

What is a developmental disability?

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

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. 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.

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)
- 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.

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.” 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).

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.” “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.

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. 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.

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 major life activity 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.

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: New DSM V - Autism Spectrum Disorder (ASD) now encompasses the previous DSM-IV autistic disorder (autism), Asperger's disorder, childhood disintegrative disorder, and pervasive developmental disorder not otherwise specified. ASD is characterized by **1) deficits in social communication and social interaction and 2) restricted repetitive behaviors, interests, and activities (RRBs)**. Because both components are required for diagnosis of ASD, social communication disorder is diagnosed if no RRBs are present.
- 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 disabilities. 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 social skills are impaired because of a psychiatric disorder or a developmental disability.

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). 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.” 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, it is recommended that you:

Contact Disability Rights California or OCRA (800)776-5746. They may not be able to be your attorney, but they can help you with your appeal. They can explain what “clearly erroneous” means. They 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.

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.