

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

JACKIE L.,

Claimant,

vs.

EASTERN LOS ANGELES REGIONAL
CENTER,

Service Agency.

OAH CASE No. 2012120510

DECISION

This matter came on regularly for hearing before Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, on January 24, 2013, in Alhambra, California.

Li Wen D.¹, Claimant's Mother, represented Claimant, with the assistance of a Chinese language interpreter.

Rhoda Tong, Community Residential Services Supervisor, represented Service Agency.

Oral and documentary evidence was received at the hearing and the matter was submitted for decision.

ISSUE

Whether Service Agency should continue to fund Discrete Trial Training (DTT) services for Claimant.

¹ Initials has been used in lieu of surnames to protect Claimant's and his family's confidentiality.

FACTUAL FINDINGS

1. Claimant is an 11-year-old Service Agency consumer with a diagnosis of autism.
2. The issue of continued funding of DTT services has been previously addressed in two Decisions by Office of Administrative Hearings administrative law judges. On September 1, 2011, the parties appeared before Judge Humberto Flores and the issue litigated at that time was: “Did the service agency properly determine that the discrete trial training (DTT) service currently provided for Claimant should be reduced by three to five hours per week toward a gradual fade-out of this service?” (Exhibit 2, at p. 1.) On September 11, 2011, Judge Flores upheld Service Agency’s decision and issued the following order: “The decision of the Eastern Los Angeles Regional Center to begin a phase out of DTT services for Claimant by reducing DTT services from 20 to 15 hours per week is affirmed. Claimant’s appeal is denied.” (Exhibit 2, at p. 4.)
3. On September 5, 2012, after a new fair hearing request involving DTT services was filed, Judge Sawyer issued an Order sustaining, in part, Service Agency’s claim that Claimant was precluded by the doctrine of collateral estoppel from relitigating the issue of continued provision of DTT services. Judge Sawyer further held that the matter could proceed to hearing on the exact date the DTT services would end and on whether any services would replace DTT.
4. On November 6, 2012, the parties appeared before Judge Sawyer, and the following issues were litigated: “1. When shall funding for Claimant’s DTT be eliminated? [¶] 2. What appropriate service(s) shall replace Claimant’s DTT?” (Exhibit 5, at p.1.) In a Decision issued November 19, 2012, Judge Sawyer ordered termination of the DTT services by January 31, 2013, ordered Service Agency to fund a functional behavioral assessment, and ordered the parties to convene an Individual Program Plan (IPP) meeting to address the need for continuing services to replace DTT.
5. The functional behavioral assessment was to have been completed on January 28, 2013, and a report was expected about two weeks thereafter. The parties have been meeting regarding possible replacement services while they await completion of the functional behavioral assessment.
6. Claimant’s mother filed the instant Fair Hearing Request on November 30, 2012, referring to “new evidence” from Dr. B.J. Freeman in support of continued funding for DTT services. As stated in the document: “Per Dr. B.J. Freeman’s assessment, it is clear that Jackie [L.] needs intensive support in the form of DTT in order to continue his progress. We

respectfully request that regional center takes [*sic*] the new evidence into consideration and affords [*sic*] Jackie [L.] more hours to stop the current regression in all areas.”

7. Service Agency filed a Motion to Dismiss the Fair hearing Request on the grounds that the matter had already been decided by Judge Flores and by Judge Sawyer. On January 14, 2013, Presiding Administrative Law Judge Susan L. Formaker denied the motion, without prejudice. Judge Formaker concluded that the current appeal suggested that there may be new evidence and that the Fair Hearing Request did not on its face clearly show that the issue had been previously decided. Claimant was afforded the opportunity to present new evidence and argument at the hearing.

8. At the hearing, Claimant’s mother identified a Psychological Assessment dated June 27, 2012, from B.J. Freeman, Ph.D., as the document referred in the Fair Hearing Request.

9. Service Agency submitted the Psychological Assessment from Dr. B.J. Freeman at the hearing before Judge Sawyer, and Dr. B.J. Freeman’s opinion was discussed in Judge Sawyer’s Decision. Dr. B.J. Freeman does not appear to have generated any additional reports, and, in any event, no report prepared after the June 27, 2012 assessment was presented at the hearing.

10. No other new evidence was presented at the hearing regarding Claimant’s need for DTT services.

LEGAL CONCLUSIONS

1. 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 be preclusive effect. (*People v. Sims* (1982) 32 Cal.3d 468.)

2. All elements of collateral estoppel have been met. The issue of continued funding of DTT services has been litigated on two separate instances, by the same parties, and a decision resolving the issue has been issued each time. Therefore, Claimant may not relitigate the issue of continued funding for DTT services. Funding for such services will terminate on January 31, 2013, as ordered by Judge Sawyer.

ORDER

Claimant's appeal is denied, and Service Agency need not continue to fund DTT services beyond January 31, 2013.

Dated: February 1, 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.