

**ATTACHMENT A**

**THE PROPOSED DECISION**

**BEFORE THE  
BOARD OF ADMINISTRATION  
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
STATE OF CALIFORNIA**

**In the Matter of the Application for Disability Retirement of:**

**TRACY L. MATHEWS and**

**REDWOOD COAST REGIONAL CENTER, Respondents**

**Agency Case No. 2023-0215**

**OAH No. 2023070142**

**PROPOSED DECISION**

Sean Gavin, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on November 1, 2023, from Sacramento, California.

Nhung Dao, Staff Attorney, represented the California Public Employees' Retirement System (CalPERS).

Tracy L. Mathews (respondent) appeared without an attorney.

Respondent Redwood Coast Regional Center (Redwood) appeared through Nichole Haydon, its Director of Human Resources.

Evidence was received and the hearing concluded on November 1, 2023. The record was held open for respondent to submit documentary exhibits. Respondent submitted five exhibits, which were marked as Exhibits A through E and admitted. The record closed and the matter was submitted for decision on November 3, 2023.

## **ISSUE**

At the time of her application for disability retirement, was respondent permanently disabled or substantially incapacitated from the performance of her usual and customary job duties as a Service Coordinator for Redwood based on her internal (Epstein Barr Virus/post-viral syndrome, anemia, COVID-19, and chronic fatigue syndrome) conditions?

## **FACTUAL FINDINGS**

### **Application and CalPERS's Denial**

1. On August 16, 2022, respondent signed and subsequently filed an application for disability retirement with CalPERS (application). At the time she filed her application, respondent was employed by Redwood as a Service Coordinator. By virtue of her employment, respondent is a local miscellaneous member of CalPERS subject to Government Code section 21150.

2. In her application, respondent identified her disability as "Long COVID, Adrenal failure, Epstein Barr Virus, [and] chronic fatigue syndrome." She stated her conditions limited and precluded her activities as follows:

Mental activity past 1 hr., standing longer than 3 min, walking longer than 5 min, grocery shopping / errands without help, strenuous exercise, mild exercise past 10 min., daily meal prep & clean up, driving past 30 min., recreation activities, socializing past 1 hr.

3. Respondent stopped working at Redwood on November 1, 2022. In response to the application question asking how her illness affected her ability to perform her job, she wrote:

It has ended it entirely. I am not able to work under pressure of deadlines or fast pace environment. I cannot cope with complex or stressful situations. I am unable to frequently stand, walk or lift up to 30lbs. I cannot develop, ensure implementation of, monitor, and report on plans for a case load of 75+ clients. I am unable to assist, collaborate, refer, advocate for and with clients & their support teams.

4. After receiving respondent's application, CalPERS reviewed respondent's medical reports concerning her conditions and sent her for an Independent Medical Examination (IME) with Scott Anderson, M.D. Based on its review of medical records and Dr. Anderson's IME report, on February 8, 2023, CalPERS denied respondent's application. In its denial letter, CalPERS explained, in relevant part, "On December 6, 2022, we spoke with you regarding your endocrinological (adrenal fatigue/failure) condition. You stated you no longer wish to pursue a disability retirement based on this condition. Therefore, your application for disability retirement was not evaluated based on your alleged endocrinological (adrenal fatigue/failure) condition."

5. On February 27, 2023, respondent appealed the denial. On July 7, 2023, Sharon Hobbs, Chief of CalPERS's Disability and Survivor Benefits Services Division, in her official capacity, made and filed a Statement of Issues alleging respondent was not permanently disabled or incapacitated from performing her duties as a Service Coordinator at the time she filed her application. This hearing followed.

## **Job Duties**

6. With her application, respondent submitted a Physical Requirements of Position/Occupational Title form for her position. The form provides the following information about the physical requirements of the Service Coordinator position:

Infrequent Tasks (between 5 and 30 minutes per day):  
walking on uneven ground.

Occasional Tasks (between 31 minutes and 2.5 hours per day): bending at the waist; twisting at the neck and waist; reaching below the shoulder; handling (holding, light grasping); and driving.

Frequent Tasks (between 2.5 and 5 hours per day):  
interacting/communicating with the public, clients, and co-workers; lifting/carrying 0-10 pounds; sitting; standing; walking; and computer use (keyboard and mouse).

7. In addition, the Redwood job description for the Service Coordinator position identified seven "core competencies and responsibilities" as follows: knowledge of developmental disabilities and Service Coordinator responsibilities; teamwork; adaptability/dependability; communication skills; judgment; proactive; and

computer/technical skills. It further clarified that Service Coordinators must be able to “multi-task and keep workload organized and up to date” and “work under pressure of deadlines and a fast-paced environment and to cope with complex and often stressful situations.”

### **IME by Scott Anderson, M.D.**

8. CalPERS sent respondent for an IME with Dr. Anderson regarding her claimed conditions. Dr. Anderson received his medical degree from University of Texas Southwestern Medical School in Dallas, Texas, in 1986. Between 1986 and 1991, he completed a three-year residency in internal medicine at New York Medical College and a two-year fellowship in Rheumatology at Georgetown University/VA Medical Center in Washington, D.C. Between 1987 and 2008, he worked as a physician and surgeon for numerous medical facilities and organizations. Since 2008, he has been a Clinical Professor of Medicine, in the Division of Rheumatology, Allergy, and Clinical Immunology at the University of California at Davis. He is a diplomate in internal medicine and rheumatology for the American Board of Internal Medicine. He has been a licensed physician in California since 1993. He has performed IMEs for CalPERS in the past and is familiar with the CalPERS substantial incapacity standard.

9. On November 14, 2022, Dr. Anderson conducted an IME on respondent. He interviewed respondent, took a medical history and accounting of her current complaints, reviewed her medical records and job duties, and physically examined her. Thereafter, Dr. Anderson wrote an IME report. He testified at hearing consistent with his report.

10. Dr. Anderson diagnosed respondent with “mild generalized deconditioning.” At hearing, he explained that means a loss of muscle mass due to

disuse and lack of physical activity rather than a disease. He concluded respondent's claimed conditions do not substantially incapacitate her from performing her usual job duties. Specifically, he opined:

[Respondent] does not have an actual and present internal condition in the form of anemia, chronic fatigue syndrome or COVID-19 that arises to the level of substantial incapacity to perform her usual job duties. She does not appear to be anemic and I find no documentation of anemia that is reproducible in the records and she does not appear to suffer from any musculoskeletal or neurological condition that would cause her to be fatigued and unable to function. She may have been exposed to COVID-19 in the past, but she shows no indication of residual adverse consequences.

11. He further explained the basis of his opinions:

The reason I think [respondent] is not substantially incapacitated is that there is a lack of documentation in the medical records of any diagnostic condition that would cause her to be substantially incapacitated within the diagnosis provided. I grant that she does have frequent interactions with a physician's assistant, nurse practitioner and alternative provider. There are not, however, notes by medical doctors documenting musculoskeletal, rheumatological or inflammatory condition that would result in adverse consequences to her health. Also, her physical examination does not show evidence of arthritis,

deformity, paleness of conjunctiva, congestion of lungs or other findings to suggest that she has an active condition involving anemia, COVID-19 or rheumatological condition.

12. Based on his findings, Dr. Anderson concluded respondent "can perform all job duties outlined under the occupational history without limitation with respect to the claims of anemia, chronic fatigue and COVID-19 which led to this assessment." He acknowledged her subjective complaints, but noted they were "completely out of proportion to the physical findings of examination." He believed respondent exaggerated her complaints.

13. Dr. Anderson's IME report did not address respondent's claimed Epstein Barr Virus/post-viral syndrome. As a result, CalPERS asked him to prepare a supplemental IME report to address those conditions. On January 17, 2023, Dr. Anderson wrote a supplemental IME report. His answers to CalPERS's questions were similar to those in his original IME report. Specifically, he concluded respondent's claimed Epstein Barr Virus/post-viral syndrome does not substantially incapacitate her from performing her usual job duties. Specifically, he opined:

[Respondent] does not have an actual or present internal medicine condition related to Epstein Barr virus or post viral syndrome, which arises to the level of substantial incapacity to perform her work duties. There is no indication that she has suffered any specific viral infection that has harmed her in any respect. I note that all human beings are subject to viral infections throughout their lifespan and that typically these viral infections are cleared with no long-term sequelae.



14. Dr. Anderson explained that, when reaching his conclusions, he considered respondent's subjective complaints and the objective findings, if any, in her medical reports. He wrote:

The findings that lead me to the conclusion that she is not substantially incapacitated include a lack of medical documentation of substantial incapacity, physical examination inconsistent with substantial incapacity, and lack of a specific diagnosis that could cause substantial incapacity. I note that having had a prior exposure to Epstein Barr virus is a normal human experience. 90% of adults would have been exposed to this virus at sometime during their life course. In and itself having an Epstein Barr virus antibody does not signify the medical condition that is ongoing or debilitating.

15. Finally, Dr. Anderson noted that his conclusions were the same as those included in his initial IME report. He wrote: "[Respondent] is able to perform her job duties without limitation at the current time. I did in fact opine as much in my previous report on this individual. My opinions remain unchanged whether or not we chose to express concern about Epstein Barr virus or not."

### **Respondent's Evidence**

16. Respondent testified at hearing. She believes Dr. Anderson failed to appreciate the full extent of her job duties as a Service Coordinator. She noted that to maintain a caseload of approximately 85 clients, she had to travel to clients' homes, meet with them and their families, help formulate individualized program plans, help

clients navigate their receipt of supports and services, and communicate with her coworkers about her clients' changing circumstances. In her opinion, her job was "far more involved and demanding than Dr. Anderson apparently understood."

17. Respondent explained she reported to Dr. Anderson that "mental, physical, and emotional activity" caused her severe fatigue. She was "horrified" to learn that Dr. Anderson accused her of exaggerating her illnesses. She is improving now, but her illness lasted two years. The worst was from November 2021 through November 2022. She was on bed rest for two months, which led her to use a wheelchair intermittently. She believes Dr. Anderson relied on "conventional Western medical science to debunk" the opinions of her naturopath and physician's assistant.

### **RESPONDENT'S EXHIBITS**

18. After the hearing concluded, respondent submitted five medical records. The first is a May 2023 progress note titled "New Patient Office Visit" signed by Sangita Deveshwar, M.D., FACC. (There was no evidence what FACC means, but it is officially noticed that in this context, it means Fellow, American College of Cardiology [Gov. Code, § 11515; Evid. Code, § 452, subd. (h)].) The note identified respondent's chief complaint as postural orthostatic tachycardia syndrome (POTS). The note also included a summary of respondent's physical examination and a list of her medications. It did not address her capacity to perform her job as a Service Coordinator.

19. Respondent also submitted a September 2023 progress note titled "Cardiology Office Follow-Up Visit" signed by Eveline S. Wallace, Adult Nurse Practitioner (ANP). The note identified respondent's chief complaint as "fatigue in afternoon." Under the heading "Assessment," the note identified five conditions: POTS;

hypertension; OSA (obstructive sleep apnea) on CPAP (continuous positive airway pressure); history of long COVID; and history of Epstein Barr. The note also summarized respondent's imaging and cardiac studies and her physical examination, listed her medications, and identified her lab results for a variety of undefined "components." It did not address respondent's capacity to perform her job duties as a Service Coordinator.

20. In addition, respondent submitted two notes signed by Melanie Anello, Nurse Practitioner (NP), dated July 7 and October 9, 2023. The July note is incomplete but indicated that, after a videoconference interview, respondent was "positive for fatigue," "positive for myalgias," "positive for weakness and light-headedness [and] brain fog," and "positive for sleep disturbance." The October note indicated that, after a videoconference interview, respondent was "positive for fatigue," "positive for [cardiovascular] palpitations," and had "brain fog." Neither note addressed respondent's capacity to perform her job duties as a Service Coordinator.

21. Finally, respondent submitted a November 2022 "Sleep Study Report" signed by "Dr. Bertrand De Silva." According to the report, "[respondent's] home sleep test was abnormal and demonstrated moderate sleep apnea." The report did not address respondent's capacity to perform her job duties as a Service Coordinator.

## **Analysis**

22. Respondent bears the burden to establish, through competent medical evidence, that she was substantially incapacitated from performing her usual job duties based on her conditions at the time of her application. She failed to do so. Rather, the persuasive medical evidence established that respondent's conditions did

not, at the time of her application, substantially disable her from performing her usual job duties as a Service Coordinator.

23. Dr. Anderson examined respondent, reviewed her medical records, and evaluated her using the CalPERS substantial incapacity standard. Based thereon, he found no objective findings to support her subjective complaints. He further found that her claimed conditions did not preclude her from performing her usual job duties. Dr. Anderson's conclusions were credible and supported by his experience and training, especially in the fields of internal medicine and rheumatology.

24. The findings and opinions contained in the medical records respondent submitted to CalPERS were less persuasive than Dr. Anderson's. Dr. Anderson testified at hearing consistently with his written reports. He explained his reasons for not only his own findings, but also for disagreeing with respondent's medical providers. Dr. Anderson credibly explained why the findings from respondent's medical records do not demonstrate respondent's substantial incapacity using the CalPERS standard.

25. In contrast, respondent's medical providers did not testify at hearing, were not subject to cross examination, and did not respond to Dr. Anderson's critiques of their conclusions. When weighed against one another, Dr. Anderson's findings and opinions were more persuasive than those of respondent's medical providers.

26. Dr. Anderson's conclusions were also more persuasive than the findings and opinions contained in respondent's exhibits for several reasons. First, respondent's exhibits are from medical visits that occurred months after respondent's application and Dr. Anderson's IME. Second, Dr. Deveshwar and Ms. Wallace specialize in cardiology, but respondent did not establish what relationship, if any, her claimed conditions have to her cardiovascular health. Finally, none of the exhibits addressed

respondent's claimed incapacity to perform her usual and customary job duties as a Service Coordinator. Nor did they address the CalPERS substantial incapacity standard.

27. As a result, when all the evidence is considered, respondent did not prove through competent medical evidence that her Epstein Barr Virus/post-viral syndrome, anemia, COVID-19, or chronic fatigue syndrome incapacitated her from performing her job duties as a Service Coordinator at the time she filed her application. Therefore, her application must be denied.

## **LEGAL CONCLUSIONS**

1. By virtue of her employment, respondent is a local miscellaneous member of CalPERS, pursuant to Government Code section 21150. To qualify for disability retirement, respondent must prove that, at the time she applied, she was "incapacitated physically or mentally for the performance of [her] duties in the state service." (Gov. Code, § 21156.) As defined in Government Code section 20026:

"Disability" and "incapacity for performance of duty" as a basis of retirement, mean disability of permanent or extended duration, which is expected to last at least 12 consecutive months or will result in death, as determined by the board . . . on the basis of competent medical opinion.

2. The party asserting the affirmative at an administrative hearing has the burden of proof. (*McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051.) This burden requires proof by a preponderance of the evidence. (Evid. Code, §§ 115, 500.) Respondent did not meet her burden.

3. An applicant must demonstrate her substantial inability to perform her usual duties based on competent medical evidence, not just the applicant's subjective complaints. (*Harmon v. Bd. of Retirement* (1976) 62 Cal.App.3d 689, 697; *Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873, 876.) Difficulty in performing certain tasks is not enough to support a finding of disability. (*Hosford v. Bd. of Administration* (1978) 77 Cal.App.3d 854; *Mansperger v. Public Employees' Retirement System, supra*, 6 Cal.App.3d at pp. 876-877.) Discomfort, which may make it difficult to perform one's duties, is insufficient to establish permanent incapacity from performance of one's position. (*Smith v. City of Napa* (2004) 120 Cal.App.4th 194, 207, citing *Hosford v. Bd. of Administration, supra*, 77 Cal.App.3d at p. 862.)

4. As discussed above, respondent did not prove by a preponderance of competent medical evidence that she was substantially incapacitated from the performance of her usual and customary duties as a Service Coordinator for Redwood based on her internal (Epstein Barr Virus/post-viral syndrome, anemia, COVID-19, or chronic fatigue syndrome) conditions at the time she filed her disability retirement application. Accordingly, respondent's application must be denied.

## ORDER

Respondent Tracy L. Mathews's application for disability retirement is DENIED.

DATE: November 9, 2023

  
Sean Gavin (Nov 9, 2023 16:22 PST)

SEAN GAVIN

Administrative Law Judge

Office of Administrative Hearings