

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

E.F.,

Claimant,

vs.

SAN DIEGO REGIONAL CENTER,

Service Agency.

OAH No. 2012050515

DECISION

This matter came on regularly for hearing before Administrative Law Judge Roy W. Hewitt, Office of Administrative Hearings, at San Diego California on June 5, 2012.

The San Diego Regional Center (agency) was represented by Ronald R. House, Esq. Claimant was represented by his mother.

Oral and documentary evidence was received and the matter was submitted on June 5, 2012.

ISSUE

Is the agency required to provide claimant with 430 hours per month of nursing services?

FACTUAL FINDINGS

1. Claimant is a 22-year-old male who qualifies for agency services based on a diagnosis of profound mental retardation. Claimant is non-verbal and non-ambulatory. Claimant needs constant care at a "Licensed Vocational Nurse (LVN) level."

2. In 2010, claimant requested nursing services from the agency. The agency denied claimant's request and an administrative hearing ensued. The Administrative Law Judge (ALJ) who heard that matter ruled that the agency is not required to fund nursing services for consumers. Consequently, the ALJ issued the following order: "Claimant's request that SDRC fund nursing services is denied." (See Exh. 4, *In the Matter of: Evan F.*, OAH No. 2010090851, ALJ Mary Agnes Matyszewski) Accordingly, claimant's current attempt to relitigate that same issue is precluded.

LEGAL CONCLUSION

In *Lucido v. Superior Court* (1990) 51 Cal.3d 335, at 342-344, the California Supreme Court set forth the doctrine of issue preclusion. According to the court, the doctrine of issue preclusion "precludes relitigation of issues argued and decided in prior proceedings," when six criteria are met. These criteria are: (1) "The issue sought to be precluded from relitigation must be identical to that decided in a former proceeding;" (2) the issue to be precluded "must have been actually litigated in the former proceeding;" (3) the issue to be precluded "must have been necessarily decided in the former proceeding;" (4) "the decision in the former proceeding must be final and on the merits;" (5) "the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding;" and (6) application of issue preclusion must be consistent with the public policies of "preservation of the integrity of the judicial system, promotion of judicial economy, and protection of litigants from harassment by vexatious litigation." Application of those criteria to the instant case results in claimant being precluded from relitigating the exact issue litigated and decided in the 2010 administrative action: "Should SDRC fund claimant's nursing services . . . ?"

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Claimant's appeal is denied. The agency is not required to fund nursing services.

DATED: June 5, 2012

ROY W. HEWITT

Administrative Law Judge

Office of Administrative Hearings

Note: This is a final administrative decision pursuant to Welfare and Institutions Code section 4712.5(b)(2). Both parties are bound hereby. Either party may appeal this decision to a court of competent jurisdiction within 90 days.