

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

ADRIAN N.,

Claimant,

OAH No. 2012040990

and

THE INLAND REGIONAL CENTER,

Service Agency.

DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on June 21, 2012.

The Inland Regional Center (IRC) was represented by Leigh-Ann Pierce, Consumer Services Representative, Fair Hearings and Legal Appeals.

Adrian N. (claimant) was present and was represented by his mother, Margarita O.

Oral and documentary evidence was received and the matter was submitted on June 21, 2012.

ISSUE

Is the agency required to provide claimant with day care services?

FACTUAL FINDINGS

1. Claimant is a 23-year-old male who qualifies for agency services based on diagnoses of profound mental retardation, Angelman's Syndrome, epilepsy and cerebral

palsy. In addition to other services, claimant receives 272.9 hours per month of In Home Supportive Services (IHSS), 45.03 per week of which is for protective supervision.

2. In 2010, claimant requested day care services from the agency. The agency denied claimant's request and an administrative hearing ensued. The Office of Administrative Hearings (OAH) issued an order denying that request and affirming the agency's decision not to fund day care services. Consequently, OAH issued the following order: "Claimant's request for IRC to continue funding day care service is denied pursuant to Welfare and Institutions Code section 4686.5, subdivision (a)(4)." (See Exh. 10, *In the Matter of: Adrian N.*, OAH Nos. 2009100333, 2009100903.) Accordingly, claimant's current attempt to relitigate that same issue is precluded.

LEGAL CONCLUSIONS

1. 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 IRC fund claimant's day care service . . . ?"

2. Alternatively, even if the issue had not already been litigated, claimant's request would still be denied because Welfare and Institutions Code section 4646, subdivision (a), requires regional centers to utilize generic resources for services. Claimant's IHSS hours qualify as a generic resource able to fund the day care claimant seeks. Although claimant argued that the 45.03 weekly hours for protective supervision was insufficient given claimant's needs, nothing in the Lanterman Act requires IRC to fund services 24 hours per day.

ORDER

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

DATED: June 25, 2012

MARY AGNES MATYSZEWSKI
Administrative Law Judge
Office of Administrative Hearings

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within ninety days.