

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

RONALD F.,

Claimant,

vs.

NORTH LOS ANGELES COUNTY REGIONAL
CENTER,

Service Agency.

OAH CASE No. 2013030488

DECISION

This matter came on regularly for hearing on Service Agency's motion to dismiss before Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, on November 14, 2013, in Van Nuys, California.

Thomas Beltran, Attorney at Law, represented Claimant.

Dan Dick, Attorney at Law, and Ruth Janka, Contract Administrator, represented Service Agency.

Documentary evidence and oral argument was received at the hearing. The record was left open for Claimant's counsel to present legal argument regarding a case cited by Service Agency for the first time at the hearing. On November 26, 2013, Claimant submitted a "Supplemental Briefing Re: The Nature of Doctrinal Change," which document has been marked as Exhibit C. The matter was submitted for decision on November 26, 2013.

PROCEDURAL HISTORY AND ISSUE

On March 7, 2013, Claimant filed a fair hearing request seeking eligibility for services under the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code¹ section 4500 et seq. Service Agency filed a motion to dismiss the appeal on grounds that the issue of Claimant's eligibility had already been decided twice and that further litigation of the issue was barred by the doctrine of collateral estoppel. On November 5, 2013, Presiding Administrative Law Judge Susan L. Formaker ordered bifurcation of the hearing on Claimant's eligibility pending a ruling on the dispositive motion to dismiss.

FACTUAL FINDINGS

1. Claimant is a 43-year-old man, who suffered a head injury when he was 14 years old.

2. a. On February 18, 1992, the issue of Claimant's eligibility for regional center services came before Administrative Law Judge Spencer Joe. At the time, Claimant was seeking services from Westside Regional Center. In his Decision, Judge Joe found that there was evidence of seizure-like activity, but concluded that the evidence did not establish that such condition was substantially handicapping. Judge Joe found no evidence that Claimant was autistic or that he had cerebral palsy, and concluded that Claimant was not mentally retarded.

b. Judge Joe wrote the following "Determination of Issue": "Claimant does not have an eligible condition for regional center services as required under . . . section 4512(a).

¹ All further statutory references are to the Welfare and Institutions Code.

He is not mentally retarded, autistic, cerebral palsied, or with a seizure disorder or epilepsy. Although the evidence establishes that [C]laimant's functioning has been significantly impaired as a result of his brain injury and frontal lobe dysfunction, this does not establish that this condition is similar to or closely related to mental retardation. The evidence, under careful review, describes [C]laimant's difficulties as behavioral and impulse control. He requires a highly structured behavior-oriented residential brain injury rehabilitation treatment. This is not similar treatment provided to individuals with mental retardation." (Exh. B, at p. 8.)

3. On January 5, 1993, in case number 35016904, the Superior Court of the State of California, by Judge Robert H. O'Brien, entered a judgment denying Claimant's Petition for Peremptory Writ of Administrative Mandamus and upholding Judge Joe's decision. In its Statement of Decision, the Court stated: "2. The court finds that using its independent judgment, the decision of the Office of Administrative Hearings of March 15, 1992, was supported by Findings I – XI, which support the conclusion that [Claimant] was not mentally retarded, did not have a condition similar to mental retardation, did not require treatment similar to that required by individuals with mental retardation, did not have a seizure disorder or a seizure-like disorder which was substantially handicapping, did not have cerebral palsy, and was not autistic. [¶]. . . [¶] 4. The weight of the evidence does not establish that [Claimant] has an eligible condition for Regional Center services" (Exh. B., at p. 23.) Claimant did not appeal Judge O'Brien's decision.

4. a. On September 15, 1997, December 18, 1997, May 5 and 6, 1998, Claimant and Westside Regional Center appeared before Administrative Law Judge H. Stuart Waxman. The issues were: "1. Are the issues raised in this matter barred by the doctrine of res judicata? [¶] 2. If the issues raised in this matter are not barred by the doctrine of res judicata, does the [C]laimant have a developmental disability entitling him

to Regional Center services?" (Exh. 1, at p. 17.)

b. Judge Waxman concluded that the action was barred by the doctrine of *res judicata*. Judge Waxman found that Claimant did not have any new evidence, except for cumulative reports. He also wrote: "Further, since Claimant was already over the age of 18 years at the time Judge O'Brien issued his ruling affirming Judge Joe's Decision, once Judge O'Brien's ruling became a final judgment, Claimant could not thereafter become developmentally disabled, as defined by . . . section 4512(a). Therefore, unlike a situation involving a younger claimant, in which several evaluations may occur until the maximum age of eligibility has passed, the only way Claimant could establish eligibility would be for the same parties to re-try the same issues heard by Judge Joe." (Exh. 1, at p. 20.). Judge Waxman rejected several legal arguments brought by Claimant, including that changed facts or legal rights precluded application of *res judicata*.

c. Judge Waxman further concluded that even if the issues raised in the matter before him were not barred by the doctrine of *res judicata*, Claimant did not establish that he had a developmental disability entitling him to regional center services. In Judge Waxman's opinion, Claimant's expert reports were cumulative and were not persuasive.

LEGAL CONCLUSIONS

1. In order to be eligible to receive services from a regional center, a claimant must have a developmental disability, which is defined as "a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental

retardation or to require treatment similar to that required for individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature.” (§ 4512, subd. (a).)

2. Section 4512, subdivision (a), requires that the disability “constitutes a substantial disability for that individual.” Substantial disability is defined in California Code of Regulations (CCR), title 17, section 54001, subdivision (a) as: “(1) A condition which results in major impairment of cognitive and/or social functioning, representing sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential; and (2) The existence of significant functional limitations, as determined by the regional center, in three or more of the following areas of major life activity, as appropriate to the person's age: (A) Receptive and expressive language; (B) Learning; (C) Self-care; (D) Mobility; (E) Self-direction; (F) Capacity for independent living; (G) Economic self-sufficiency.”

3. Service Agency seeks to dismiss Claimant’s Fair Hearing Request because the matter of his eligibility has been determined against him on two prior occasions and relies on the legal principles of *res judicata* and collateral estoppel. The California Supreme Court has described the related doctrines of collateral estoppel and *res judicata* as follows: “As generally understood, ‘[t]he doctrine of *res judicata* gives certain *conclusive effect* to a *former judgment* in subsequent litigation involving the same controversy.’ (7 Witkin, Cal. Procedure (4th ed. 1997) Judgment, §280, p. 820.) The doctrine ‘has a double aspect.’ (*Todhunter v. Smith* (1934) 219 Cal. 690, 695.) ‘In its primary aspect,’ commonly known as claim preclusion, it ‘operates as a bar to the maintenance of a second suit between the same parties on the same cause of action. [Citation.]’ (*Clark v. Leshner* (1956) 46 Cal.2d 874, 880.) ‘In its secondary aspect,’ commonly known as collateral estoppel, ‘[t]he prior judgment . . . operates’ in a ‘second suit . . . based on a different cause of action . . . as an

estoppel or conclusive adjudication as to the issues in the second action as were litigated and determined in the first action. [Citation.]' (*Ibid.*) 'The prerequisite elements for applying the doctrine to either an entire cause of action or one or more issues are the same: (1) A claim or issue raised in the present action is identical to a claim or issue litigated in a prior proceeding; (2) the prior proceeding resulted in a final judgment on the merits; and (3) the party against whom the doctrine is being asserted was a party or in privity with a party to the prior proceedings. [Citations.]' (*Brinton v. Bankers Pension Services, Inc.* (1999) 76 Cal.App.4th 556.)" (*People v. Barragan* (2004) 32 Cal.4th 236, 252-253.) Decisions resulting from administrative hearings can have preclusive effect. (*People v. Sims* (1982) 32 Cal.3d 468.)

4. Courts have held that collateral estoppel cannot bar relitigation where there has been a change in law or circumstances, as the issues litigated in the first action would not be the same ones arising in the second action because of the changes. (See. e.g., *California Hosp. Assn v. Maxwell-Jolly* (2010) 188 Cal.App.4th 559, 572 [the pertinent provision of law in the prior case was no longer applicable to the situation before the court]; *United States Golf Assn. v. Arroyo Software Corp.* (1999) 69 Cal.App.4th 607, 617-618 [the prior issue was decided under the law of another state]; *Powers v. Floersheim* (1967) 256 Cal.App.2d 223, 230 [the statute under which the prior action was filed was substantially changed after the former action concluded].

5. All elements of collateral estoppel have been met in this matter. The issue of Claimant's eligibility was litigated before Judges Joe and Waxman, and, with respect to the decision by Judge Joe, also before Judge O'Brien. The same operative law governed the two prior decisions. In each instance, a decision on the merits became final. Claimant was a party in each case. Therefore, Claimant may not relitigate the issue of eligibility absent changed circumstances.

6. Claimant argues that identity of issues does not exist because there has been a change in the law caused by the appellate decision in *Samantha C. v. State Dept. of Developmental Services* (2010) 185 Cal.App.4th 1462 (*Samantha C.*) In that case, the Appellate Court reversed the trial court's ruling that Samantha was not eligible for regional center services. Eligibility was found on the basis that Samantha required "treatment similar to that required for individuals with mental retardation" under section 4512, subdivision (a), despite the fact that her intelligence was higher than typically associated with mental retardation. In reaching its conclusion, the Court construed the term "treatment" found in section 4512, subdivision (a), to refer to the types of treatment not to the methods employed in providing the treatment in question. The Court found that Samantha required several of the services described in section 4512, subdivision (b), including help with cooking, public transportation, money management, rehabilitative and vocational training, independent living skills training, specialized teaching and skill development approaches, and supported employment services, just like individuals with mental retardation required.

7. Claimant argues that the *Samantha C.* Court's interpretation of the term "treatment," constitutes a doctrinal change, or a change in the prevailing view or understanding of the law, that makes the issue to be determined different than the one already determined. Citing *Multi Denominational Ministry of Cannabis and Rastafari, Inc.* (207) 474 F.Supp.2d 1133, 1143, *Johnson v. Glaxosmithkline, Inc.* (2008) 166 Cal.App.4th 1497, 1515, and *CIR v. Sunnen* (1948) 333 U.S. 591, 600, Claimant states that these courts have used terms such as "the shifting of the legal terrain," "a change in the legal landscape," and "a change in the legal atmosphere" to characterize doctrinal changes. As an example of such a doctrinal change, Claimant cites the "last overt act" doctrine first enunciated in *Schessler v. Keck* (1954) 125 Cal.App.2d 827, which clarified when the statute of limitations begins to run in cases involving conspiracies. As these references, including

the “last overt act” doctrine example, make clear, there must be some recognition or acceptance of the new principle before it can be deemed a doctrinal change. In fact, in *Wyatt v. Union Mortgage Co.* (1979) 24 Cal.3d 773, 787, a case also cited by Claimant, the Supreme Court signaled its approval by referring to the “consistent line of cases that have applied the ‘last overt act’ doctrine to civil conspiracies.” Claimant has not established that the *Samantha C.* Court’s interpretation of the term “treatment” constitutes a doctrinal change. Even if the Court’s construction of the plain language of a statute first enacted in 1977 is considered new and different, there is no indication that such interpretation has caused a shift in the legal terrain. On the contrary, Claimant has cited no decision in which a court has followed *Samantha C.*

8. Citing *Lucido v. Superior Court* (1990) 51 Cal.3d 335, 339 (*Lucido*), Claimant also argues that that consideration must be given to whether application of collateral estoppel serves the fundamental principles underlying the doctrine. He argues that the Lanterman Act is a remedial statute and that efforts to show that Claimant falls within the definition of developmentally disabled should not be frustrated.

In *Lucido*, the Supreme Court declined to apply *res judicata* to preclude relitigation in criminal court of whether the defendant had committed a crime despite the fact that he was found not to have done so in a probation revocation hearing. The Court held that the public policies underlying collateral estoppel, namely, preservation of the integrity of the judicial system, promotion of judicial economy, and protection of litigants from harassment by vexatious litigation, would not be served by strict application of *res judicata*. However, the Court arrived at its holding chiefly by examining the differences between the two proceedings and the impact on the policies behind *res judicata* in barring proceedings before the criminal court. Inasmuch as the same proceedings before the Office of Administrative Hearings are involved, the factors that led the Court to decline to apply *res*

judicata in *Lucido* are not present here. Rather, precluding a third hearing regarding Claimant's eligibility in the existing circumstances serves the fundamental principles underlying the *res judicata* doctrine set forth by the Supreme Court in *Lucido*.

9. By reason of the foregoing, Claimant is precluded from relitigating the issue of his eligibility for services under the Lanterman Act, and Service Agency's motion to dismiss is granted.

ORDER

Service Agency's motion to dismiss Claimant's Fair Hearing Request is granted and the appeal is denied.

Dated: December 12, 2013

_____/s/____

SAMUEL D. REYES

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter and both parties are bound by this Decision. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.