

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

In the Matter of:

Claimant

v.

ALTA CALIFORNIA REGIONAL CENTER, Service Agency

OAH No. 2022090004

DECISION

Jessica Wall, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter based on written submissions by the parties.

Claimant represented himself.

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

The record closed and the matter submitted for decision on October 28, 2022.

ISSUE

Was ACRC justified in its refusal to reconsider claimant's eligibility to receive regional center services and supports, based on a qualifying conditions of intellectual disability and autism spectrum disorder (ASD) under Welfare and Institutions Code section 4512, because of the lack of new information or records that suggested a developmental disability?

FACTUAL FINDINGS

Background

1. Claimant is a 72-year-old man who referred himself to ACRC for an eligibility determination based on an asserted diagnoses of intellectual disability and ASD. As of December 2019, he was a non-conserved adult who lived independently in an apartment with his daughter's support.

Prior Applications for Eligibility

2002 APPLICATION

2. Claimant has applied for eligibility for regional center services on three prior occasions. In April 2002, claimant referred himself to ACRC for an eligibility determination based on Tourette Syndrome and Asperger Syndrome/ASD. ACRC conducted a social assessment of claimant and referred him to clinical psychologist Sidney Ganzler, Ph.D., for a psychological evaluation. Based on all the information provided, the ACRC Eligibility Team determined that claimant did not meet the eligibility criteria for regional center services because he did not have ASD, an

intellectual disability, or another potentially eligible condition prior to age 18. ACRC issued a Notice of Proposed Action informing claimant of the ineligibility determination. There is no evidence that claimant appealed that decision.

2019 APPLICATION

3. In June 2019, claimant applied for regional center services a second time. In this application, claimant alleged he was eligible based on ASD and cited his social communication concerns and behavioral difficulties. Again, ACRC conducted a social assessment, interviewed claimant's family members, examined claimant's medical correspondence and reports, and reviewed the social assessment and psychological evaluation from claimant's 2002 application. Based on this information, the ACRC Eligibility Team determined claimant was not eligible for regional center services because the evidence did not establish that claimant was substantially disabled in at least three areas of major life activity due to a qualifying condition prior to age 18.

4. On October 9, 2019, ACRC issued a Notice of Proposed Action informing claimant of the ineligibility determination. Claimant timely appealed the ACRC's decision and proceeded to a fair hearing on December 6, 2019. Following the hearing, ALJ Tiffany L. King issued a decision denying claimant's appeal of ACRC's determination, which found that claimant was not eligible for regional center services under the Lanterman Act. (See *Claimant v. ACRC*, OAH Case No. 2019100968.) The final page of the decision advised claimant of his appeal rights, including that, under Welfare and Institutions Code section 4712.5, subdivision (a), "[a]n appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision." There is no evidence that claimant appealed ALJ King's decision to a court of competent jurisdiction within the applicable period.

2020 APPLICATION

5. In November 2020, claimant applied for regional center services for a third time. On his intake form, claimant asserted he was eligible based on ASD, Tourette Syndrome, and hemochromatosis.¹ He told ACRC staff that he had a letter from his psychiatrist that stated he had ASD but did not produce the letter or any other medical documentation with his intake form. ACRC staff advised claimant that he was not being denied eligibility again; rather, that the determination had already been made by ACRC and affirmed by ALJ King, and that claimant would need to submit new information to re-apply for eligibility.

6. Claimant appealed and a fair hearing took place on January 27, 2021, in front of ALJ Ed Washington. On February 10, 2021, ALJ Washington issued a decision in which he denied claimant's appeal from ACRC's decision not to reconsider claimant's eligibility in the absence of new evidence. (See *Claimant v. ACRC*, OAH Case No. 2020120579.) The decision noted that after ACRC's determination, claimant had submitted a two-sentence letter written by Tyson Ray Adams, D.O., on December 14, 2020, which stated, "Mr. Storman 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." However, the letter's contents, alone, were insufficient to warrant reconsideration of the prior determination even if they had been submitted earlier. The final page of the decision again advised claimant of his right to appeal the decision to a court of competent jurisdiction within 90 days of receipt of the decision. There is no evidence that claimant

¹ Hemochromatosis is a disorder in which the body can build up too much iron.

appealed ALJ Washington's decision to a court of competent jurisdiction within the applicable period.

Current Application for Eligibility

7. The instant case concerns claimant's fourth intake application for eligibility, submitted by claimant on April 16, 2022. Claimant referred himself to ACRC based on his need for "help with [his] personal habits and relationships [with his] disabled children (Adults) because of [his] mild cognizant [*s/c*] impairments." He completed the intake form sections related to intellectual disability (Category 1) and Autism (Category 2) and checked "No" for the section related to disabling conditions found to be closely related to intellectual disability or requiring similar treatment (Category 5).

8. First, claimant stated that Nurse Practitioner (NP) Liana Edwards diagnosed him with an intellectual disability at age 71. Specifically, claimant stated: "She diagnosed me on 12/16/21 with mild cognizant [*s/c*] impairment with some problems with memory loss that can lead to Alzheimer's and dementia." Claimant asserted his intellectual disability caused him to "have problems with chores sometimes" and made him forget where he put and lose objects. Second, claimant stated his belief that he had ASD and was diagnosed by "Stanley Ganzler, M.D.,"² at age 52. He wrote that his ASD impacted his communication skills by causing stuttering and difficulties understanding peoples' intentions towards him. Claimant noted he had few friends and had lived alone since his divorce in 1996. He listed his repetitive

² It appears claimant is referencing the psychological evaluation performed by Sidney Ganzler, Ph.D., which was at issue in 2002 eligibility determination.

behaviors as “sports, listening to radio and TV constantly, eating a lot, and occasional reading.”

9. In a July 2022 phone call, ACRC Service Coordinator Ashley Lambert interviewed NP Edwards. NP Edwards told Ms. Lambert that claimant’s “last cognitive test was well within normal range,” but claimant sometimes experienced confusion or memory loss attributable to his medication for Tourette Syndrome. Based on the qualifying conditions, NP Edwards did not think claimant qualified for ACRC services.

10. On August 18, 2022, ACRC sent claimant a letter stating that it had reviewed claimant’s medical records from Kaiser Permanente and had interviewed NP Edwards. Based on the information from those sources, ACRC found there was insufficient evidence to establish a belief of a developmental disability. ACRC did not make an eligibility determination. Instead, ACRC found there was not sufficient information to continue with the intake process. Claimant filed a request for fair hearing with the OAH. He objected to the service agency’s determination because he believed his mild cognitive impairment, ASD, and Tourette Syndrome qualify him for services. He requested six months of services to assist him with habits and relationships.

MOTION TO DISMISS

11. On September 14, 2022, ACRC filed a Motion to Dismiss Fair Hearing. ACRC argued that the fair hearing should be dismissed based on the 2019 and 2020 decisions, which respectively denied claimant’s eligibility for regional center services and upheld ACRC’s denial of reconsideration on claimant’s eligibility without new information or documentation. Claimant did not appeal either of these decisions to a

court of competent jurisdiction, which rendered the decisions final and prohibited claimant from relitigating the decisions.

12. On September 21, 2022, claimant filed an opposition to ACRC's motion to dismiss. Claimant asserted that NP Edwards diagnosed him with "mild cognizant [sic] impairment" in December 2021. He also argued that none of his developmental disabilities were diagnosed before age 18 because "in the 1950's and 1960's they did not make such developmental disability diagnoses due to lack of knowledge about them." ACRC's motion to dismiss was denied by an order issued by Presiding ALJ Heather Rowan on September 23, 2022.

Claimant's Evidence

13. Claimant was granted his requested accommodation of proceeding solely on written materials. In support of his arguments, claimant submitted six exhibits.

- Exhibit A: ACRC's August 2022 decision letter, upon which claimant wrote: "Because of my 3 developmental disabilities, I have problems [with] self care, learning, mobility, and some economic self-efficiency."
- Exhibit B: Two pages of the ACRC Intake Application for Children 3 Years of Age and Older, upon which claimant wrote "my 3 developmental disabilities of mild cognizant [sic] impairment (Category 1) and Autism (Category 2) and Tourette Syndrome (Category 5) qualify me for eligibility for services."
- Exhibit C: Two pages of medical records from a December 2021 telephone appointment with NP Edwards at Kaiser Permanente's Memory Clinic, upon which claimant wrote, "diagnosis of mild cognizant [sic] impairment

(Intellectual disability – Category 1).” The document lists a diagnosis of “mild cognitive impairment” as of December 16, 2021, and recounts claimant’s complaints about forgetting the location of a microwave, occasionally forgetting how to use a computer, and misplacing his glasses and cell phone.

- Exhibit D: Two pages³ of an June 2022 After Visit Summary from Kaiser Permanente, upon which claimant wrote, “Nurse Practitioner only says in this memory care tests ... that I have no diagnosis of dementia ... yet,” and “Notes: this does not say I no longer have mild cognizant [*sic*] impairment also a condition or diagnosis can not [*sic*] be reversed or undiagnosed.” The summary documented that claimant spoke with NP Edwards on June 14, 2022, and listed his diagnosis as “Memory Disorder Screening Without Evidence of Dementia.”
- Exhibit E: A one page excerpt of Assembly Bill 2702, dated February 23, 1998, upon which claimant wrote, “The Unruh Act prohibits discrimination against persons with disabilities for accommodations and services they need.”
- Exhibit F: A one-page medical record from a video visit in December 2020 with Kaiser Permanente, which is same letter by Dr. Adams that ALJ Washington considered in the 2020 application. Claimant also submitted two pages of the Order Denying Motion to Dismiss, upon which he wrote, “Exhibit F refers to Dr. Adams letter saying I have been substantially disabled [with] Autism for self-care, mobility, and learning.”

³ The third page is a copy of the second page.

14. Claimant submitted a Position Statement Brief on September 29, 2022. In his brief, he disagreed with ACRC's prior determination that he is not substantially disabled in at least three areas of major life activity due to ASD prior to age 18. He asserted that his three eligible conditions are intellectual disability, ASD, and Tourette Syndrome, and wrote, "It should be noted here that none of these developmental disabilities were diagnosed before age 18 because when I was growing up in the 1950's and 1960's there were few if any such diagnoses." He claimed that his recently diagnosed memory problem constituted an intellectual disability. He further argued that he was diagnosed with Asperger's/ASD in 2002, which caused him issues in his relationships with women and employers. Claimant opined that Tourette Syndrome should be accepted under the Lanterman Act as a qualifying developmental disability "because it is directly associated (with [him]) by ADD and OCD, both of which are somewhat intellectually disabling."⁴ Finally, he argued that any decision against him would be "disparate treatment" and have "a disparate impact on persons with disabilities."

15. Claimant later amended his Position Statement to add the December 2020 letter by Dr. Adams. He stated that the letter demonstrated that he has been substantially disabled by ASD in the areas of self-care, mobility, and learning. He further argued about his disagreement with the evidence ALJ Washington considered in the 2020 case.

⁴ It appears claimant is referencing attention deficit hyperactivity disorder (ADHD) and obsessive-compulsive disorder (OCD).

ACRC's Evidence

16. After claimant submitted his fourth application, ACRC's intake staff, including Cynthia A. Root, Ph.D., ACRC Staff Clinical Psychologist, reviewed the new information claimant provided. This information included claimant's own statements, his Kaiser Permanente medical records, and information provided by NP Edwards. Dr. Root determined, based on her years of experience evaluating individuals for developmental disabilities, that claimant had not presented new information that provided any support for regional center eligibility.

17. ACRC presented the relevant medical records that it reviewed in determining that there was insufficient evidence to believe that claimant has a qualifying condition, absent new information. The records related to claimant's assertion that that he had an intellectual disability based on a December 2021 diagnosis.⁵ Specifically, in a December 2021 Montreal Cognitive Assessment (MoCA Test),⁶ claimant scored 25/30. Based on this result, NP Edwards listed a diagnosis of mild cognitive impairment (MCI) and recommended that claimant take a Vitamin B12 supplement, exercise, and engage in mental and social stimulation. In these records, MCI is described as "a condition in which someone has minor problems with memory or thinking," but "the symptoms are not severe enough to interfere significantly with daily life, and so are not defined as dementia." Indeed, "between 5 and 20% of people

⁵ There were no new documents that related to claimant's ASD and Tourette Syndrome claims.

⁶ The MoCA Test is a tool which tests for early detection of mild cognitive impairment.

aged over 65 have MCI” according to the records. In June 2022, claimant underwent a second MoCA Test, where his score increased to 27/30. The records do not show that claimant began showing symptoms of MCI prior to age 18. Rather, NP Edwards told claimant that his current medications “are a major contributor to [his] memory loss.” The medical records never refer to MCI as an intellectual disability.

Claimant’s Response

18. On October 19, 2022, claimant filed a response document with attachments.⁷ Claimant argued that his statements that were quoted in the order on the motion to dismiss were “accepted as fact,” and repeated his claim that he was eligible for regional center services based on intellectual disability, ASD, and Tourette Syndrome. His attachments included:

- Exhibit A: One page of medical notes from claimant’s December 2021 appointment with NP Edwards, previously submitted as Exhibit C.
- Exhibit B: The 2020 letter from Dr. Adams, previously submitted as Exhibit F.
- Exhibit B1: A single page from ALJ Washington’s decision, which detailed Dr. Root’s testimony and her finding that the 2020 letter from Dr. Adams was insufficient to constitute new information because it lacked any foundation for its conclusions.

⁷ Claimant alleged that he had not received Presiding ALJ Rowan’s order or ACRC’s argument, despite quoting from the order and providing a page of evidence that ACRC submitted with its argument. Both the order and arguments had valid proof of service documents, which state the dates on which they were served on claimant.

- Exhibit C: A five-page paper written by claimant in 2008 for a course at Sacramento City College, in which he wrote about Tourette Syndrome and how he believed those with the condition were the most knowledgeable.

Analysis

19. When all the evidence is considered, claimant did not establish any basis for ACRC to reconsider its 2002 and 2019 determinations that he was ineligible for regional center services, ALJ King's December 2019 decision affirming that determination on appeal, or ALJ Washington's February 2021 decision affirming ACRC's denial of reconsideration. Because claimant did not appeal ALJs King's and Washington's decisions to a court of competent jurisdiction within 90 days, the decisions are final.

20. The legal doctrine of res judicata prohibits parties from relitigating a cause of action finally resolved in a prior proceeding. Res judicata has two aspects. First, it "operates as a bar to the maintenance of a second suit between the same parties on the same cause of action." (*People v. Barragan* (2004) 32 Cal.4th 236, 252.) Second, it prohibits a party from relitigating an issue that was resolved in a previous lawsuit or administrative proceeding, even if the issue relates to a different claim. (See *id.* at pp. 252–253.) Three elements must be satisfied to apply the doctrine:

- (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 proceeding.

(*Id.* at 253.)

21. The three elements are satisfied here as to claimant's ASD claim. The 2019 and 2020 proceedings involved the same parties and considered the evidence that claimant provided here to substantiate his claim of ASD. The prior decisions concluded that this evidence, including Dr. Adams's 2020 letter, was insufficient to establish that claimant was substantially disabled in at least three major areas of life activity because of ASD prior to age 18. As described above, the decisions are final judgments and cannot be relitigated. Accordingly, 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 by ALJs King and Washington.

22. Claimant did not list Tourette Syndrome as a basis for eligibility on his April 2022 intake application, and thus ACRC's decision did not address this condition. Additionally, he did not provide any new information about how his Tourette Syndrome qualifies as a Category 5 eligible condition. However, had claimant included Tourette Syndrome on the 2022 application, it would have been barred by res judicata, as it was previously considered in the prior decisions.

23. Finally, claimant failed to demonstrate a basis to reconsider ACRC's denial of reconsideration as to his claim that he is eligible for services based on intellectual disability. The records claimant provided indicate that he began experiencing memory issues, diagnosed as a mild cognitive impairment, in his early 70s. His medical provider, NP Edwards, told ACRC that claimant's cognitive test was

within normal range, and she did not believe he qualified for regional center services. There is no evidence to establish a belief that claimant had an intellectual disability, such as memory impairment, that arose prior to age 18 and substantially disabled him in at least three major areas of life. Claimant's unsupported statements were also not sufficient to warrant reconsideration of ACRC's prior determinations, considering that he participated in multiple interviews and assessments that led to those prior determinations.

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.) The Lanterman Act defines a "developmental disability" as "a disability that originates before an individual attains 18 years of age, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual." (Welf. & Inst. Code, § 4512, subd. (a)(1).) This term includes "intellectual disability, cerebral palsy, epilepsy, and autism," as well as "disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability," except for conditions that are solely physical in nature. (*Ibid.*)

2. A person who seeks a government benefit has the burden of proof to establish his or her right to the requested benefit. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161–162.) 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, in relevant part:

Any applicant for or recipient of services, or authorized representative of the applicant or recipient, who is dissatisfied with any decision of the service agency which they believe 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 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 August 18, 2022 decision not to reconsider his eligibility for regional

center services without new information was improper. Therefore, claimant's appeal must be denied.

ORDER

Claimant's appeal from the Alta California Regional Center's August 18, 2022 decision that it would not reconsider his eligibility for regional center services without receiving new information is DENIED.

DATE: November 2, 2022

JESSICA WALL

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).)