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File identification

Archive resolution of the previous information no. IP 106/2019, referring to the Department of Work, Social Affairs and Families of the Generalitat of Catalonia.

Background

1. On 03/04/2019, the Catalan Data Protection Authority received a letter from a person for which he made a complaint against the Department of Work, Social Affairs and Families (hereinafter, TSF Department), due to an alleged breach of the regulations on the protection of personal data. The complainant, an inmate of a certain penitentiary center (hereinafter, CP), explained that the TSF Department issued a resolution by which he was recognized with a degree of disability of 56%, in which they would only have had account for 2 of the 6 disorders he had been diagnosed with.

The reporting person provided various documentation relating to the events reported.

2. The Authority opened a preliminary information phase (no. IP 106/2019), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure of application to the areas of competence of the Generalitat, and article 55.2 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (henceforth, LPAC), to determine whether the facts they were likely to motivate the initiation of a sanctioning procedure, the identification of the person or persons who could be responsible and the relevant circumstances involved.

3. In this information phase, on 04/17/2019 the reported entity was required because report, among others, on the reasons why the other disorders invoked by the complainant would not have been taken into account in the degree recognition resolution.

4. On 06/05/2019, the TSF Department responded to the aforementioned request through a letter in which it stated, among others, the following:

- That the assessment of the degree of disability of the reporting person was carried out in the CP on date 06/11/2018.
- That in the assessment of disability, the diagnosis of the disease is not an assessment criterion in itself. The assessment is based on the severity of the consequences of the disease. The assessment guidelines are not based on the extent of the impairment but on the effect of the impairment on the ability to carry out activities of daily living.
- That the disease must lead to non-recoverable organic or functional alterations, with no reasonable possibility of restitution or improvement of the structure or functionality, causing limitation in the person's daily life activity.

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- That in order to assess a deficiency, the pathological process must be previously diagnosed by the competent bodies, the appropriate therapeutic measures must have been applied and it must be documented through medical reports.
- That to the recognition resolution dated 11/01/2019, the summary of the optional technical opinion of the review of the degree of disability carried out on 06/11/2018 was attached, which contained the diagnoses mentioned in the medical reports provided :
 - Mental disorder/psychosis (where persecutory delusional disorder is included).
 - Alteration of behavior/personality disorder (where explosive disorder is included intermittently, dependence on multiple drugs and other substances).
 - Functional limitation of both EEII/Deformity of the feet (where gonalgia is included).

The reported entity attached various documentation to the letter.

Fundamentals of law

1. In accordance with the provisions of articles 90.1 of the LPAC and 2 of Decree 278/1993, in relation to article 5 of Law 32/2010, of October 1, of the Authority Catalan Data Protection Agency, and article 15 of Decree 48/2003, of February 20, which approves the Statute of the Catalan Data Protection Agency, the director of the Catalan Data Protection Authority.

2. Based on the account of facts that has been set out in the background section, it is necessary to analyze the reported facts that are the subject of this file resolution.

In the present case, the complainant considered that the resolution recognizing the degree, the TSF Department did not take into account all the disorders he had diagnosed, so he questioned that the resolution recognizing the degree of disability regarding the his person conformed to the principle of accuracy.

The Royal Decree 1971/1999, of December 23, on the procedure for the recognition, declaration and qualification of the degree of disability (hereinafter, RD 1971/1999) regulates the recognition of the degree of disability, the establishment of new applicable scales, the determination of the competent bodies to carry out said recognition and the procedure to be followed, all this with the aim that the assessment and qualification of the degree of disability affecting the person is uniform throughout the territory of the State.

Annex IA of RD 1971/1999 establishes the following general rules for determining disability caused by permanent deficiencies:

"1.º The pathological process that has given rise to the deficiency, whether congenital or acquired, must have been previously diagnosed by the

competent organisms, the indicated therapeutic measures must have been applied and must be documented.

2.º The diagnosis of the disease is not an evaluation criterion in itself. The disability assessment guidelines that are established in the following chapters are based on the severity of the consequences of the disease, whatever it may be.

3. Those organic or functional alterations that cannot be recovered must be understood as permanent deficiencies, that is, without reasonable possibility of restitution or improvement of the structure or function of the affected organ.

In the specific application rules of each chapter, the minimum time that must elapse between the diagnosis and the start of the treatment and the act of assessment is fixed. This waiting period is essential so that the deficiency can be considered established and its duration depends on the pathological process in question.

4.º The permanent deficiencies of the different organs, devices or systems are evaluated, whenever possible, by means of objective parameters and are reflected in the corresponding chapters. However, the assessment guidelines are not based on the scope of the deficiency but on its effect on the ability to carry out the activities of daily life, that is to say, on the degree of disability that has caused the deficiency.

The deficiency caused by diseases that occur in outbreaks must be evaluated in the intercritical periods. However, the frequency and duration of outbreaks are factors to be taken into account because of the interference they produce in carrying out the activities of daily life.

For the assessment of the consequences of this type of illness, frequency and duration criteria of the acute phases are included in the corresponding chapters.

The evaluation must respond to homogeneous criteria. With this purpose, the activities of daily life and the degrees of disability to which the Evaluation Teams must refer are defined."

According to these guidelines, although the pathological process that gives rise to the deficiency must be previously diagnosed, the diagnosis of the disease is not an assessment criterion in itself (rules 1a and 2a of annex IA of the RD 1971/1999), as pointed out by the TSF Department in its letter of 02/05/2019.

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It is for this reason that, as provided by art. 4.2 of RD 1971/1999, the qualification of the degree of disability carried out by the competent technical bodies of the TSF Department, is independent of the technical assessments carried out by other bodies in the exercise of their public powers.

These competent technical bodies, which must be made up of at least one medical professional, one psychological professional and one social worker, have as their function the assessment of situations of disability and the determination of their degree, among others (art. 8 of RD 1971/1999).

The assessment of the situations of disability and the qualification of its degree must be carried out prior to examination of the person concerned by said competent technical bodies, which will issue a proposed opinion that must necessarily contain the diagnosis, type and degree of the disability (art. 9 of the RD 1971/1999).

Once said opinion has been issued, the competent body of the TSF Department issues the express resolution on degree recognition (art. 10 of RD 1971/1999).

Given the above, when assessing situations of disability and the qualification of its degree, although the diagnoses must be recognized beforehand by the competent bodies (it is inferred that they are linked to the Department of Health), the bodies competent technicians of the TSF Departments are not bound by these diagnoses, so they can be taken into account or not for the purposes of qualifying the degree of disability, according to their professional judgment.

In the present case, it is certified that on 06/11/2018 the technical bodies of the TSF Department assessed the complainant, issuing the corresponding opinion on the same date. Based on this opinion, the TSF Department decided to recognize the person reporting a degree of disability of 56% on 01/11/2019.

On the other hand, it is also proven that the person reporting here filed, on 01/25/2019, a previous claim against said resolution as he was dissatisfied with it. This previous claim meant that the person reporting here was subjected to a new assessment by the technical bodies of the TSF Department on 01/29/2019 and 02/04/2019.

In accordance with the opinion issued by said bodies in relation to this second assessment, the TSF Department decided on 04/02/2019 to dismiss the previous claim, given that there was no evidence that new facts had occurred or a worsening in the circumstances that founded the first assessment carried out on 06/11/2018 for the recognition of the degree of disability.

For his part, the claimant has alleged before the Authority that he has been diagnosed with several disorders, in order to support the rectification of his degree of disability. However, the

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qualification of the degree of disability carried out by the competent technical bodies of the TSF Department does not necessarily have to correspond with all the diagnoses previously recognized by the competent bodies of the health system, since the competent technical bodies of the TSF Department (which have assessed in two occasions to the reporting person) must only take into account those previous diagnoses that may affect the recognition of the degree of disability.

As things stand, this Authority does not have any elements that allow it to be inferred that the principle of accuracy has been infringed, given that it cannot question the evaluations made by the technical bodies of the TSF Department, which were the basis for solving on two occasions that the degree of disability recognized by the reporting person is 56%.

3. In accordance with everything that has been set out in the 2nd legal basis, and given that during the actions carried out in the framework of the previous information it has not been accredited, in relation to the facts that have been addressed in this resolution, no fact that could be constitutive of any of the violations provided for in the legislation on data protection, should be archived.

resolution

Therefore, I resolve:

1. File the actions of prior information number IP 106/2019, relating to the Department of Work, Social Affairs and Families of the Generalitat of Catalonia.
2. Notify this resolution to the TSF Department and the person making the complaint.
3. Order the publication of the resolution on the Authority's website (apdcat.gencat.cat), in accordance with article 17 of Law 32/2010, of October 1.

Against this resolution, which puts an end to the administrative process in accordance with article 14.3 of Decree 48/2003, of 20 February, which approves the Statute of the Catalan Data Protection Agency, the persons interested parties may file, as an option, an appeal for reinstatement before the director of the Catalan Data Protection Authority, within one month from the day after their notification, in accordance with what provided for in article 123 et seq. of Law 39/2015. An administrative contentious appeal can also be filed directly before the administrative contentious courts, within two months from the day after its notification, in accordance with articles 8, 14 and 46 of Law 29/1998, of July 13, governing the contentious administrative jurisdiction.

Likewise, interested parties may file any other appeal they deem appropriate to defend their interests.

The director,