

**ASSOCIATION OF REGIONAL CENTER AGENCIES
GUIDELINES FOR DETERMINING “5TH CATEGORY” ELIGIBILITY FOR THE
CALIFORNIA REGIONAL CENTERS**

The California Welfare and Institutions (W&I) Code Section 4512(a) defines a developmental disability as: “...a disability which originates before an individual attains age 18, 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.” The California Code of Regulations (CCR) Title 17 Section 54000 defines “developmental disability” as a disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism or other conditions similar to mental retardation that require treatment similar to that required by individuals with mental retardation. The developmental disability shall: 1) originate before age 18; 2) be likely to continue indefinitely; and 3) constitute a substantial handicap for the individual.

Eligibility for Regional Center services under the 5th category requires a determination as to whether an individual functions in a manner that is similar to that of a person with mental retardation **OR** requires treatment similar to that required by individuals with mental retardation.

A recent appellate court decision clarified that the Legislative intent was not to provide a detailed definition of the 5th category in statute, deferring to the professionals of the Regional Center Eligibility Team to make the decision on eligibility after considering information obtained through the assessment process [Mason v OAH (2001) 89 Cal.App.4th 1119]. This opinion also discusses what information should be considered in determining eligibility in the 5th category.

The local eligibility team should consider the following factors when determining eligibility under the 5th category.

I. Does the individual function in a manner that is similar to that of a person with mental retardation?

Mental retardation is defined in the DSM-IV as “significantly subaverage general intellectual functioning...that is accompanied by significant limitations in adaptive functioning...”

General intellectual functioning is measured by assessment with one or more standardized tests. Significantly sub-average intellectual functioning is defined as an intelligence quotient (IQ) of 70 or below.

An individual can be considered to be functioning in a manner that is similar to a person with mental retardation if:

- A. The general intellectual functioning is in the low borderline range of intelligence (I.Q. scores ranging from 70-74). Factors that the eligibility team should consider include:
1. Cognitive skills as defined in the California Code of Regulations, Title 17, Section 54002: “...the ability of an individual to solve problems with insight, to adapt to new situations, to think abstractly and to profit from experience.”
 2. The higher an individual’s IQ is above 70, then the less similar to a person with mental retardation is the individual likely to appear. For example, an individual with an IQ of 79 is more similar to a person with low average intelligence and more dissimilar to a person with mild mental retardation.
 3. As an individual’s intelligence quotient rises above 70, it becomes increasingly essential for the eligibility team to demonstrate that:
 - a. there are substantial adaptive deficits, and
 - b. such substantial adaptive deficits are clearly related to cognitive limitations.
 4. Occasionally, an individual’s Full Scale IQ is in the low borderline range (IQ 70-74) but there is a significant difference between cognitive skills. For example, the Verbal IQ may be significantly different than the Performance IQ. When the higher of these scores is in the low average range (IQ 85 or above), it is more difficult to describe the individual’s general intellectual functioning as being similar to that of a person with mental retardation. In some cases, these individuals may be considered to function more like persons with learning disabilities than persons with mental retardation.
 5. Borderline intellectual functioning needs to show stability over time. Young children may not yet demonstrate consistent rates and patterns of development. For this reason, eligibility for young children in the 5th category should be viewed with great caution.

- B. In addition to sub-average intellectual functioning the person also must demonstrate significant deficits in *Adaptive* skills including, but not limited to, communication, learning, self-care, mobility, self-direction, capacity for independent living, and economic self-sufficiency. Factors that the eligibility team should consider include:
 - 1. Adaptive behavior deficits as established on the basis of clinical judgments supplemented by formal Adaptive Behavior Scales (e.g., Vineland ABS, AAMR-ABS) when necessary.
 - 2. Adaptive deficits are skill deficits related to intellectual limitations that are expressed by an inability to perform essential tasks within adaptive domains or by an inability to perform those tasks with adequate judgment.
 - 3. Skill deficits are not performance deficits due to factors such as physical limitations, psychiatric conditions, socio-cultural deprivation, poor motivation, substance abuse, or limited experience.

I. Does the person require treatment similar to that required by an individual who has mental retardation?

In determining whether an individual requires “treatment similar to that required for mentally retarded individuals,” the team should consider *the nature of training and intervention* that is most appropriate for the individual who has global cognitive deficits. The eligibility team should consider the following to determine whether the individual requires treatment similar to that required by an individual who has mental retardation.

- A. Individuals demonstrating *performance based deficits* often need treatment to increase motivation rather than training to develop skills.
- B. Individuals with *skill deficits* secondary to socio-cultural deprivation but not secondary to intellectual limitations need short term, remedial training, which is not similar to that required by persons with mental retardation.
- C. Persons requiring *habilitation* may be eligible, but persons primarily requiring *rehabilitation* are not typically eligible as the term rehabilitation implies recovery of previously acquired skills; however, persons requiring rehabilitation may be eligible if the disability is acquired before age 18 and is a result of traumatic brain injury or disease.
- D. Individuals who require *long term training* with steps broken down into small, discrete units taught through repetition may be eligible.

- E. The eligibility team may consider the intensity and type of *educational supports* needed to assist children with learning. Generally, children with mental retardation need more supports, with modifications across many skill areas.

III. Is the individual substantially handicapped based upon the statewide definition of Substantial Disability/Handicapped?

The W&I Code (Section 4512) defines a *Developmental Disability* as a disability which originates before an individual attains age 18, continues, or can be expected to continue, indefinitely, and constitutes a *substantial disability* for that individual.

The CCR Title 17 (Section 54001) defines *substantial handicap* as:

- a) Substantial handicap means a condition which results in major impairment of cognitive and/or social functioning. Moreover, a substantial handicap represents a condition of sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential.
- b) Since an individual’s cognitive and/or social functioning is many-faceted, the existence of a major impairment shall be determined through an assessment which shall address aspects of functioning including, but not limited to:
 - 1) Communication skills;
 - 2) Learning;
 - 3) Self-care;
 - 4) Mobility;
 - 5) Self-direction;
 - 6) Capacity for independent living;
 - 7) Economic self-sufficiency.
- c) The assessment shall be made by a group of Regional Center professionals of differing disciplines and shall include consideration of similar qualification appraisals performed by other interdisciplinary bodies serving the potential consumer. The group shall include as a minimum a program coordinator, a physician, and a psychologist.
- d) The Regional Center professional group shall consult the potential consumer, parents, guardians/ conservators, educators, advocates, and other consumer representatives to the extent that they are willing and available to participate in its deliberation and to the extent that the appropriate consent is obtained.

Regional Centers should use the criteria of three or more limitations in the seven major life activities as used in the federal definition for Developmental Disability. The

determination of substantial handicap for children under 5 years of age should be based upon assessment in five areas of functioning (communication skills; learning; self-care; mobility; and self-direction). For children from 6-18 years of age (and adults ages 18-22 who are in educational programs) the determination should be based upon assessment in six areas of functioning (communication skills; learning; self-care; mobility; self-direction and capacity for independent living).

IV. Did the disability originate before age 18 and is it likely to continue indefinitely?

The eligibility team should provide an opinion regarding the person’s degree of impairment in the adaptive functioning domains, identifying skill deficits due to cognitive limitations and considering performance deficits due to factors such as physical limitations, psychiatric conditions, socio-cultural deprivation, poor motivation, substance abuse, or limited experience. Additional information, such as that obtained by a home visit, school or day program observation, or additional testing may be required to make this determination.

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