

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

DONNA PRESTON,

Claimant,

vs.

REGIONAL CENTER OF ORANGE COUNTY,

Service Agency.

OAH Case No. 2012100704

A Proceeding under the Lanterman
Developmental Disabilities Services
Act

DECISION

This matter came before Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, for a fair hearing on December 4, 2012, in Costa Mesa. Claimant Donna Preston and her father and conservator, Joseph G. Preston, were present and represented by John M. Ebner, Attorney at Law. Respondent Regional Center of Orange County (Service Agency) was represented by Christina M. Petteruto, Attorney at Law. The Service Agency's Fair Hearing Coordinator, Paula Noden, was also present.

At the outset of the fair hearing, the Administrative Law Judge indicated that the fair hearing would be bifurcated with the first part of the fair hearing dedicated to a hearing on the Service Agency's Motion to Dismiss. If the motion was denied, then the fair hearing would proceed to the second part which would be an evidentiary hearing on the Fair Hearing Request. Thereupon, the Service Agency presented Exhibits 1 – 13 and oral argument on its Motion to Dismiss. Immediately thereafter, claimant presented a hearing transcript before the Superior Court and oral argument. Both parties presented rebuttal arguments. The parties' oral arguments coincided with their written arguments. The hearing on the Motion to Dismiss was then concluded.¹

After a short recess, the Administrative Law Judge reconvened the fair hearing and made a ruling on the Service Agency's Motion to Dismiss, granting the motion. The fair hearing was then adjourned. The following is the formal Decision and Order on the Motion to Dismiss and Fair Hearing Request.

Documentary evidence having been received and argument heard, the Administrative Law Judge submitted this matter for decision on December 4, 2012, and finds as follows:²

¹ On his own motion, the Administrative Law Judge marks the Service Agency's Motion to Dismiss as Exhibit 14, claimant's Opposition to Motion to Dismiss as Exhibit A, the Service Agency's Response as Exhibit 15, and the Superior Court hearing transcript presented by claimant as Exhibit B. The parties' exhibits were deemed admitted into evidence pursuant to Welfare and Institutions Code section 4712, subdivision (i).

² For this Decision and Order, the Administrative Law Judge relied upon the Motion to Dismiss, claimant's Opposition, the Service Agency's Response, and Exhibits 7 – 9 and B.

FACTUIAL FINDINGS

1. Claimant Donna Preston is a developmentally disabled person who is a consumer of the Regional Center of Orange County. She is a conserved adult. Her conservator is her father, Joseph G. Preston, and her co-conservators are Dennis Wells and Alexine Wells.

2. On or about October 13, 1989, claimant was committed to the Fairview Developmental Center, a state hospital or developmental center within the definition of Health and Safety Code section 1502. Claimant has been resident at the state hospital for the past 23 years.

3. (A) On or about October 17, 2011, Vu Tran, Deputy Public Defender, Office of the Orange County Public Defender (Tran), submitted a Request for Release with the Fairview Developmental Center under Welfare and Institutions Code section 4800, subdivision (a), requesting the release of claimant from the state hospital. Tran wrote that the request for release was received from claimant on September 28, 2011.

(B) Deputy Public Defender Tran is not a staff member or employee of the Fairview Developmental Center or the Service Agency. No staff member of the Fairview Developmental Center or employee of the Service Agency, and none of claimant's conservators', signed the Request for Release.³

³ Welfare and Institutions Code section 4800, subdivision (a), provides that every adult committed to a state hospital as a developmentally disabled patient has the right to a hearing by writ of habeas corpus for her release from the state hospital after she or any person acting on her behalf makes a request for release to any state member of the state hospital or to an employee of a regional center. Subdivision (b) provides that the staff member or regional center employee to whom a request for release is made shall promptly provide the person making the request for release for his or her signature or mark on a copy of the form set forth

4. On October 17, 2011, Deputy Public Defender Tran filed a Petition for Writ of Habeas Corpus in the Superior Court, County of Orange. In the petition, Tran represented that claimant was being unlawfully restrained of liberty or illegally confined at the Fairview Developmental Center and was entitled to be released or to have an evidentiary hearing for release. Tran requested, in part, that the Superior Court issue a Writ of Habeas Corpus to the director of the state hospital and order the release of claimant from restraint.

5. On October 19, 2011, Fairview Developmental Center forwarded the Request for Release to the Orange County Superior Court for judicial review under Welfare and Institutions Code section 4800, subdivision (b). Fairview Developmental Center asked that, when the evidentiary hearing was scheduled, notice be given to persons required by law and as set forth on a service list.

6. On January 31 and February 7, an evidentiary hearing was held on the Writ of Habeas Corpus before Superior Court Judge Caryl A. Lee at the Betty Lamoreaux Justice Center, County of Orange.

7. (A) On April 3, 2012, in the *Matter of Donna Preston, Petitioner, and the Orange County Regional Center, Real Party in Interest*, Case No. 30-2011-00515903, Superior Court Judge Lee (also the court) issued an Order Requiring Placement of Petitioner over Objection of the Conservator.

(B) Superior Court Judge Lee ordered that the Service Agency be allowed to take whatever steps are necessary to place petitioner, or claimant, in a community placement with Independent Options. The court found that the Fairview Developmental Center is no longer the least restrictive placement for claimant. The

in subdivision (c) The staff member or regional center employee is then required to fill in his or her own name and deliver the completed form to the medical director of the state hospital.

court acknowledged that claimant's conservators have objected to the community placement but ordered the placement over their objections.

(C) Superior Court Judge Lee further ordered that the placement of claimant proceed subject to the following conditions: the community placement must first be attempted in available housing across from the Fairview Developmental Center, community placement must be coordinated with the Fairview Developmental Center to ensure claimant continues to have visits with her sibling who resides at the state hospital at the same frequency, and the community placement staff must coordinate with the Fairview Developmental Center to allow claimant to continue attending activities at the state hospital to the extent allowed by Fairview Developmental Center.

8. The parties have a status conference or hearing before the Superior Court in January 2013 to review the progress or the status of claimant's community placement under the Order Requiring Placement of Petitioner over Objection of the Conservator.

9. Claimant's conservator and co-conservators continue to object to the release of claimant from the Fairview Developmental Center and her placement in the community. The conservator and co-conservators prefer that claimant continue to reside at the Fairview Developmental Center.

10. Neither claimant nor her conservators appealed the Superior Court's Order Requiring Placement of Petitioner over Objection of the Conservator.

11. On October 5, 2012, claimant by her conservator filed a Fair Hearing Request. The stated reason for requesting a fair hearing was that claimant is seeking a determination whether community placement is in her best interests. As for what is needed to resolve her complaint, claimant stated on the Fair Hearing Request that she seeks "termination of current placement procedures."

12. On October 16, 2012, the Service Agency filed the Fair Hearing Request with the Office of Administrative Hearings and requested that the matter be set for a hearing under the Lanterman Developmental Disabilities Services Act (Lanterman Act). On October 26, 2012, the matter was scheduled for a fair hearing for December 4, 2012. A Notice of Hearing was served upon the parties. This matter ensued.

13. On November 6, 2012, the Service Agency filed a Motion to Dismiss. On November 28, 2012, the Presiding Administrative Law Judge of OAH issued an Order Setting Briefing Schedule on Motion to Dismiss. On December 3, 2012, claimant filed an Opposition to Motion to Dismiss. On the same date, the Service Agency filed a Response to Claimant's Opposition to Motion to Dismiss. On December 4, 2012, a hearing was held on the Service Agency's Motion to Dismiss.

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following Conclusions of Law:

LEGAL CONCLUSIONS

1. Grounds exist to grant the Motion to Dismiss based on Welfare and Institutions Code sections 4710 and 4710.5, in that jurisdiction does not exist to consider claimant's Fair Hearing Request to review and cease the community placement order issued by the Superior Court, based on Findings 1 – 13 above.⁴

First, under the Lanterman Act, section 4710, subdivision (a), provides, in pertinent part, that a Service Agency must give adequate notice to a recipient and her authorized representative if the Service Agency makes a decision without the mutual consent of the recipient or her authorized representative to change services set forth in an Individual Program Plan.⁵ Adequate notice is defined as certified

⁴ All further section references are to the Welfare and Institutions Code.

⁵ Recipient means a person with a developmental disability who is eligible

mail at least 30 days prior to the service agency's decision.

Section 4710.5, subdivision (a), further provides, in pertinent part, that a recipient of services, or her authorized representative, who is dissatisfied with any decision or action of the Service Agency, which the recipient believes to be illegal, discriminatory, or not in the recipient's best interests, shall be afforded an opportunity for a fair hearing. The request for a fair hearing must be filed within 30 days after notification of the decision or action complained of.

In this matter, claimant through her conservator filed her Fair Hearing Request in order to complain about and stop her release from Fairview Developmental Center and her placement in the community. However, the decision to release claimant from the state hospital and to place her in the community was not made by the Service Agency. The Service Agency did not make a decision or take action to propose or to initiate a change in claimant's placement. The Service Agency did not issue or publish a notice that ordered or proposed changing claimant's placement.

Rather, it was the Deputy Public Defender who filed the Request for Release which precipitated a judicial proceeding. Thereupon, the Superior Court conducted a judicial review of a Request for Release under section 4800 and a Petition for Writ of Habeas Corpus under section 4801 and determined that claimant should be released from the state hospital and placed in the community. The Superior Court found that placement at Fairview Developmental Center is no longer the least restrictive setting for claimant. The Superior Court then ordered and notified claimant of the decision to release her and place her in the community by issuance of the Order Requiring Placement of Petitioner over Objection of the Conservator.

In the absence of a decision or action by the Service Agency, jurisdiction

for and receives services from a service agency. (§ 4703.5.)

cannot be said to exist under section 4710.5 for claimant to file a Fair Hearing Request or to consider a review and/or reversal of the judicial order for her release and community placement in this administrative proceeding under the Lanterman Act.

Here, claimant's reliance on the case of *Conservatorship of Whitley* (2007) 155 Cal.App.4th 1447, to argue that jurisdiction exists for the present fair hearing request is misplaced, for the facts in the *Whitley* case differ from the instant matter. In *Whitley*, the Court of Appeal, First Appellate District, determined that the proper jurisdiction or forum to challenge the community placement of a developmentally disabled resident at the Sonoma State Hospital was an administrative fair hearing under the Lanterman Act, rather the Superior Court. Unlike the present matter, the resident's interdisciplinary planning team, which included one or more representatives from the regional center, made a decision to place him in the community. The resident's conservator requested judicial review of the community placement decision under the process prescribed by the *Richard S.* federal settlement case but, concurrently, the conservator filed a fair hearing request under the Lanterman Act. The Superior Court first held a hearing on the issue of resident's community placement and made a ruling affirming the decision of the interdisciplinary planning team to move the resident to a community placement. In reversing the ruling of the Superior Court, the *Whitley* court held that the exclusive remedy to challenge the decision of the interdisciplinary planning team to place the resident in the community was the administrative fair hearing process under the Lanterman Act. In other words, the guidance provided by the Court of Appeal in the *Whitley* case does not apply to the instant matter where neither the Service Agency nor claimant's individual program planning team made a decision to change her placement and the Superior Court properly had jurisdiction to review the Request for Release and Writ for Habeas Corpus under provisions of the

Lanternman Act.

Second, even if jurisdiction were assumed to exist in this matter, the consideration of claimant's Fair Hearing Request is barred by the doctrines of res judicata and collateral estoppel, which doctrines are well established in the law. The doctrine of res judicata gives conclusive effect to a former judgment in subsequent litigation involving the same controversy whereas the doctrine of collateral estoppel gives conclusive effect to issues actually litigated between the parties in the former action. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1244.) The elements for applying the doctrines of res judicata and collateral estoppel are that the claim or issue raised in the present action is identical to a claim or issue litigated in a prior proceeding, the prior proceeding resulted in a final judgment on the merits, and the party against whom the doctrines are being asserted was a party or in privity with a party to the prior proceeding. (*Brinton v. Bankers Pension Services, Inc.* (1999) 76 Cal.App. 4th 550, 556.)

In this matter, claimant seeks to litigate and/or review claimant's release and placement in the community, which issue was already litigated in the judicial hearing on the Petition for Writ of Habeas Corpus before the Superior Court earlier this year. The Superior Court reached a final judgment on this issue by ordering claimant's release and community placement. Claimant as the petitioner and the Service Agency as the real party in interest were parties to the Superior Court proceeding and are parties in this administrative matter. Accordingly, the elements exist in this matter to apply the doctrines of res judicata and collateral estoppel to bar claimant from re-litigating the issue of her release from Fairview Developmental Center and concomitant community placement in this administrative matter.

Third, under sections 4800 and 4801, the merits of a request for release of a patient from a state hospital pursuant to a petition for writ of habeas corpus are subject to judicial review in the Superior Court. Regarding claimant's assertion that

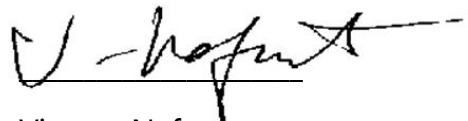
the Superior Court did not consider the best interests of claimant in ordering her release and community placement, it goes without saying that an administrative hearing under the Lanterman Act is hardly the proper forum to review the judgment of the Superior Court

Wherefore, the following Order is hereby made:

ORDER

1. The Motion to Dismiss filed by the Regional Center of Orange County is granted.
2. The Fair Hearing Request filed on behalf of claimant Donna Preston is dismissed with prejudice.

Dated: December 14, 2012

A handwritten signature in black ink, appearing to read 'V. Nafarrete', with a horizontal line drawn underneath the signature.

Vincent Nafarrete

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision. Both parties are bound by this decision and either party may appeal this decision to a court of competent jurisdiction within ninety (90) days.