

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

Claimant

v.

ALTA CALIFORNIA REGIONAL CENTER, Service Agency

OAH No. 2020120579

DECISION

Administrative Law Judge (ALJ) Ed Washington, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on January 27, 2021, from Sacramento, California.

Claimant appeared telephonically and represented himself.

Robin Black, Legal Services Manager, represented Alta California Regional Center (ACRC or service agency).

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on January 27, 2021.

ISSUE

Was ACRC's refusal to reconsider claimant's eligibility to receive regional center services and supports, based on a qualifying condition of autism spectrum disorder (ASD) pursuant to Welfare and Institutions Code section 4512, without the benefit of new information or documentation about his condition justified?

FACTUAL FINDINGS

Background

1. Claimant is a 70-year-old man who referred himself to ACRC for an eligibility determination based on an asserted diagnosis of ASD. He is a non-conserved adult who, as of December 2019, lived independently in an apartment, with In-Home Support Services support provided by his daughter.

2. Claimant has applied for eligibility for regional center services on multiple occasions. In April 2002, claimant referred himself to ACRC for an eligibility determination based on Tourette Syndrome and Asperger Syndrome. ACRC conducted a Social Assessment of claimant, and referred him to a clinical psychologist for a psychological evaluation. Thereafter, based on all the information provided, the ACRC Eligibility Team met and determined that claimant did not meet the eligibility criteria for regional center services because he did not have ASD, intellectual disability, or a condition similar to intellectual disability that required treatment similar to that required by individuals with an intellectual disability. And, there was no evidence claimant suffered a developmental disability constituting a substantial handicap prior

to age 18. ACRC issued a Notice of Proposed Action informing claimant of the ineligibility determination.

3. In June 2019, claimant again applied for regional center services on the basis of ASD, citing social communication concerns and behavioral difficulties. The ACRC conducted another social assessment, interviewed claimant's family members, reviewed medical correspondence and reports provided by claimant, and reviewed the social assessment and psychological evaluation obtained pursuant to claimant's 2002 application for regional center services and supports.

4. On October 7, 2019, the ACRC Eligibility Team determined claimant was not eligible for regional center services because the evidence presented did not establish that claimant was substantially disabled in at least three areas of major life activity due to ASD prior to age 18. In addition, there was no evidence that prior to age 18 claimant had substantially disabling cerebral palsy, epilepsy, intellectual disability or a disabling condition closely related to intellectual disability or which requires treatment similar to that required for intellectually disabled individuals.

5. On October 9, 2019, ACRC issued a Notice of Proposed Action informing claimant of the ineligibility determination and also advising claimant of his right to appeal the decision and request a fair hearing before an administrative law judge with OAH. Claimant timely appealed the ACRC's decision and requested a fair hearing.

6. On December 6, 2019, in the matter of Claimant v. ACRC, Case No. 2019100968, a fair hearing was held before ALJ Tiffany L. King, pursuant to claimant's request. On December 19, 2019, ALJ King issued a decision denying claimant's appeal of ACRC's determination in which she expressly found that claimant was not eligible

for regional center services under the Lanterman Act. The final page of the decision includes the following notification:

NOTICE

**This is the final administrative decision in this matter.
Each party is bound by this decision. An appeal from the
decision must be made to a court of competent
jurisdiction within 90 days of receipt of the decision.
(Welf. & Inst. Code, § 4712.5, subd. (a).)**

(Bolding and capitalization in original.)

7. Claimant was served with ALJ King's decision by certified mail on December 19, 2019. He did not appeal from ALJ King's decision within 90 days of receipt of the decision.

8. On November 1, 2020, claimant called ACRC's Intake Department to again apply for regional center supports and services. Claimant left a message stating he had a letter from his psychiatrist that stated he had ASD. An intake packet was mailed to claimant, based on his request.

9. On or about November 12, 2020, ACRC received claimant's most recent intake information form. On that form, claimant specified that his current diagnoses included ASD, Tourette Syndrome, and hemochromatosis.¹ He produced no letter from a psychiatrist regarding an ASD diagnosis nor any other medical documentation with his intake form.

¹ Overabundance of iron.

10. Intake Manager Jyoti Sharma reviewed the November 2020 intake form submitted by claimant. She noted in claimant's case file that claimant had already been deemed ineligible for regional center services, that he was informed of that decision on or about November 7, 2019, and that the information considered by the eligibility team included all the information and records possessed by ACRC. Ms. Sharma assigned service coordinator Edward Loveridge for follow up with claimant.

11. On November 18, 2020, Mr. Loveridge called claimant and informed him that ACRC had previously determined that he was not substantially disabled by ASD, based on the information they obtained, and that ALJ King agreed with their determination at hearing. Mr. Loveridge told claimant that he would need to provide new evidence not previously submitted to ACRC to have his request for eligibility reconsidered. Mr. Loveridge advised claimant that simply asserting he has ASD is not sufficient to warrant reconsideration without materials to support that assertion, such as doctor reports, medical notes, psychological reports, teacher reports, school records, and family interviews. Mr. Loveridge informed claimant that he was not being denied eligibility again, but that the determination had already been made by ACRC and affirmed by ALJ King, and that he would need to submit new information to re-apply for eligibility.

12. On December 9, 2020, ACRC received a completed Fair Hearing Request form from complainant and this hearing followed. On the form, claimant specified that he requested a fair hearing for the following reasons:

I was denied in 2019 and 2020. Alta Regional is confused about my diagnosis of Autism and first they said I had no developmental disability and then they said I don't have Autism and recently said I do but it's not substantially

disabling. They fail to recognize Tourette's as a developmental disability.

13. As a resolution, claimant specified that he is seeking "[p]ermanent eligibility and \$1,500 for discriminatory violation of Title 3 of the ADA and the California Unruh [Civil Rights] Act."

14. On December 16, 2020, ACRC filed a Motion to Dismiss Fair Hearing. ACRC argued that the fair hearing should be dismissed because ALJ King had already issued a final decision regarding claimant's eligibility, which was not timely appealed to a court of competent jurisdiction, and claimant had provided no new information or documentation to support regional center eligibility.

15. On January 4, 2021, claimant filed an opposition to ACRC's motion to dismiss. Attached to claimant's opposition is a letter, dated December 14, 2020, from Tyson Ray Adams, D.O., which contains the following information, in total:

To whom it may concern,

[Claimant] has had autism since childhood which has substantially disabled him in the areas of self-care, learning and mobility. He has difficulty with hygiene, reading comprehension and can not [*sic*] drive.

ACRC's motion to dismiss was denied January 6, 2021.

Testimony of Cynthia Root

16. Cynthia Root, PhD., has been a licensed psychologist since 2008. She has been employed as a staff psychologist at ACRC for 12 years. She holds a bachelor's

degree in Communication from Michigan State University, a master's degree in Marriage and Family Therapy from CSU San Francisco, and a doctorate in Clinical Psychology from The California School of Professional Psychology at Alliant University.

17. Dr. Root sits on the ACRC Eligibility Review Team, consults with vendor psychologists, consults with intake staff, and conducts assessments for developmental disabilities. She has experience with performing and interpreting psychological assessments, including for ASD, results of ASD diagnostic schedules, and differential diagnoses. Dr. Root was a member of the Eligibility Review Team for claimant's 2019 request for eligibility and testified during the related appeal hearing.

18. Dr. Root testified that to be considered as having a developmental disability one would have to have a diagnosis of an intellectual disability, ASD, cerebral palsy, epilepsy or a disabling condition found to be closely related to intellectual disability or requiring treatment similar to that required for individuals with an intellectual disability, which causes the claimant to be substantially disabled in at least three areas of major life activity, which had an onset prior to age 18 and is expected to continue indefinitely. Dr. Root testified that a diagnosis of Tourette syndrome or Tourette disorder is not, in and of itself, considered a regional center eligible condition.

19. To prepare for hearing, Dr. Root reviewed the December 14, 2020 letter from Dr. Adams that claimant provided to ACRC on January 5, 2021. She found that the letter lacked foundation for the conclusions described in the letter, and for that reason did not find the information "particularly compelling to shed light on his condition or impact of his condition prior to [his reaching] age 18." Dr. Root determined that the letter was not sufficient to constitute new information to warrant bringing claimant through intake and again to review his eligibility. She noted that the

letter does not constitute evidence that claimant met the criteria for a diagnosis of ASD prior to age 18, does not constitute evidence that he was substantially disabled prior to age 18, and that there is nothing in the letter that would cause ACRC to reconsider or reverse its most recent determination that claimant is ineligible for regional center services.

Claimant's Testimony

20. Claimant testified that he was late filing an appeal of ALJ King's decision because he is developmentally disabled with ASD and because he was being assisted by Disability Rights and their delay caused him to miss the deadline to file an appeal. He testified that instead he filed a disability discrimination claim against ACRC in the U.S. District Court on May 4, 2020. He did not file a writ of administrative mandamus in Superior Court challenging ALJ King's decision because he "did not know how" and determined that the U.S. District Court was a "court of competent jurisdiction" to challenge ALJ King's decision.

21. At hearing, claimant requested that he be allowed to submit new evidence of his eligibility for regional center services. That evidence includes the letter from Dr. Adams described in Factual Finding 15, and presumably, the testimony provided at hearing. Claimant also testified that he has been unable to drive a vehicle since he was 17 years old. He has had only one or two friendships since childhood and has only had one or two relationships with women during his life, because they do not understand his illness.

22. Claimant testified that he has had constant problems taking care of himself and his hygiene. He has had difficulty finding housing because "many landlords have had difficulty accepting [him] due to symptoms" related to ASD and

Tourette Syndrome. He has had difficulty finding and maintaining employment for the same reasons.

23. As a child, claimant was bullied, and had to play sports with younger children due to his condition. He has had difficulty with reading comprehension since childhood and has been told by his pediatrician that he has to study five times harder than the average person to retain information. He sometimes lacks discretion when sharing information, causing others not to like him. He has received assistance from the California Department of Rehabilitation from 25 to 51 years of age to assist him with "constant battles with employers and how [he] dealt with them.

24. Claimant opined that Tourette Syndrome is a neurodevelopmental disorder, that began to affect him between ages two and five, which should be accepted under the Lanterman Act as a qualifying developmental disability because it is similar to epilepsy and cerebral palsy. He disagrees with ACRC's determination that he is not substantially disabled in at least three areas of major life activity due to ASD prior to age 18.

Discussion

25. When all the evidence is considered, claimant did not establish any basis for ACRC to reconsider its October 2019 determination that he was ineligible for regional center services, or ALJ King's December 2019 decision affirming that determination on appeal. Respondent has already challenged ACRC's 2019 ineligibility determination through the fair hearing process. He did not appeal ALJ King's decision within 90 days, therefore that decision is final and cannot be re-litigated. The legal doctrine of res judicata prohibits parties from relitigating a claim that has been finally determined in a prior case. (*Bernhard v. Bank of America* (1942) 19 Cal.2d 807, 810-

811.) The purpose of the rule is to limit litigation by “preventing a party who has had one fair trial on an issue from again drawing it into controversy.” (*Id.* at p. 811.) Here, the doctrine of res judicata prohibits claimant from relitigating his claims for regional center eligibility between the same parties and based on the same facts that were fully considered in OAH Case No. 2019100968 by ALJ King.

26. Additionally, claimant’s submission of the very brief December 14, 2020 letter from Dr. Adams is insufficient to establish that ACRC’s decision not to reconsider claimant’s eligibility was improper. First, the letter was not timely provided to ACRC. ACRC informed claimant that it would not reconsider his eligibility without new information on November 18, 2020. Claimant filed his request for fair hearing on December 9, 2020, but did not provided the letter from Dr. Adams to ACRC until January 4, 2021. ACRC cannot be held responsible for considering information it did not have when its decision not to reconsider claimant’s ineligibility was made. Second, even had ACRC possessed the letter from Dr. Adams when it denied claimant’s request for reconsideration, that letter alone would not be sufficient to warrant reconsideration for the reasons described at hearing by Dr. Root. Claimant’s unsupported statements were also not sufficient to warrant reconsideration of ACRC’s prior determination, considering that he participated in multiple interviews and assessments that led to the prior determination by ACRC.

LEGAL CONCLUSIONS

1. Under the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities and an obligation to them which it must discharge. (Welf. & Inst. Code, § 4501.) As defined in the Lanterman Act, a developmental disability is a disability that originates before age 18, that continues or

is expected to continue indefinitely, and that constitutes a substantial disability for the individual. Developmental disabilities include intellectual disability, cerebral palsy, epilepsy, ASD, and what is commonly known as the "fifth category" – a disabling condition found to be closely related to intellectual disability or requiring treatment similar to that required for individuals with an intellectual disability. (Welf. & Inst Code, § 4512, subd. (a).)

2. In seeking government benefits, the burden of proof is on the person seeking the benefits. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) The standard of proof in this case is a preponderance of the evidence. (Evid. Code, § 115.).

3. Welfare and Institutions Code section 4710.5, subdivision (a), provides:

Any applicant for or recipient of services, or authorized representative of the applicant or recipient, who is dissatisfied with any decision or action of the service agency which he or she believes to be illegal, discriminatory, or not in the recipient's or applicant's best interests, shall, upon filing a request within 30 days after notification of the decision or action complained of, be afforded an opportunity for a fair hearing.

4. Welfare and Institutions Code section 4712.5, subdivision (a), provides:

Except as provided in subdivision (c), within 10 working days of the concluding day of the state hearing, but not later than 80 days following the date the hearing request form was received, the hearing officer shall render a written

decision and shall transmit the decision to each party and to the director of the responsible state agency, along with notification that this is the final administrative decision, that each party shall be bound thereby, and that either party may appeal the decision to a court of competent jurisdiction within 90 days of the receiving notice of the final decision.

5. As set forth in the Factual Findings as a whole, claimant failed to establish that ACRC's November 18, 2020 decision not to reconsider his eligibility for regional center services without receiving new information was improper. Therefore, claimant's appeal must be denied.

ORDER

Claimant's appeal from the Alta California Regional Center's November 18, 2020 determination that it would not reconsider his eligibility for regional center services without receiving new information is DENIED.

DATE: February 10, 2021

ED WASHINGTON
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)