Disability Rights California

California's protection & advocacy system
Toll-Free (800) 776-5746

"Fifth Category" Regional Center Eligibility

January 2016, Pub. #5510.01

This memo is to help in establishing regional center eligibility for children (age three years and older) or adults under the "fifth category" of eligibility. We hope you find this information helpful.

Before you read this memo, you should understand the basics of regional center eligibility. You can find that information in the memo "Regional Center Eligibility Appeals," the publication "Regional Center Eligibility Hearing Packet" at http://www.disabilityrightsca.org/pubs/557301.pdf, and Chapter 2 of "Rights Under the Lanterman Act" at http://www.disabilityrightsca.org/pubs/506301Ch02.pdf.

Proving that a person has a developmental disability that fits into the fifth category is just one of several steps to eligibility.

To qualify for regional center services under the fifth category, a person must either have a disability "closely related to" intellectual disability[1] OR "requiring treatment similar to" intellectual disability. The person's disability must also meet the other eligibility requirements found in Welfare and Institutions Code, Section 4512, as discussed in the publications mentioned above. Regional centers and hearing decisions

[1] The term "intellectual disability" replaces the outdated term "mental retardation." Even though many of the decisions and materials discussed in this memo used the term "mental retardation," we will primarily use the currently accepted term, "intellectual disability." "Return to Main Document"

sometimes say that a person has to have a condition that is closely related to intellectual disability AND requires similar treatment to intellectual disability. This is a misinterpretation of the law.

This memo will help you understand how to prove that a person's disability is "closely related to" or requires "treatment similar to" intellectual disability.

The guidance in this memo comes from:

- The Lanterman Act[2];
- Court cases called *Mason*[3] and *Samantha C*[4];
- Office of Administrative Hearings decisions;
- The Diagnostic and Statistical Manual[5] (DSM-5); and
- An Association of Regional Center Agencies (ARCA) publication.[6]

The Diagnostic and Statistical Manual (DSM) defines various disorders, including intellectual disability. Regional centers, administrative law judges, and DDS rely heavily on the DSM. It was updated in 2013. The new version, the DSM-5, differs from the previous version, the DSM-IV-TR.[7] One of the main differences is that the diagnosis, "Mental Retardation" from the DSM-IV-TR has been replaced with the diagnosis, "Intellectual Disability" in the DSM-5, and the criteria have changed

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[2] California Welfare and Institutions Code, Sections 4400 and following. "Return to Main Document"

[3] *Mason v. Office of Administrative Hearings*, 89 Cal.App.4th 1128 (2001). *"Return to Main Document"*

[4] *Samantha C v. DDS* (2010) 185 Cal.App.4th 1462. "Return to Main Document"

[5] Diagnostic and Statistical Manual, fifth edition, American Psychiatric Association. "Return to Main Document"

[6] Association of Regional Center Agencies Guidelines for Determining "5th Category" Eligibility for the California Regional Centers, http://www.arcanet.org/pdfs/5th.category.guidelines.pdf. "Return to Main Document"

[7] Diagnostic and Statistical Manual, fourth edition, Text Revision, American Psychiatric Association. "Return to Main Document"

somewhat as discussed below. The court cases *Mason* and *Samantha C.* were both decided when the DSM-IV-TR was the current edition. *Mason* and *Samantha C.* are important fifth category cases, but it is also important to understand how the DSM has changed, as we describe later in this memo.

Similar to the court cases of *Mason* and *Samantha C*., the administrative hearing decisions and publications discussed in this memo were published before the DSM changed. New cases are being decided all the time. Advocates representing clients in fifth category cases should always research new case law and hearing decisions to see how the law is changing and how the new version of the DSM is impacting judges' decisions. This memo discusses both versions of the DSM, but a person being newly diagnosed with a developmental disability should be evaluated by an expert who uses the DSM-5.

If you have questions or need additional assistance, contact Disability Rights California (800) 776-5746 or your local Office of Clients' Rights Advocacy (800) 390-7032.

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I. "Closely Related to" Intellectual Disability

There are three main requirements for a condition "closely related to," or similar to, intellectual disability:

- Impaired cognitive skills;
- Adaptive deficits; and
- A need for interdisciplinary planning and coordination.

The *Diagnostic and Statistical Manual 5* (DSM-5) requirements for intellectual disability parallel *Mason*'s test for when a disability is similar to intellectual disability. The DSM-5 says that a person with intellectual disability must have deficits in intellectual and adaptive functioning. The DSM-5 also talks about a person with intellectual disability needing support across multiple environments (like school, work, and home), suggesting the need for interdisciplinary planning and coordination.

A. **Mason v. Office of Administrative Hearings**

Mason v. Office of Administrative Hearings is an important case from the California Court of Appeal. The decision held that the claimant did *not* have a developmental disability and was not eligible under the fifth category. The court found that the words "closely related to" and "treatment similar to" in the law are not unconstitutionally vague. The court acknowledged that those terms are "somewhat imprecise" but found that DDS and regional center professionals' "common knowledge and understanding" supply the "required specificity" in deciding who qualifies for eligibility under the fifth category. The court said that great deference should be given to DDS and regional centers in deciding who is eligible.

The court addressed what it means for a condition to be "closely related to" intellectual disability. The court said that the condition must be "substantially similar" to intellectual disability. The condition must have "many of the same, or close to the same" factors that would be used to diagnose intellectual disability. The factors the court emphasized were impaired cognitive skills, adaptive deficits, and a need for

interdisciplinary planning and coordination. As noted by the court, these factors were also required for a diagnosis of mental retardation under the DSM-IV-TR. Remember, the DSM-IV-TR has been replaced by the DSM-5. However, the DSM-5 also requires "deficits in general mental abilities" and "impairment in everyday adaptive functioning" for a diagnosis of intellectual disability.

1. Impaired Cognitive Skills

In *Mason*, the regional center claimed that a person must have an IQ at or below 75 to have a condition similar to intellectual disability. The court appeared to support this position. According to the regional center's psychologists, the claimants full-scale IQ was 78, which is in the "borderline" range. He had some IQ scores ranging from 80 and 89, in the "low average to average range of intelligence." The court deferred to the regional center's experts who determined that the claimant's IQ scores were too high for him to have a condition "closely related" to intellectual disability. The court cited the DSM-IV-TR, which said that the IQ range for mild mental retardation (now called mild intellectual disability) was 50-70, but allowed for a measurement of error of approximately 5 points. Therefore, a person with an IQ between 70 and 75 and significant deficits in adaptive behavior could be diagnosed with intellectual disability.

The *Mason* court also treated clinical evidence of organic brain disorder as important in deciding whether a person has a condition "closely related" to intellectual disability. The court appeared to find that there was not enough evidence of an organic brain disorder in the case. The claimant did not have evidence of testing by a neurologist and the court dismissed the opinion of a psychologist that the claimant had an organic brain disorder because she was not a neurologist.

2. Adaptive Deficits

In *Mason*, the claimant had borderline to low-average adaptive functioning and a full-scale IQ of 78 (borderline range) with some scores

between 80 and 89 (low average to average range). The court deferred to the regional center's judgement that under those circumstances, a person cannot have a condition "closely related to" intellectual disability. It appears that, using the *Mason* court's approach, a person with borderline to low-average adaptive functioning would need an IQ score of 75 or lower to have a condition "closely related" to intellectual disability.

3. Interdisciplinary Planning and Coordination

Mason very briefly touches on the idea that a person with a disability "closely related" to intellectual disability needs interdisciplinary planning and coordination. The case found that the claimant did not meet this requirement because he attended a regular class at school with an individual aide instead of participating in classes or programs designed specifically for people with intellectual disability. The more recent decision in *Samantha C*, discussed below, appears to reject the idea that a person must attend classes or programs with people who have intellectual disability to show a need for interdisciplinary planning and coordination.

B. Samantha C. v. DDS

In *Samantha C. v.* DDS, the California Court of Appeal found that the claimant did have a developmental disability and was eligible for regional center services under the fifth category. The decision was based on the claimant requiring similar treatment to a person with intellectual disability, the second prong of the fifth category, discussed below. However, the court also talked about conditions under which a person would *not*, in the court's opinion, be eligible under the fifth category because of a condition "closely related" to intellectual disability.

1. Impaired Cognitive Skills and Adaptive Deficits

The court found that impaired adaptive functioning alone cannot make a person eligible under the fifth category. There must also be a cognitive element to the person's disability. The claimant had past IQ scores in

the normal range (full-scale IQ of 90), and the court found this meant she did not have a condition "closely related" to intellectual disability.

C. Diagnostic and Statistical Manual

Regional center evaluators use the American Psychological Association's Diagnostic and Statistical Manual when diagnosing developmental disabilities. The current edition of the DSM is the fifth edition or DSM-5, which uses the term, "intellectual disability." The previous edition, the DSM-IV-TR, was in use when *Mason* and *Samantha C.* were decided, and uses the term, "mental retardation."

For a diagnosis of mental retardation, DSM-IV-TR required:

- "Significantly sub-average general intellectual functioning," which is "the essential feature" of mental retardation, and exists when a person has an IQ of 70 or below. Because of the 5 point measurement error on IQ tests, it was "possible to diagnose Mental Retardation in individuals with IQs between 70 and 75."
- "Significant limitation in adaptive functioning 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."
- Onset before 18 years of age.

For a diagnosis of intellectual disability, DSM-5 requires:

- "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."
- Deficits in adaptive functioning that, without support, would "limit the person's 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."

- Onset during the developmental period.

Unlike the DSM-IV-TR, the DSM-5 describes both deficits in mental abilities *and* impairment in adaptive functioning as "essential" features of intellectual disability. DSM-5 says that adaptive functioning, not IQ, determines the level of severity of an individual's intellectual disability. By contrast, the DSM-IV-TR assigned a range of IQ scores to each level of severity. While both versions of the DSM talk about IQ scores for intellectual disability not exceeding 70-75, the DSM-5 appears to de-emphasize this requirement while placing more emphasis on adaptive functioning.

These changes to the DSM are potentially important for people with IQ scores higher than 70 but who have significant deficits in adaptive skills. The new criteria may permit people with slightly higher IQs to be diagnosed with intellectual disability. These people may qualify for regional center services in the intellectual disability category, avoiding the task of proving fifth category eligibility.

It is unclear how the changes to the DSM will impact people who still do not receive a diagnosis of intellectual disability, but who have adaptive deficits. It is possible that decisions about when a disability is "closely related" to intellectual disability will put more emphasis on adaptive functioning and less emphasis on IQ scores.

D. Vineland Adaptive Behavior Scales

The DSM-IV-TR talked about use of the Vineland Adaptive Behavior Scales (VABS) to help determine a person's adaptive deficits. The DSM-5 does not specifically mention the VABS, but does say that adaptive functioning should be measured using both clinical evaluation and "individualized, culturally appropriate, psychometrically sounds measures." Adaptive behavior is a person's typical performance of day-to-day activities. The VABS assesses what a person actually does, not

what he or she is capable of doing. It measures adaptive behavior in four domains: communication, daily living skills, socialization, and motor skills. A composite score summarizes the person's performance across all four domains. The person who knows the individual best, often a parent, is typically interviewed for the VABS. Sometimes teachers and others are also interviewed. The norm is 100 with standard deviations of 15. A score more than two standard deviations below the norm (70 or below) indicates significant impairment.

E. ARCA Guidelines

The Association of Regional Center Agencies (ARCA) has developed guidelines for fifth category eligibility. ARCA represents the 21 regional centers in California. ARCA's board of directors is made up of 21 regional center board delegates and 21 regional center executive directors The ARCA guidelines are based on the DSM-IV-TR. They have not been updated to reflect the new DSM-5.

The ARCA Guidelines regarding conditions "closely related" to intellectual disability are different from the DSM in significant ways. The Guidelines require that a person have adaptive deficits that are not due to psychiatric conditions. By contrast, the DSM-IV-TR did not require a clinician to distinguish between limits to adaptive skills caused by cognitive deficits and those caused by other disorders that may coexist with intellectual disability. The DSM-5, on the other hand, does say that "deficits in adaptive functioning must be directly related" to the person's intellectual impairments. However, the DSM-5 also stresses that it is common for other conditions, including "mental disorders," to co-occur with intellectual disability, at a rate "three to four times higher than in the general population." This strongly suggests that although adaptive deficits must be directly related to cognitive functioning, the presence of other disorders that also impact adaptive functioning should not prevent an intellectual disability diagnosis.

The *Mason* court emphasized deference to regional center professionals who make eligibility determinations. *Mason* did not, however, say that guidelines created by the regional centers' professional organization should receive special deference. The Mason court cited Section 4640 of the Welfare and Institutions Code (WIC) when explaining that the Legislature intended to defer to regional centers. Section 4640 gave the Department of Developmental Services (DDS) authority to develop regulations with input from various stakeholders. The ARCA guidelines are not regulations, have not undergone the formal scrutiny of a regulation, and were not developed by DDS. Section 4663 of the WIC lists types of information a regional center may consider in determining whether an applicant has a developmental disability, but gives the regional centers themselves no special authority to define the eligibility categories.

F. Administrative Hearing Decisions

Unlike the state appellate court decisions in *Mason* and *Samantha C.*, administrative hearing decisions by the Office of Administrative Hearings (OAH) are not binding legal precedent. This means that an administrative law judge in another case does not have to follow them. However, there are OAH decisions that provide helpful guidance in preparing for fifth category eligibility hearings.

You can search OAH's regional center hearing decisions here: http://www.dgs.ca.gov/oah/DDSHearings/DDSDecisions.aspx

Administrative law decisions issued while the DSM-IV-TR was in use appear to allow for a person to have a condition "closely related" to intellectual disability if his or her full-scale IQ falls in the range of 71 to 75, even with some higher scores on IQ subtests.

In *Nicholas V. v. Valley Mountain Regional Center*,[8] the claimant had a full-scale IQ of 72. Because of a subtest score of 94, the Administrative Law Judge (ALJ) agreed with the regional center's evaluator that the full-scale IQ was misleading. The ALJ determined that the claimant did not have intellectual disability. He did, however, have a condition closely related to intellectual disability based on evidence of deficits in learning, communication, attention, and information processing.

The regional center's assessor had determined that Nicholas had only a mixed receptive-expressive language disorder. The assessor had not reviewed all of Nicholas' records and primarily assessed for autism. By contrast, an independent evaluator reviewed all records and did a comprehensive assessment. The independent evaluator concluded that a language disorder alone could not explain all of Nicholas' adaptive deficits. The ALJ agreed that Nicholas' difficulties with verbal and nonverbal attention, speed of information processing, visual perceptual skills, and "list of learning of commonly used words," could not be explained by a language disorder alone.

The ALJ gave great weight to testimony from Nicholas' special education teacher, who had worked with him for three years. She gave specific examples of how Nicholas functioned like a person with intellectual disability. He needed a lot of repetition to learn and he qualified to take an alternate standardized test for students with severe disabilities. He often got lost at school, forgot to show up to baseball practice, and forgot where tools and supplies were stored in the classroom.

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[8] OAH Decision No. 2009090021. "Return to Main Document"

II. "Requires Treatment Similar to" Intellectual Disability

A person who does not qualify for regional center services due to a disability "closely related to" intellectual disability may instead qualify due to a disability found to "require treatment similar to that required for individuals with an intellectual disability." This standard can be found in Welfare and Institutions Code, Section 4512, subdivision (a).

A. Samantha C. v. DDS

Samantha C. is the first court case that talks about when a person qualifies for regional center services under the fifth category because of a condition requiring similar treatment to intellectual disability.

1. Impaired Cognitive Skills

The *Samantha C.* decision confirms that a person who does not have a condition "closely related" to intellectual disability because of an IQ that is too high may nevertheless be eligible because of a disability that requires similar treatment to intellectual disability. Therefore, a person with an IQ above 75 may still qualify under fifth category.

2. Adaptive Deficits and Interdisciplinary Planning and Coordination

The court in *Samantha C.* discussed what it means for a person to need treatment similar to that required by a person with intellectual disability. The court said that "treatment" should be defined broadly and can vary in type depending on a person's level of intellectual and adaptive functioning. The court rejected the regional center's argument that "treatment" only means teaching methods, and pointed out that even amongst those with intellectual disability, different people may benefit from different teaching methods. Instead, the court said that a person must need *types* of treatment similar to those a person with intellectual disability might need, for example, independent living skills training.

Samantha C. lists the following examples of types of treatment:

> (1) self-help and independent living skill training, including cooking, cleaning, money management, and public transportation use; (2) service coordination and management; (3) information and referral services; (4) special education and related services for those under age 21; (4) generic or special social or recreational services; (5) generic or special rehabilitative or vocational training; (6) specialized residential care or supported living services for those not living with family; (7) supported employment; (8) supported or semi-independent living arrangements; (9) day activity program services for those who do not work; (10) mobility training, including transportation education; (11) specialized skill development teaching methods; (12) behavioral training and behavior modification programs; (13) financial oversight, reading, and writing support services; and (14) publications that translate complex information into manageable units.

The *Samantha C.* court acknowledged that a range of treatment and services may count as treatment required by individuals with intellectual disability due to the range of cognitive functioning of individuals. For example, a person with borderline cognitive impairments and an IQ of 75 needs different treatment strategies than a person with mild, moderate, or severe intellectual disability.

B. Mason v. Office of Administrative Hearings

1. Interdisciplinary Planning and Coordination

The *Mason* decision very briefly touched on whether the claimant required treatment similar to a person with intellectual disability. The court found that the claimant was not eligible because he attended a

regular class at school with an individual aide instead of participating in classes or programs designed specifically for people with intellectual disability. As discussed above, the more recent decision in *Samantha C.* takes a very different approach.

C. Diagnostic and Statistical Manual

The DSM-5 talks about the types of treatment or support people with intellectual disability need. Children with mild intellectual disability need support to learn academic skills. Individuals "need some support with complex daily living tasks." Adults need help with "grocery shopping, transportation, home and child-care organization, nutritious food preparation, and banking and money management." "Individuals typically need support to make health care decisions and legal decisions, and to learn to perform a skilled vocation competently. Support is typically needed to raise a family."

People with moderate intellectual disability need "ongoing assistance on a daily basis" to "complete conceptual tasks of day-to-day life." "Caretakers must assist the person with life decisions" and "significant social and communicative support is needed in work settings for success." The person may need an "extended period of teaching" to learn personal care skills, and may continue to need reminders. Individuals need extended teaching and ongoing support to complete household tasks and need significant support to succeed on the job. People with moderate intellectual disability need help with scheduling, transportation, money management, and developing recreational skills.

D. ARCA Guidelines

ARCA's guidelines talk about how to determine whether a person needs treatment similar to a person with intellectual disability. The guidelines give examples of treatment needs ARCA believes are *not* similar to the needs of those with intellectual disability. A need for training to motivate the individual is not associated with intellectual disability, but a need to develop skills is. A need for remedial training due to "socio-cultural

deprivation" is not associated with intellectual disability. So, it is important to show that training is needed because of cognitive deficits, not because of lack of previous opportunity to learn. A need for rehabilitation to recover a skill the person used to have is usually not associated with intellectual disability. A person with intellectual disability is expected to instead need habilitation to learn that skill in the first place. ARCA acknowledges that a person who needs long-term training with steps broken down into small units may be eligible. Keep in mind that the ARCA guidelines are simply guidelines, and are not entitled to special deference, as discussed above.

E. Administrative Hearing Decisions

Most hearing decisions involving fifth category involve assessments of the person before the DSM-5 and thus use the term, "mental retardation" under the DSM-IV-TR. The hearing decisions finding individuals eligible for regional center services under the fifth category because of a need for similar treatment to mental retardation focus on the claimants' adaptive and vocational skills. The decisions rely on the DSM and the ARCA Guidelines.

In *Ebony C. v. South Central Los Angeles Regional Center*,[9] the ALJ focused on vocational and adaptive skills and the treatment the claimant would need.

The claimant was a 15-year-old girl. Her expert testified that she would need "'life-long training' and treatment" in the area of vocational skills. She would also need help with self-care, communication, and social adaptation. She would need treatment in the areas of "imaginative play, problem solving and empathy." The expert testified that these treatment needs were similar to those of a person with mental retardation. The

[9] OAH Case No. 2009091460. "Return to Main Document"

ALJ analyzed whether Ebony had a substantial disability. In doing so, she focused on the Ebony's adaptive deficits. She talked about the Vineland test and Ebony's deficits in communication, self-help, socialization, and economic self-sufficiency.

In *D.R. v. Inland Regional* Center,[10] the ALJ focused on vocational and adaptive skills and the treatment provided. The claimant was a 21-year-old man who applied for regional center services because he needed vocational rehabilitation services. The ALJ found that the claimant functioned in a manner similar to a person with intellectual disability. His full-scale IQ was 73. His performance IQ was 79 and his verbal IQ was 71. His Vineland scores showed that his adaptive skills were "quite poor in all areas." He was unable to communicate effectively, struggled with self-care, and was dependent on his mother for transportation. He was not able to live independently and was not economically self-sufficient.

The ALJ also found that the claimant "require[d] treatment similar" to a person with intellectual disability. The decision echoed the language in the ARCA guidelines. The ALJ discussed "performance based deficits," skill deficits," "require[d] habilitation," "require[d] long term training with steps broken down" and the need for "educational supports." The claimant's expert had difficulty testing D.R. because he had a very hard time performing simple tasks. His grandfather explained that he almost constantly needs tasks broken down. A doctor offered the opinion that he could not do skilled or semi-skilled work due to his "mental impairment." The ALJ found that the claimant needed treatment similar to that required for a person with mental retardation.

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[10] OAH Case No. 2008070064. At the date of this memo, this hearing decision was not available on OAH's website. If you have questions about this decision, please contact Disability Rights California. "Return to Main Document"

III. Exclusions: "Solely" a Learning Disability, Psychiatric Disorder, or Physical Disorder

Please review Disability Rights California's publications about regional center eligibility for more information about disorders that are excluded from regional center eligibility. A developmental disability cannot be solely a learning disability, solely a psychiatric disorder, or solely physical in nature. These exclusions require special attention when preparing for a hearing in a fifth category case because the nature of an applicant's disability is more likely to be in dispute than in other cases.

A. Solely a Learning Disability

"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." This standard can be found in Title 17 of the California Code of Regulations, Section 54000(c)(2).

1. *Samantha C* v. DDS

In *Samantha C.*, the claimant's school district had found her eligible for special education due to a learning disability when she was in kindergarten. However, the court found that she was eligible for regional center services under the fifth category because she required treatment similar to a person with intellectual disability. The school district had diagnosed a learning disability at a time when the claimant was functioning within the "average range of cognitive ability." The court appears to have determined that her deficits were not "solely" due to a learning disability because of her adaptive functioning scores in the range of mild intellectual disability. The case distinguishes between a learning disability, which is related to academic performance, and the need for treatment similar to intellectual disability, which involves the need for "life skills." The court reinforced this distinction when it ruled that "treatment" similar to that required for intellectual disability did not

refer to educational or teaching methods, but rather to types of treatment such as independent living skills.

2. Administrative Hearing Decisions

Reviewing administrative hearing decisions can be helpful to see what evidence supports a finding that a person has a fifth category condition requiring similar treatment to intellectual disability and not "solely" a learning disability.

*Nicholas V. v. Valley Mountain Regional Cente*r is a particularly helpful example. In that case, the ALJ found that the claimant did not solely have a mixed receptive-expressive language disorder. The judge found the expert testimony of a neuropsychologist persuasive. The expert testified that someone with only a language disorder would not have the difficulties the claimant had with verbal and nonverbal attention, speed of information processing, visual-spatial perceptual skills, and "list of learning of commonly used words."[11]

The claimant's expert and the ALJ identified specific types of treatment or instruction Nicholas needed. This reinforced that his disability was not solely a learning disability because a person with only a learning disability would not have needed the same types of treatment. The list also helped to show that Nicholas instead had a disability requiring treatment similar to intellectual disability, as many of the listed strategies would help a person with intellectual disability. The strategies included a consistent daily routine, individual or small group instruction, assignments broken down into small segments, visual and graphic organizers, and providing information in "small bits" with "rehearsal strategies."

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[11] OAH Decision No. 2009090021. "Return to Main Document"

Therefore, one approach to preparing for a hearing to prove that a person does not have "solely" a learning disability is to have an expert identify the person's deficits that are not associated with the learning disability and suggest strategies to treat those deficits that are similar to strategies for people with intellectual disability.

B. Solely a Psychiatric Disorder

A disorder is "solely" psychiatric if "there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder." This standard can be found in Title 17 of the California Code of Regulations, Section 54000(c)(1).

1. Samantha C. v. DDS

Samantha C. helps to distinguish "solely" psychiatric disorders from developmental disabilities that may co-occur with psychiatric disorders. The court found that the claimant's condition was not solely psychiatric because her birth injuries contributed to her adaptive deficits. The claimant's behavior problems before age three also helped to demonstrate that her social adaptive deficits were not caused solely by a psychiatric disorder. Therefore, it appears that evidence of birth injuries or behavior problems at an early age help to show that a person's disability is not "solely psychiatric." Using an expert to review records from birth and childhood is often necessary to show that a problem is developmental in nature and not solely psychiatric.

The court in *Samantha C.* held that "a need for psychological or mental health services does not disqualify a person from fifth category eligibility if the person is otherwise eligible."

C. Solely Physical in Nature

California Welfare and Institutions Code Section 4512(a) excludes "handicapping conditions that are solely physical in nature." Very few

claimants appeal in cases where the regional center claims the person's disability is solely physical.

IV. Conclusion

There are two ways that a person can be eligible for regional center services under the fifth category: Having a disability that is "closely related" to intellectual disability; or having a disability that requires treatment similar to the treatment required by people with intellectual disability.

When deciding whether a disability is closely related to intellectual disability, courts and administrative law judges look for similarities to the diagnostic criteria for intellectual disability in the DSM. The claimant must show that he or she has both cognitive deficits and impaired adaptive functioning. A person with an IQ in the 70-75 range may have a condition closely related to intellectual disability if he or she also has adaptive deficits. The Vineland Adaptive Behavior Scales is an important tool for gathering information about an individual's adaptive deficits.

A person with an IQ score above 75 could be found eligible for regional center services based on having a need for treatment similar to a person with intellectual disability. Courts have defined "treatment" broadly and ruled that treatment can vary based on the severity of a person's disability. A person must show evidence of a cognitive deficit. Evidence of birth injuries or behavior or developmental problems in early childhood may help to demonstrate that a disability is not solely psychiatric.

Disability Rights California is funded by a variety of sources, for a complete list of funders, go to http://www.disabilityrightsca.org/Documents/ListofGrantsAndContracts.html.