

# RIGHTS UNDER THE LANTERMAN ACT

## *Developmental Disabilities*

### Chapter 2

This chapter explains:

- What developmental disabilities are,
- Who is eligible for regional center services, and
- How to show the regional center that you are eligible.



## Chapter 2: Developmental Disabilities

### Table of Contents

1.	What is a developmental disability? .....	2-1
2.	Who can get the regional center to assess them for services? .....	2-2
3.	What else can you tell me about “high-risk” children and parents? .....	2-2
4.	What happens when the child turns three? .....	2-3
5.	How do I apply for regional center services? .....	2-4
6.	How does the regional center decide if my condition is covered by the Lanterman Act? .....	2-5
7.	What is mental retardation? .....	2-6
8.	What is cerebral palsy? .....	2-6
9.	What is autism? .....	2-7
10.	What is epilepsy? .....	2-9
11.	What is the fifth category? .....	2-9
12.	What does the Mason v. Office of Administrative Hearings case say about eligibility under the fifth category? .....	2-10
13.	Who qualifies under the fifth category? .....	2-11
14.	What kinds of treatment do people with mental retardation need? .....	2-12
15.	What information should I give a regional center if I apply under the fifth category? .....	2-13
16.	If other people with the same conditions as me are eligible under the fifth category, will I be eligible too? .....	2-14
17.	My evaluation was done by the regional center psychologist. Should I get another evaluation by a different psychologist? .....	2-15
18.	Am I eligible for regional center services if my condition is closely related to autism, cerebral palsy, or epilepsy? .....	2-15
19.	What does “substantial disability” mean? .....	2-16
20.	How do I prove I have a substantial disability? .....	2-18

21.	Why do I have to prove substantial disability in three major life activity areas, if other clients only had to prove it in one area?.....	2-19
22.	What are “handicapping conditions that are solely physical”? .....	2-19
23.	Am I eligible for regional center services if I have a learning disability and/or a psychiatric disorder? .....	2-20
24.	Can I lose my regional center eligibility? .....	2-22
25.	How long does the regional center take to process my application? .....	2-23
26.	What does the regional center do during this 60–120 day period? .....	2-24
27.	What can I do if the regional center says I am not eligible? .....	2-25
28.	Is there a deadline to appeal? .....	2-26

# Chapter 2

## Developmental Disabilities

*This chapter gives you answers to the most common questions about developmental disabilities. We explain what developmental disabilities are, who is eligible for services at regional centers, and how to show that you are eligible for those services.*

*All of our information is based on a state law called the Lanterman Act. We also give you the exact section of this state law where the information is found. You may have to refer to the law to get the services you need. When you see § 4512(a), for example, it means that information comes from the Lanterman Act, section (§) 4512, part a.*

*If you want to read the Lanterman Act, go to:*

<http://www.dds.ca.gov/Statutes/LantermanAct.cfm>

### 1. What is a developmental disability?

California law defines a *developmental disability* as a disability that starts before age 18, is expected to continue indefinitely, and is a “substantial disability” for that person. (See *Question 19* for more information.)

The developmental disabilities for which you can receive regional center services are: cerebral palsy, epilepsy, autism, mental retardation, and other conditions closely related to mental retardation or that require similar treatment.<sup>1</sup>

On August 11, 2003, the law that defines “substantial disability” was changed to say that the person must also have problems in at least *three* of these areas:

- Communication skills (receptive and expressive language)

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<sup>1</sup> § 4512(a)

- Learning abilities,
- Self-care,
- Mobility,
- Self-direction,
- Independent living skills, and
- Economic self-sufficiency.

If you were eligible for regional center services *before* the law changed on August 11, 2003, the regional center must use the old definition to determine your eligibility now. You do *not* have to prove that you have problems in three of the areas listed above.

## **2. Who can get the regional center to assess them for services?**

These people can apply for regional center services and get an assessment:

- Anyone suspected of having a developmental disability,
- Anyone with a high risk of parenting a baby with a developmental disability, and
- Babies and children under 3 years of age suspected to be at high risk of becoming developmentally disabled. Children in this category are called “high-risk” children.

## **3. What else can you tell me about “high-risk” children and parents?**

Signs of a developmental disability are often easy to spot very early in a child’s life. Health professionals call them developmental “delays.” If your child has a delay, or if you are at high risk of having a child with a developmental disability, it is very important to have an assessment and to get services.

Health professionals who specialize in child development can teach parents and children how to address early delays. For example, parents can learn

about how an infant’s mind and body develops, how to stimulate their child, and to change the diet and vitamins to prevent or treat delays.

High risk babies and children under age 3 and parents with a high risk of having developmentally disabled children can get services from regional centers.<sup>2</sup> Children and parents in this category can get the same services and supports as any other person eligible for regional center services.<sup>3</sup>

However, infants and toddlers who are at high risk of having a developmental disability are no longer eligible for services under the Early Start Program. They will be served under a new prevention program. The eligibility criteria for determining whether an infant or toddler has a developmental delay under the Early Start program has changed. It is now as follows:

For children aged 0-23 months, a significant delay is a 33% delay in one or more areas.

For children aged 24-36 months, a significant delay is 50% in one area or 33% in two or more areas.

The areas of delay are unchanged. They are: cognitive development, physical and motor developmental, communication development, social or emotional development, or adaptive development.

#### **4. What happens when the child turns three?**

When a high-risk child turns three, the regional center will do a new assessment. If the child is “substantially disabled” by one of the conditions listed above, the child can continue receiving regional center services. If not, the child can no longer get regional center services.

If the regional center says your child is no longer eligible, but you do not agree, you can ask for an administrative hearing. (See *Chapter 12.*)

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<sup>2</sup> §§ 4642; 4644

<sup>3</sup> § 4644

Even if the child is no longer eligible for regional center services, she or he may still need special education and other supports. Most children aged 3 and older are in the school system, which will now provide most of the services your child needs. First, the school must complete an Individual Education Plan (IEP), to make sure there is a smooth transition from the regional center to the school system.

To learn more about moving to the school system, ask Disability Rights California or OCRA for Chapter 12 of our *Special Education Rights and Responsibilities*, Publication 5040.01. Or download it from Disability Rights California's web site at:

[www.disabilityrightscalifornia.org/PUBS/504001SpecEdIndex.htm](http://www.disabilityrightscalifornia.org/PUBS/504001SpecEdIndex.htm).

## **5. How do I apply for regional center services?**

There are 21 regional centers in California. Each one covers a specific geographic area. You must apply to the center closest to where you live. To find out which center covers your area, call:

OCRA: **800.390.7032** *Toll free!*

Department of Developmental Services: **(916) 654-1958**

Or go to: [www.dds.ca.gov/rc/rc/rlist.cfm](http://www.dds.ca.gov/rc/rc/rlist.cfm)

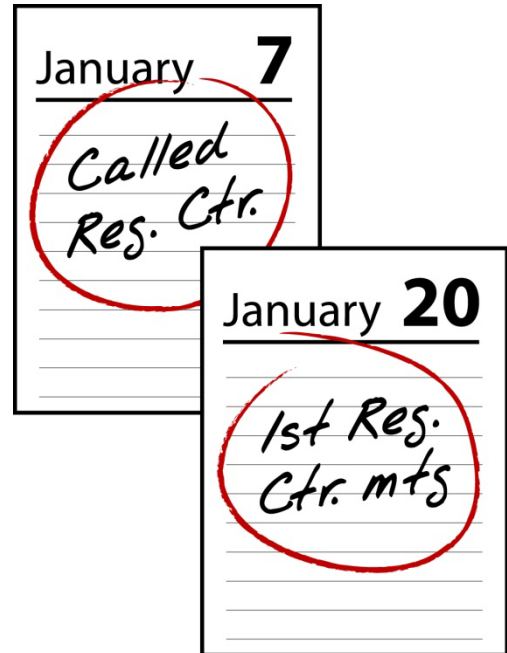
Each regional center has its own application process. They all start out by asking for your home address to make sure you are applying to the right center. Then, they ask you for other personal information and give you an appointment to meet with someone at the regional center.

When you go to this meeting, take this information with you:

- Your school records, medical records, work history, and
- Evaluations, assessments, and any other information that correctly describes your abilities and your disabilities

The regional center will photocopy your documents. They will also ask for your written permission to contact your doctors, schools, employers and others who may have information about you. They cannot get copies of your records without your permission.

**Important!** You should take notes. Write down the date of your first contact and the date of your first meeting with the staff. (This is called the *intake meeting*.) The regional center must tell you if you are eligible within 120 days of your first appointment (or 60 days for more urgent cases).



For more information about the application process, see Chapter 3.

## 6. How does the regional center decide if my condition is covered by the Lanterman Act?

The regional center will do an assessment. They will collect and review your diagnostic information, developmental history, and the services you have received. They may also have a doctor give you tests.

We encourage you and your family to take part in the assessment process. Your participation will help the regional center understand your cultural values, language, religion, education, and the socio-economic and socio-emotional factors that affect you.

All these factors affect you and your evaluation. The regional center must consider your input so that the assessment is thorough and sensitive to your culture, family, and community.

If you do not agree with the assessment, you have a right to ask for a fair hearing.

For more information about assessments, see:

- [www.dds.cahwnet.gov/statutes/LantermanAct\\_toc.cfm](http://www.dds.cahwnet.gov/statutes/LantermanAct_toc.cfm), and
- [www.ddhealthinfo.org](http://www.ddhealthinfo.org)

## **7. What is mental retardation?**

According to the American Psychiatric Association (*Diagnostic and Statistical Manual*, Fourth Edition), a mentally retarded person has:

- Deficits in intellectual and adaptive functioning,
- IQ score of 70 or less (using standardized tests and full-score results), and
- Deficits in three or more of these areas:
  - Communication skills (receptive and expressive language),
  - Learning abilities,
  - Self-care,
  - Mobility,
  - Self-direction,
  - Independent living skills, and
  - Economic self-sufficiency.

People with full-scale IQ scores between 71 and 75 may also be diagnosed as mentally retarded if they have significant deficits in the areas of adaptive behavior listed above.

The opinion of an independent expert may be needed to show that your condition qualifies under this definition.

## **8. What is cerebral palsy?**

Cerebral palsy is a condition that affects the control you have over your own movements. It is caused by developmental problems or damage to the parts of the brain that control movement and posture.

Cerebral palsy most often starts at birth or within the first few years of life. The early signs usually appear before age 3. Babies with cerebral palsy are often slow to reach developmental milestones, such as learning to roll over, sit, crawl, smile, or walk.

Symptoms may change over time, but cerebral palsy is not progressive. This means that in most cases, it does not get worse. If your symptoms seem to be getting worse, the problem may be something besides cerebral palsy.

Symptoms differ from person to person. Generally, they include:

- difficulty with fine motor tasks, such as writing or using scissors,
- difficulty maintaining balance or walking, and
- involuntary movements.

Some people with cerebral palsy may have other medical disorders, including seizures or mental impairment, but cerebral palsy alone does not always cause substantial disability. To qualify for regional center services because of your cerebral palsy, it must be a substantial disability for you.

For more information on cerebral palsy see:

[www.nlm.nih.gov/medlineplus/cerebralpalsy.html](http://www.nlm.nih.gov/medlineplus/cerebralpalsy.html)

## **9. What is autism?**

The most recent definition for autism comes from the *Diagnostic and Statistical Manuals (DSM-IV-TR and DSM for Primary Care, Child and Adolescent Version)*. This definition reflects the recent view that autism is a range of *qualitative* abnormalities. The severity of autism varies from one person to another, but all children with autism have some degree of:

- qualitative impairment in reciprocal social interaction,
- qualitative impairment in communication, and
- restricted, repetitive, and stereotypic patterns of behaviors, interests, and activities.

Autism is classified as one of five *pervasive developmental disorders*, or PDD. The other PDDs are:

- Asperger's disorder,
- Rett syndrome,
- Childhood disintegrative disorder, and
- Pervasive developmental disorder—not otherwise specified, called PDD-NOS.

Diagnosing autism can be difficult for many reasons. This is partly because autism and Asperger's disorder share some common features, such as impaired social interaction and social behaviors. However, unlike someone with autism, someone with Asperger's may **not** have a significant language delay.

Some regional centers and some administrative law judges who decide regional center appeals say that because Asperger's is not the same thing as Autism, it does not make you eligible for regional center services. But some administrative law judges say that "autism" means autistic spectrum disorders, including Asperger's. Those judges say that people with Asperger's qualify for regional center services, if the disorder causes substantial disability. People with Asperger's may have age-appropriate adaptive skills and may not be substantially disabled by the disorder. If so, they do not qualify for regional center services. In some cases, Asperger's disorder may be severe enough to be considered closely related to mental retardation. These cases qualify for regional center services.

Proving that Asperger's is substantially disabling is difficult. It requires a great deal of preparation. If you believe you fall into this category, contact Disability Rights California or OCRA for information. We recommend you get legal consultation or technical assistance in these kinds of cases.

To learn more about autism, autistic spectrum disorder, and pervasive developmental disorders, see:

- <http://pediatrics.aappublications.org/cgi/content/full/107/5/e85>
- [www.ddhealthinfo.org](http://www.ddhealthinfo.org)

## 10. What is epilepsy?

Epilepsy is a neurological condition that makes people susceptible to *seizures*. A seizure is a change in sensation, awareness, or behavior brought about by a brief electrical disturbance in the brain. Seizures vary in intensity. Some cause moments of sensory disruption; others cause short periods of unconsciousness, staring spells, and convulsions.

Some people may have just one kind of seizure. Others have more than one kind. Although they look different, all seizures are caused by the same thing: a sudden change in how the brain cells send electrical signals.

If you have epilepsy, you probably already know that it is *not* a mental disorder. It can be caused by anything that affects the brain, including tumors and strokes. Sometimes epilepsy is inherited. Often, no cause can be found.

Doctors may treat epilepsy with seizure-preventing medicines, surgery, diet, or electrical stimulation. If the treatment is successful and your seizures are under control, you may not be eligible for regional center services.

For more information see:

- [www.ddhealthinfo.org](http://www.ddhealthinfo.org)
- [www.epilepsyfoundation.org](http://www.epilepsyfoundation.org)

## 11. What is the fifth category?

Even if you do not have autism, cerebral palsy, epilepsy, or mental retardation, you may still have an eligible developmental disability if you meet the requirements of the “fifth category.”

The fifth category is really two categories. You are eligible for regional center services under the fifth category if you can prove that *either*:

- You have a condition “closely related” to mental retardation, or

- You require treatment “similar to” treatment for mental retardation.

Unfortunately, the law does not define the terms “closely related to” or “similar to” mental retardation, nor does it say what types of conditions might fall under the fifth category. Because the law is so unclear, some regional centers are reluctant to find people eligible under the fifth category. Fifth category eligibility cases are also the hardest to win on appeal.

## **12. What does the *Mason v. Office of Administrative Hearings* case say about eligibility under the fifth category?**

In *Mason v. Office of Administrative Hearings*, the California Court of Appeal talked about the definition of fifth category eligibility.<sup>4</sup> The details of the case are not as important as the way the opinion discusses what information should be considered in determining fifth category eligibility.

The Court decided that: “[t]he fifth category condition must be very similar to mental retardation, with many of the same, or close to the same, factors required in classifying a person as mentally retarded.”<sup>5</sup>

Based on the Court’s decision in *Mason*, regional centers and administrative law judges deciding fifth category eligibility have considered:

1. The following definitions found in Lanterman Act regulations:

- *Cognitive skill* – the ability of an individual to solve problems with insight, to adapt to new situations, to think abstractly, and to benefit from experience.<sup>6</sup>
- *Substantial handicap* – a major impairment of cognitive and/or social functioning that requires interdisciplinary planning and coordination of special or generic services to help the individual reach his/her maximum potential. There must also be significant functional limitations in three or

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<sup>4</sup> 89 Cal.App.4th 1119 (2001)

<sup>5</sup> *Mason* at 1129

<sup>6</sup> Cal. Code Regs., tit. 17, § 54002

more of the following areas of major life activities: communication, learning, self-care, mobility, self-direction, capacity for independent living, and economic self-sufficiency.<sup>7</sup>

2. The Association of Regional Center Agencies (ARCA) “Guidelines for Determining 5th Category’ Eligibility for the California Regional Centers,” found at: [www.arcanet.org/pdfs/5th.category.guidelines.pdf](http://www.arcanet.org/pdfs/5th.category.guidelines.pdf).

If you believe you qualify under the fifth category, consider the guidelines and definitions above. And, read Questions 13, 14, and 15 below. This information will help you prepare your case.

### **13. Who qualifies under the fifth category?**

People with a “condition closely related to mental retardation” who qualify under the fifth category do not fit into the usual definition of mental retardation. For example, someone may have an IQ that is too high to qualify for mental retardation (above 70-75), but still may **function** like someone with mental retardation because his or her thinking (cognitive ability) is substantially impaired.

Regional centers and administrative law judges *may* consider you eligible if you also have significant deficits in *adaptive* skills. If your IQ is above 70, it is very important to get a test of your adaptive skills, including:

- Communication skills (receptive and expressive language),
- Learning abilities,
- Self-care,
- Mobility,
- Self-direction,
- Independent living skills, and

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<sup>7</sup> Cal. Code Regs., tit. 17, § 54001(a)

- Economic self-sufficiency.

Supplement F lists some characteristics that are common for people with mental retardation. It is not a complete list, nor is it a substitute for diagnostic criteria used by psychologists. The list may help you think about whether a particular condition might fit under the fifth category as “closely related” to mental retardation.

It is important to keep in mind that some people have some characteristics of mental retardation *without* having a condition that is closely related to mental retardation. For example, you may have a learning disability or psychiatric disability with similar characteristics.

#### **14. What kinds of treatment do people with mental retardation need?**

If the treatment you need is similar to what people with mental retardation need, you may be eligible for regional center services under the fifth category.

The law does not specify what the treatment needs of people with mental retardation are. In our experience, people with mental retardation generally learn new skills slowly, and may need things such as:

- the break down of complex tasks into simpler tasks and/or steps;
- learning by constant repetition;
- the presentation of information in a concrete rather than abstract way; and
- the regular reinforcement of gained knowledge to avoid knowledge loss.

Supplement G lists some treatment needs that are common for people with mental retardation. It is not a complete list, nor is it a substitute for diagnostic criteria used by psychologists. And, some people may have treatment needs that are similar to those of people with mental retardation *without* having a condition that is closely related to mental retardation. For example, you may have a learning disability or psychiatric disability with similar treatment needs.

If you are in the fifth category, you will have to prove to a regional center or an administrative law judge that you need treatment similar to what people with mental retardation need.

Keep in mind that it is **not** enough to show that you can *benefit* from regional center services. You must show you *need* regional center services to lead a more independent and productive life.

We suggest you:

- Use Supplement G to help you think about whether or not your condition fits under the fifth category of eligibility, based on treatment needs.
- Find a psychologist or other professional who works closely with people with mental retardation. Ask that person to describe your treatment needs and compare them to the treatment needs of people with mental retardation.
- Make a list of your treatment needs, and ask other people who know you and work with you to provide evidence of your treatment needs.

The regional center or administrative law judge will consider the evaluations and opinions of psychologists and other professionals, the opinions of the people who know you best and/or work with you, and your treatment history, including school, employment, and other program records.

### **15. What information should I give a regional center if I apply under the fifth category?**

No matter which category you apply under, turn in *every* document that you think helps prove your diagnosis or condition. The regional center needs as much information as possible that shows your diagnosis or condition, or describes your abilities and your needs, including:

- All psychological evaluations that show your conditions and diagnosis.

- The results of any adaptive skills (daily living skills) testing. This is very important! (Most psychologists can test your adaptive skills at the same time they do the evaluation.)
- Medical records, school records, your work history, Social Security records, and any other documents that show your diagnosis.
- Other documents that describe you and/or your skills, like your work skills, the way you do things at home, and any other skills that show your condition.
- Letters from family members and neighbors that describe their observations of you.

School records may be very helpful if the school district has done its own psychological evaluations. Individual Education Plans (IEPs) show your disability-related school needs. Keep in mind that school evaluations may not be as thorough as other psychological evaluations. Schools often use different standards to determine disabilities and/or test for specific reasons that do not require an overall diagnosis. Schools may not use the same tests as an independent psychologist who is trying to find your overall diagnosis or condition.

The regional center may ask you to sign releases to allow them to gather your records from other agencies. You should sign the releases, but we recommend that **you** collect the documents and give copies to the regional center. Do not depend on the regional center to do this for you.

**16. If other people with the same conditions as me are eligible under the fifth category, will I be eligible too?**

Not necessarily. Regional center eligibility is individualized because disabilities are individualized. Even if you have the exact same diagnosis as someone who is already a regional center client, you should not count on being eligible.

The regional center will look at how your disability affects *you*. You may be affected differently than others with the same diagnosis. How you are affected may depend on: early intervention services you may have had, help you may have received at school, and any other supportive services that helped you learn skills.

**17. My evaluation was done by the regional center psychologist. Should I get another evaluation by a different psychologist?**

First, wait to find out if the regional center's psychologist says that you qualify for regional center services. If he or she says you do **not** qualify, and you still want regional center services, then you should get an independent evaluation.

Psychological evaluations and diagnoses are not an exact science. To make a diagnosis, psychologists must interpret the information they find from the tests they administer. Different psychologists may interpret the same information differently. If possible, get another evaluation. Find an independent psychologist who can evaluate you. In our experience, independent assessors may be more balanced in their evaluations.

If the regional center says you are not eligible and you want to appeal, keep in mind that they will refer to their psychologist's evaluation and opinions at the hearing. They may also have the psychologist at the hearing to support his or her opinions. You will need someone who is independent of the regional center to give you and the hearing officer a more objective assessment and opinion about your condition.

**18. Am I eligible for regional center services if my condition is closely related to autism, cerebral palsy, or epilepsy?**

No. The five eligible categories are:

- autism,
- epilepsy,
- cerebral palsy,

- mental retardation, or
- a condition closely related to *mental retardation*.

The last category only includes conditions closely related to or treated similarly to mental retardation. Conditions that are closely related to autism, cerebral palsy, or epilepsy are **not** eligible.

## 19. What does “substantial disability” mean?

The law says you must have one of the five eligible conditions listed above, **and** your condition must be a *substantial disability* for you. (*Lanterman Act § 4512(a)*).

Department of Developmental Services regulations define a *substantial disability* as “a major impairment of cognitive and/or social functioning.”<sup>8</sup>

This means you can show that you are substantially disabled by a major impairment of *either*:

- Your cognitive functioning (your thinking, your intellect), or
- Your social functioning (how you relate to others).

You do not have to prove both.

Many people with autism, for example, have significant problems interacting socially. They may not have problems with their thinking and they may even score high on intelligence testing. But, if they prove that their social skills are significantly impaired by autism, they may be eligible for regional center services.

According to the law, substantially disabling conditions require “interdisciplinary planning” and the “coordination of services” to help you “reach your maximum potential.”<sup>9</sup>

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<sup>8</sup> Cal. Code Regs., tit., 17, § 54001

<sup>9</sup> Cal. Code Regs., tit. 17, § 54001(a)

We think “interdisciplinary planning” means that you need the services of many different people such as teachers, psychiatrists, psychologists, medical doctors, social workers, and rehabilitation counselors. You do not have to show that you need all of these, but you do have to show that you need help from several different kinds of professionals, working together.

“Coordination of services” means that because you need a wide variety of services, you also need someone to make sure all of these services work together to help you. The agency that can coordinate the services you need may be the regional center.

The law says you should use interdisciplinary planning and coordination of services to “reach your maximum potential.” This means your plan and services should help you be the most that you can be — not just a little better than you are now. Service coordination and life planning can help you reach your long-term life goals and dreams. Think of what you really want to do with your life and what help you need to do it. List the help you need in your IPP.

You may also show you have a substantial disability by showing you need “case management services.” Case management services means having someone to help you get what you need.

For example, you may need help to:

- get services from other agencies, like Social Security, school, hospitals, and therapists.
- find somewhere to live,
- make sure you are safe,
- keep track of your money, and
- take care of your personal needs.

These kinds of services are called lifetime case management services. If you need this kind of help, you may need service coordination and

interdisciplinary planning. This helps prove that you have a substantial disability that qualifies for regional center services.

## **20. How do I prove I have a substantial disability?**

Use any document you have that correctly describes your diagnosis, condition, and/or your skills. Many people use their psychological evaluations to show their diagnosis and to show *how* they are substantially disabled.

To determine if you have a “substantial disability,” your evaluation must consider a wide range of your skills, including at least your:

- communication skills (receptive and expressive language),
- learning abilities,
- self-care,
- mobility,
- self-direction,
- independent living skills, and
- economic self-sufficiency.

To prove a substantial disability, you must show that you have significant problems in at least **three** of the major life activities listed above. Several tests used by psychologists are available to assess your abilities in these seven areas and in other daily activities.<sup>10</sup>

The law says that your skills in these key areas should be evaluated in a way that is appropriate for your age. For example, if a child does not have a job to support himself, it does not necessarily mean that he is substantially disabled in the area of economic self-sufficiency. However, the child, or his family could argue that the child’s condition and skills in other areas show whether the child is likely to have economic self-sufficiency as an adult.

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<sup>10</sup> Cal. Code Regs., tit. 17, § 54001.

## **21. Why do I have to prove substantial disability in three major life activity areas, if other clients only had to prove it in one area?**

The California Legislature changed the law on “substantial disability” on August 11, 2003.

*Before* August 11, 2003, you only needed to prove that you had a substantial disability in **one** of these key areas:

- communication skills (receptive and expressive language),
- learning abilities,
- self-care,
- mobility,
- self-direction,
- independent living skills, and
- economic self-sufficiency.

*Since* August 11, 2003, you must prove that you have a substantial disability in at least **three** of these key areas.

If you were a regional center client before the law changed on August 11, 2003, and the regional center now reviews your eligibility, it must still use the old standard used when you were made a regional center client. If you apply now, however, the new standard of showing problems in three major life activity areas applies.<sup>11</sup>

## **22. What are “handicapping conditions that are solely physical”?**

The Lanterman Act says that people with “handicapping conditions that are solely physical” are **not** eligible for regional center services.<sup>12</sup>

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<sup>11</sup> § 4512(l)

<sup>12</sup> § 4512(a)

The law does not give an exact definition of “handicapping conditions that are solely physical.” We think it means a condition that affects only your physical abilities, without affecting your thinking or problem solving abilities.<sup>13</sup> For example, if you have an injury or a condition that you were born with, which only affects you physically, you would not be eligible.

People with cerebral palsy may have only physical disabilities, but they are eligible because the California Legislature wrote the law to include cerebral palsy as an eligible condition.

### **23. Am I eligible for regional center services if I have a learning disability and/or a psychiatric disorder?**

Maybe. If you have a learning disability or a psychiatric disability (or both), *and* a disability from one of the five eligible categories (autism, epilepsy, cerebral palsy, mental retardation, or a condition closely related to mental retardation), **you are eligible** for regional center services.

Even if you have more than one disability, you are still eligible as long as one of your disabilities is in one of these five categories:

- autism,
- epilepsy,
- cerebral palsy,
- mental retardation, or
- a condition closely related to *mental retardation*.

If you have a learning disability or a psychiatric disability, but do *not also* have a disability from one of the five categories above, you will **not be eligible** for regional center services.

DDS regulations say that “solely” learning disabilities and “solely” psychiatric disorders – that is, these disabilities *on their own* – are **not** developmental

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<sup>13</sup> Cal. Code Regs., tit. 17, § 54000(c)(3)

disabilities.<sup>14</sup> Disability Rights California does not agree with DDS because the Lanterman Act does not mention these exclusions. Disability Rights California believes that DDS does not have the authority to limit regional center eligibility beyond what the California Legislature intended. But for now, the DDS interpretation is considered legal.

If a regional center denies eligibility based on the DDS regulations, keep this information in mind:

- DDS regulations only exclude people whose disabilities are “solely” (only) learning disabilities or psychiatric disorders. A person with a learning disability and/or a psychiatric disability may also have a developmental disability. For example, you may have a psychiatric disability *and* mental retardation. A regional center cannot deny you eligibility if one of your disabilities is an eligible condition.
- Even if a regional center says your condition is “primarily” due to a learning disability or a psychiatric disorder, you may still have a developmental disability. DDS exclusionary regulations apply *only* if your handicapping condition is “solely” the result of your learning disability or psychiatric disorder.
- According to DDS regulations, a learning disability refers to *educational* performance that is significantly below a person’s estimated cognitive potential. A disability that affects *more than* educational performance is, therefore, not *solely* a learning disability.
- If you have a psychiatric disability, the regional center may say that any impairment or poor intellectual testing is due to your psychiatric disability. But, this is not necessarily true. You may have impaired social or intellectual functioning that is *not* the result of that psychiatric disability. A psychologist (or other expert) can test you to see if your intellectual and/or

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<sup>14</sup> Cal. Code Regs., tit. 17, § 54000(c)(1), (2)

social skills are impaired because of a psychiatric disorder or a developmental disability.

## 24. Can I lose my regional center eligibility?

In most cases, eligibility for regional center services lasts your whole life. Even if you move to a different part of California and change regional centers, you are still eligible. (Each regional center covers a different part of the state.)<sup>15</sup>

But sometimes, a regional center may challenge your eligibility. If your regional center tells you that you are no longer eligible, you should appeal. The law says that the only way a regional center can take away your eligibility is to do a “comprehensive reassessment” and prove that its original eligibility decision was “clearly erroneous.”<sup>16</sup>

It will be difficult for the regional center to prove its decision was “clearly erroneous.” So it will be difficult for it to prove you are ineligible. They are not allowed to just say they *think* you are no longer disabled – they must *prove* their original decision was very obviously wrong.

If the regional center challenges your eligibility, we recommend that you:

- **Contact Disability Rights California or OCRA.** We may not be able to be your lawyer, but we can help you with your appeal. We can explain what “clearly erroneous” means. We can also help you prepare for your appeal and suggest how to present your case at a hearing.
- **Get an independent evaluation** from a qualified psychologist or psychiatrist.

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<sup>15</sup> § 4643.5. See Chapter 3, questions 19–21 for information on transferring to a new regional center.

<sup>16</sup> § 4643.5(b)

**You might lose your eligibility if your condition improves on its own or with medication.** If your disability improves greatly, the regional center may say that you are no longer substantially impaired by the disorder.

For example, if you have epilepsy and your seizures are completely controlled for several years, the regional center may argue that you are no longer developmentally disabled.

But the regional center must still do a “comprehensive reassessment” and prove that its original eligibility decision was “clearly erroneous.” Even if your condition has greatly improved, the regional center may not be able to find you ineligible. You can argue that while you may not have significant impairments *now*, you are not sure if that will change in the future.

If you believe that your disability does not disable you now, you may want to see if the regional center will make your case inactive. People with inactive cases are eligible for regional center services if needed in the future.

**Children can lose their eligibility when they turn 3 years old.** When a child turns three, a regional center can reassess the child to see if he or she has a developmental disability. In these cases, the regional center does **not** have to prove their original eligibility decision was “clearly erroneous.”

Children who do not meet the eligibility requirements can no longer get regular regional center services. But, if the reassessment shows a developmental delay or a risk of becoming developmentally disabled, the child can get regional center services through an “early start” or “early intervention” program.

If you disagree with the results of the child’s reassessment, you can appeal.

For more information on regional center services for young children, see:

- Chapter 6, Question 7 of this publication, and
- Chapter 12 of Disability Rights California’s manual, Special Education Rights and Responsibilities.

## **25. How long does the regional center take to process my application?**

In most cases, the regional center has **120** days after the *initial intake* to decide if you are eligible.<sup>17</sup>

**Tip:**  
*Write down the date of your initial intake.*

This is when you first meet with someone from the regional center, sign release authorizations, and make it clear that you are applying for regional center services. Ask the regional center staff if they agree that this is your initial intake.

But sometimes the regional center must decide within **60 days** of the initial intake. This happens when:

- A delay would expose you to unnecessary risk to your health and safety, or to significant further delay in your mental or physical development, or
- There is an imminent risk that you would be placed in a more restrictive environment, for example being moved from your family home to a developmental center or other health facility.<sup>18</sup>

## **26. What does the regional center do during this 60–120 day period?**

The regional center may do its own assessments, review any assessments you give them or authorize them to get, and interview you and other people who know you well.

Then, the regional center writes a report about all of the information it has collected. They will send you a letter to let you know if you are eligible or not.

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<sup>17</sup> § 4643(a). The current law says that as of July 1, 2006, the assessment must be done within 60 days after the intake. But if unusual circumstances make it difficult to complete it within 60 days, the regional center can have 30 days more if they get written approval from DDS. The 120-day deadline has been in place since 2002, and the Legislature may continue the 120-day deadline in future years.

<sup>18</sup> § 4643(a)

If you are eligible, you can ask the regional center for a date for your first Individual Program Plan (IPP) meeting. Your first Plan must be completed within **60 days of the completion of the assessment.**<sup>19</sup> (See Chapter 4.)

If you are **not** eligible, you can appeal the decision. (See below. Also see the information in Chapter 12.)

## 27. What can I do if the regional center says I am not eligible?

You can “appeal” the regional center’s decision. An appeal is when you ask a judge or hearing officer to consider your application again.

Appeals are very complicated. You and your health providers will have to present detailed information about your disability. And you must understand the laws for your case, and the deadlines.

We recommend that you do these things:

- **Contact Disability Rights California.**  
We may not be able to be your lawyer, but we can help you with your appeal. We can explain what you need to do and suggest the best way to present your case.
- **Get a *psychological evaluation*** from a qualified psychologist or psychiatrist.
- **Get a *neuropsychological evaluation*** if you believe you have mental retardation or a closely related condition. The neuropsychological evaluation is different from the psychological evaluation. It uses more tests. These tests give more information about how you think about things and how you process information. You can use that information to prove you have mental retardation or a condition closely related to mental retardation.

**Tip:**

*Find a psychologist who can do both evaluations **and** go to your hearing to talk about your disability.*

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<sup>19</sup> § 4646 (c)

- **Make copies** of your school records, results of other psychological testing, and any other documents that correctly describe or list your abilities and your disabilities.

Even if you already gave the regional center this information when you applied, you must make another set of copies of any document that supports your case.

## **28. Is there a deadline to appeal?**

Yes. There is a strict deadline to appeal the decision. If you are applying for the first time, the deadline is 30 days after the date when the regional center tells you in writing that you are not eligible. If you miss the deadline, you lose your chance to appeal. (*See Chapter 12.*)

***Important!*** It's best to count 30 days after the date **on** the letter that says you are not eligible — not the date you actually *receive* the letter.