to that seen in individuals with mental retardation, nor a need for services similar to those required by the mentally retarded are present. Rather, it would appear that, as has been already determined by the public schools, this consumers [sic] handicapping condition is the result of a learning disability. Since handicapping conditions that arise from a learning disability are excluded from regional center eligibility per Title 17, Section 54000(c)(1) this consumer must be found ineligible and his case closed.

18. By letter dated June 11, 2004, VMRC sent claimant a NOA and informed him that the ID team determined he was ineligible for regional center services, in that "there is no evidence of Epilepsy, Mental Retardation, Cerebral Palsy or Autism."

19. In response to the NOA, claimant filed a Fair Hearing Request and requested an informal meeting with VMRC staff. VMRC conducted an informal meeting on January 24, 2006, to reconsider claimant's eligibility. Dr. Westcott, Maurice Franklin, claimant's VMRC service coordinator, and Joanne Eversole, M.S.W., Health Administrator, attended on behalf of VMRC. Claimant's mother, Rachel Arroyo, attended the informal meeting, and claimant participated at the conclusion of the meeting. In a letter to Ms. Arroyo dated

January 30, 2006, VMRC stated its final decision that claimant “does not have Mental Retardation, Cerebral Palsy, Epilepsy, Autism or another condition similar to Mental Retardation, which requires similar services as defined by Title 17, section 54000 of the California Code of Regulations. The letter further stated:

[Claimant’s] case was reviewed. In September 2005 [claimant] was provided a psychological evaluation due to a court order. Results of the psychological evaluation indicate that [claimant] is functioning above the mentally retarded range. [Claimant’s] handicapping condition is the result of a learning disability, which is excluded from regional center eligibility.

Dr. Westcott explained regional center eligibility to you with regard to the difference between a learning disability and a qualifying condition, such as mental retardation, cerebral palsy, epilepsy, autism, or another condition similar to mental retardation.

20. The DSM-IV defines mild mental retardation as an IQ level of 50-55 to approximately 70. The diagnostic criteria for mental retardation are the following:

- A. Significantly subaverage intellectual functioning: an IQ of approximately 70 or below on an individually administered IQ test (for infants, a clinical judgment of significantly subaverage intellectual functioning)
- B. Concurrent deficits or impairments in present adaptive functioning (i.e., the person’s effectiveness in meeting the standards expected for his or her age by his or her cultural group) in at least two of the following areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety.
- C. The onset is before age 18 years.

21. The DSM-IV describes the diagnostic features of learning disorders as follows:

Learning Disorders are diagnosed when the individual’s achievement on individually administered, standardized tests in reading, mathematics, or written expression is substantially below that expected for age, schooling, and level of intelligence. The learning problems significantly interfere with academic achievement or activities of daily living that require reading, mathematical, or writing skills. A variety of statistical approaches can be used to establish that a discrepancy is significant. *Substantially below* is usually defined as a discrepancy of

more than two standard deviations between achievement and IQ. A smaller discrepancy between achievement and IQ (i.e., between 1 and 2 standard deviations) is sometimes used, especially in cases where an individual's performance on an IQ test may have been compromised by an associated disorder in cognitive processing, a comorbid mental disorder or general medical condition, or the individual's ethnic or cultural background. If a sensory deficit is present, the learning difficulties must be in excess of those usually associated with the deficit. Learning Disorders may persist into adulthood.

LEGAL CONCLUSIONS

Applicable Statutes and Regulations

1. Welfare and Institutions Code section 4512, subdivision (a), states:

(a) "Developmental disability" means a disability that originates before an individual attains age 18 years, 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 mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature.
2. Welfare and Institutions Code section 4643.5, subdivision (b), states:

(b) An individual who is determined by any regional center to have a developmental disability shall remain eligible for services from regional centers unless a regional center, following a comprehensive reassessment, concludes that the original determination that the individual has a developmental disability is clearly erroneous.
3. California Code of Regulations, title 17, section 54000, states:

(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.

(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.

Eligibility

4. In order to qualify for regional center services, claimant must have a developmental disability. As set forth in section 4512, subdivision (a), "Developmental disability" includes mental retardation, cerebral palsy, epilepsy, and autism; it also includes disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature. California Code of Regulations, title 17, section 54000, subdivision (c)(2), states specifically that a handicapping condition that is solely a learning disability does not meet the definition of a developmental disability.

5. Claimant was initially made eligible for regional center services by VMRC in 1997 based on a determination by Dr. Wakefield that claimant's IQ score was consistent with mild mental retardation (Findings 6 and 7). Dr. Wakefield did not find that claimant

qualified for regional center services under any other category listed in Welfare and Institutions Code section 4512, subdivision (a), i.e., 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. Dr. Wakefield's evaluation did not reflect that he considered the psychometric testing performed by SUSD, which placed claimant's IQ score in the low-average to borderline range of cognitive functioning (Findings 4 and 6).

6. When claimant's case was reviewed by Dr. Westcott in 2005, he immediately noted the discrepancy between the IQ test scores obtained by Dr. Wakefield in 1997, and those obtained by the Lodi Unified School District in its triennial special education evaluation in 1999. Dr. Westcott ordered a further evaluation of claimant to confirm eligibility for regional center services (Finding 15). The IQ test results obtained by Dr. Herrera in his September 30, 2005 assessment were more consistent with the testing performed in 1999 than they were with the testing in 1997. Dr. Herrera's conclusion, that claimant's level of intellectual functioning was in the low-average range, was amply supported by the test data and information obtained from prior records. Claimant does not meet diagnostic criteria A. of the DSM-IV definition of mental retardation, in that his IQ was above 70 in the testing performed by Mr. Householder in 1999 and by Dr. Herrera in 2005, and was therefore not indicative of significant subaverage intellectual functioning, especially when compared to his performance on adaptive behavior measures (Finding 20).

7. Welfare and Institutions Code section 4643.5, subdivision (b), requires that an individual who was previously determined by a regional center to have a developmental disability shall remain eligible for services from regional centers unless a regional center, following a comprehensive reassessment, concludes that the original determination that the individual has a developmental disability is clearly erroneous. In this case, VMRC's ID team conducted a comprehensive review of the medical evidence in 2005 (Findings 15 and 17); as expressed by Dr. Westcott on the October 10, 2005 Interdisciplinary Eligibility Review form, it was the conclusion of the ID team, in reviewing Dr. Herrera's report, that claimant had been initially approved for services by VMRC based upon an erroneous diagnosis of mental retardation when, in fact, claimant did not have mental retardation (Finding 17). Claimant produced no evidence at hearing to refute the conclusions of Dr. Westcott, and the more recent medical evaluation of Dr. Herrera, which concluded that he does not have mental retardation. Under the circumstances, the basis for the original determination that claimant had a developmental disability was clearly erroneous.

8. Claimant did not introduce any evidence at hearing to establish that he is eligible for regional center services in that he has a disabling condition that is closely related to mental retardation, or which requires treatment similar to that required for individuals with mental retardation. The evidence established that claimant received special education services based on a diagnosis of specific learning disability (Findings 9, 10, and 11). Claimant's most recent test results, in 1999 and 2005, also show a significant discrepancy between estimated cognitive potential and academic achievement (Findings 9, 10, and 16), thereby suggesting that claimant has a learning disability (Finding 21). A learning disability

does not constitute a developmental disability within the meaning of Welfare and Institutions Code section 4512, subdivision (a), and is in fact specifically excluded from the definition of developmental disability under California Code of Regulations, title 17, section 54000, subdivision (c)(2).

Conclusion

9. Claimant produced no evidence at hearing to refute VMRC's contention that he had been erroneously determined to be eligible for regional center services, or to establish that he is developmentally disabled under any of the categories specified in Welfare and Institutions Code section 4512, subdivision (a). Consequently, he is not eligible for regional center services under the criteria set forth in applicable laws and regulations.

ORDER

Claimant Richard S's appeal to continue his eligibility for regional center services is denied. Valley Mountain Regional Center's decision to discontinue claimant's eligibility is affirmed.

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.

Dated: _____

CATHERINE B. FRINK
Administrative Law Judge
Office of Administrative Hearings