BEFORE THE MONTANA DEPARTMENT OF LABOR AND INDUSTRY

Maria Howard-Linn, Charging Party, versus **Quality Life Concepts, Inc.**, Respondent.	)	HRC Case No. 0001009149
	)	*Final Agency Decision*

I. Procedure and Preliminary Matters

Maria Howard-Linn filed a complaint with the Department of Labor and Industry on February 3, 2000. She alleged that Quality Life Concepts, Inc., discriminated against her because of national origin (Greek) when it dismissed her from her position as a family support specialist on or about December 28, 1999. On September 14, 2000, the department gave notice Howard-Linn's complaint would proceed to a contested case hearing, and appointed Terry Spear as hearing examiner.

This contested case hearing convened on December 14, 2000, in the conference room of Howard-Linn's attorneys at 300 4th St. N., Great Falls, Cascade County, Montana. Howard-Linn was present with her attorney, J. Kim Schulke, Linnell, Newhall, Martin & Schulke. The corporation was present through its designated representative, Priscilla Halcro, Director of Home Based Services, with its attorney, Dolphy O. Pohlman, Corette, Pohlman & Kebe. The hearing examiner excluded witnesses on Howard-Linn's motion. Maria Howard-Linn, Cheryl McCabe Thurman, Bobbie K. Bevars, Debbie Richter, Valerie Burgan, Linda Olson, Janet Kukes and Priscilla Halcro testified at hearing. Patsie Thomas testified by deposition. The hearing examiner's exhibit docket accompanies this final decision. The hearing concluded on December 16, 2000. Howard-Linn filed the last post-hearing submission on January 9, 2001.

II. Issues

The legal issue in this case is whether the corporation took adverse employment action against Howard-Linn because of her national origin. A full statement of the issues appears in the final prehearing order.

III. Findings of Fact

1. Howard-Linn was an employee of Quality Life Concepts (QLC) from late April 1995 through December 22, 1999. She worked as a Family Support Specialist Assistant until May 1997, when the corporation promoted her to a Family Support Specialist. Final Prehearing Order, Sec. IV, "Facts and Other Matters Admitted," No. 1; testimony of Howard-Linn.

2. Howard-Linn's national origin is Greek. She speaks with a Greek accent, and does not always use correct grammatical structure or syntax.[1] She came to this country in 1967 and became a United States citizen in 1973. Testimony of Howard-Linn.

3. Beverly Bevars supervised Howard-Linn for approximately four years. Howard-Linn was the only employee of QLC Bevars supervised in 1997 through 1999. Final Prehearing Order, Sec. IV, "Facts and Other Matters Admitted," No. 2; testimony of Howard-Linn, Bevars and Priscilla Halcro (Home Based Services Director).

4. Bevars and Howard-Linn were both primarily involved in providing services to families entitled to limited services under the Limited Family Education and Support program, or LFES. The corporation assigned those families to different employees. In early 1999, there were 98 such families receiving services from QLC. Each such family received fewer services, with less documentation in QLC's files, than families receiving home-based services under other programs QLC administered, such as the Family Education and Support and Intensive Family Education and Support programs. Testimony of Howard-Linn, Bevars, Jan Kukes (Howard-Linn's supervisor after Bevars) and Halcro.

5. Throughout the time she supervised Howard-Linn, Bevars never observed or became aware of any problems with Howard-Linn's communications with the families to whom she delivered services. Howard-Linn communicated well with the families she served, and had excellent rapport with them. Testimony of Howard-Linn and Bevars; Exhibits CP1, CP3, CP4 and CP5.

6. Howard-Linn knew the policies and procedures of QLC regarding employees and their work. She also knew her job requirements and duties as a Family Support Specialist. In March 1999, in a periodic employee evaluation, Howard-Linn acknowledged that she knew the policy and procedures of QLC and that she should do more to review and follow the specifics of those policies and procedures. However, she believed that she could properly conform her

[1] During hearing, the hearing examiner found Howard-Linn's conversational English difficult to understand in two instances.

work performance to that of other employees, and had done so while Bevars was her supervisor. Testimony of Howard-Linn; Exhibits CP4 and R113.

7. Effective in April 1999, QLC reorganized, incorporating the delivery of services to LFES families within the Home Based Services Division's delivery of services to other families. Bevars no longer supervised Howard-Linn, and Howard-Linn's caseload expanded to include families to whom QLC delivered more extensive services over longer periods. Jan Kukes became Howard-Linn's supervisor as part of this reorganization. Howard-Linn received files involving provision and documentation of more extensive services for longer times to families outside the LFES program. Testimony of Howard-Linn, Bevars, Kukes and Halcro; Exhibit CP5.

8. Howard-Linn was a good employee and performed her duties for QLC in a proper and acceptable manner under supervision by Bevars and Kukes from June 1995 through August or September 1999. Final Prehearing Order, Sec. IV, "Facts and Other Matters Admitted," No. 3; testimony of Howard-Linn, Bevars and Kukes; Exhibits CP1, CP2, CP3, CP4, CP5 and CP12.

9. Kukes supervised Howard-Linn from April 1999 until the termination of her employment on December 22, 1999. Kukes was a supervisor for QLC during the entire time Howard-Linn worked there. Final Prehearing Order, Sec. IV, "Facts and Other Matters Admitted," Nos. 2 and 4; testimony of Howard-Linn, Bevars, Kukes and Halcro.

10. Before she became Howard-Linn's supervisor, Kukes made negative comments to other employees of QLC about Howard-Linn's poor English. Kukes' comments evidenced to some of the other employees an antipathy toward Howard-Linn because Howard-Linn had not become more fluent in conversational and written English despite her many years in the United States. After she became Howard-Linn's supervisor, Kukes continued to make such comments to Howard-Linn and other employees. Testimony of Howard-Linn, Cheryl McCabe Thurman (Family Support Specialist), Bevars and Valerie Burgan (Family Support Specialist).

11. QLC had hired Kukes as the case manager for the Special Family Service program in 1988. Kukes began supervising Family Support Specialists for QLC in 1993. During the period from April to December 1999 that she supervised Howard-Linn, Kukes supervised four other family support specialists. Testimony of Kukes.

12. Bevars believed Kukes and Howard-Linn would have difficulty working together. Kukes paid close attention to detail. She focused upon

timeliness and accuracy of documentation. Bevars had heard Kukes comment about Howard-Linn while Bevars still supervised her. Bevars anticipated that Kukes would see problems with Howard-Linn's performance. She offered to visit with Kukes about how Bevars had successfully worked with Howard-Linn. Kukes did not accept the offer.[2] Bevars also talked to Halcro, the program director, and asked her to help Kukes and Howard-Linn through any initial difficulties in their new working relationship. Testimony of Bevars, Kukes and Halcro.

13. Kukes did see problems with Howard-Linn's performance. By October 1999, before her first quarterly review of Howard-Linn's work (see following paragraph), Kukes had already begun to review Howard-Linn's written communications with clients and others, to correct what Kukes viewed as inadequate writing skills. Testimony of Howard-Linn and Kukes; Exhibit CP14.

14. Kukes routinely made random quarterly reviews of the files of the Family Support Specialists she supervised. She staggered the reviews, by regularly reviewing random files on a rotating basis throughout the year, instead of spending blocks of time reviewing files. The press of work kept her from reviewing files on any regularly scheduled basis, but she tried to review some files for each specialist in time to permit meaningful quarterly reviews. In early October 1999, Kukes conducted a random review of some of Howard-Linn's files. Although she sometimes told her specialists that she was about to do such a review, she did not tell Howard-Linn of this review. Kukes' review of some of Howard-Linn's files revealed problems with current documentation of case status and services delivered. Testimony of Kukes.

15. QLC's policies required that family support specialists document certain information and prohibited falsification of agency records or data. Although the primary of the corporation's Home Based Services Division was provision of services to families and individuals requesting and entitled to services, current documentation of case status and services delivered was crucial for several reasons. The corporation contracted with government agencies. The agencies, by contract, required QLC to make specified numbers of contacts with clients over particular periods. The agencies had designated forms for QLC to use with clients and to document contacts with clients and services to clients. The corporation filed reports with the agencies on designated forms. The information for the reports came in part from the documentation provided by

[2] After she began supervising Howard-Linn, Kukes did ask Bevars about how to approach Howard-Linn to talk about her errors and Kukes' concerns with Howard-Linn's performance.

the specialists. The agencies could audit QLC's records to verify the accuracy of the reports. In addition, legal proceedings regularly resulted in subpoenas for QLC client files. Unless QLC maintained current, complete and accurate documentation, it could lose its contracts. With reduced funding due to reduced contracts, QLC would not have clients to whom to provide services, and would be unable to remain in business. Testimony of Kukes and Halcro.

16. The corporation used the specialists' contact reports to provide confirmation to the agencies that it was meeting contract specifications. When agencies audited QLC's records, inconsistencies between the contact reports and the file documentation could result in QLC owing refunds to the agencies on contract payments. Although such inconsistencies could result from mistakes or lack of current documentation at the time of review, the specialists involved would add later the documentation, thereby correcting the inconsistencies for any subsequent agency audit. Testimony of Howard-Linn, Kukes, Thurman, Richter, Burgan, Linda Olson, Patsie Thomas and Halcro; Exhibit R106.

17. Howard-Linn never deliberately falsified any agency records or data. However, in her random review of Howard-Linn's files, Kukes could not reconcile the number of face to face or telephone contacts with the families or others about the families that Howard-Linn had reported with the documented activity in the files. Kukes characterized Howard-Linn's inconsistencies as "falsification." She also considered Howard-Linn's reporting of her hours (not numbers of hours worked, but start and finish times) as "falsification." Testimony of Kukes; Exhibit R106.

18. QLC's policies did not specifically provide that contact reports had to reconcile exactly to file documentation or that the failure of the reports to reconcile exactly would subject a specialist to disciplinary action. Testimony of Howard-Linn, Thurman, Richter, Burgan, Olson and Thomas.

19. In her random review of Howard-Linn's files, Kukes also found that documents were missing or incomplete. She also found incomplete Individualized Family Service Plans (IFSPs)[3] the families had signed before Howard-Linn completed descriptions of the plans. Kukes considered Howard-Linn in violation of mandatory documentation requirements for a Family Service Specialist. Testimony of Howard-Linn, Kukes, Thurman, Richter, Burgan, Olson and Thomas; Exhibits R106 and R131.

[3] IFSPs are the families' combined request for and agreement to accept specific services from QLC.

20. The violations Kukes found were not unique to Howard-Linn's work. Other specialists failed to include all documents to make files current, had incomplete documents in their files and had families sign IFSPs before completing the plan descriptions. However, Howard-Linn had more violations of mandatory documentation requirements than Kukes considered even marginally acceptable. Testimony of Howard-Linn, Kukes, Thurman, Richter, Burgan, Olson and Thomas; Exhibits R106 and R131.

21. In her random review of Howard-Linn's files, Kukes also decided that Howard-Linn's written information was inadequate in some documents pertaining to families receiving more extensive services over longer periods. Kukes believed that Howard-Linn, a Family Support Specialist for almost 2 years, should already know how to write the documentation properly. Kukes considered that Howard-Linn's limited involvement with families receiving more extensive services over longer periods before April 1999 did not justify what Kukes considered inadequate documentation. Testimony of Kukes; Exhibit R106.

22. On October 11, 1999, because of the problems she found in the files, Kukes placed Howard-Linn on probation for a six-month period and gave her a written reprimand and a 6-month work plan. Final Prehearing Order, Sec. IV, "Facts and Other Matters Admitted," No. 5; testimony of Howard-Linn and Kukes; Exhibit R106.

23. At the time Kukes disciplined Howard-Linn, Debbie Richter and Patsie Thomas, were also behind in their documentation. Kukes also supervised Richter and Thomas. Kukes did not discipline them at that time. The documentation of other specialists was rarely current. Testimony of Howard-Linn, Kukes, Thurman, Richter, Burgan, Olson and Thomas.

24. Earlier in 1999, Kukes had given Richter a written reprimand and placed her a 3-month work plan earlier in 1999. Richter had not been current on documentation for some of her files at that time, and was due to take a leave of absence. Kukes gave her two weeks to work full-time on the required documentation. Kukes permitted Richter the entire period of her 3-month work plan to address and resolve the deficiencies. Kukes did not tell Richter in the written reprimand that she had reconciled contact reports with file documentation of contacts. Testimony of Kukes and Richter; Exhibit CP21.

25. The corporation had written policies regarding employee counseling and corrective action. The policy included a partial list of infractions that were cause for corrective action. The only item on the list that Kukes could relate to her corrective action for Howard-Linn was "Falsifying employment or other

agency records or data."[4] The policy specified that a written reprimand (the third level of corrective action "is the most severe level of written corrective action. It indicates a major or repeated violation of the agency's policies, procedures or standards." Kukes had not previously given Howard-Linn documented informal counseling, the first level of corrective action, or a written warning, the second level of corrective action.[5] Testimony of Howard-Linn and Kukes; Exhibit CP6.

26. Kukes confirmed the propriety of her corrective action toward Howard-Linn with Halcro, in accord with QLC's policies. Halcro relied upon Kukes' evaluation of Howard-Linn's performance. Testimony of Kukes and Halcro; Exhibit CP6.

27. Kukes met privately with Howard-Linn and provided her with the written reprimand and work plan, following QLC's corrective action procedure policy.[6] Howard-Linn questioned the validity of Kukes' criticisms. She told Kukes that she was doing the documentation in the same ways and within the same periods as other specialists. Testimony of Howard-Linn and Kukes; Exhibit CP7.

28. Kukes did not investigate Howard-Linn's explanations, contrary to QLC's corrective action procedure policy. Testimony of Howard-Linn and Kukes; Exhibit CP7.

29. QLC required all of its family support specialists to obtain certification from the state. Before her probationary period and during the first few weeks of it, Howard-Linn worked at her normal duties, worked on her certification as a Family Support Specialist and attended a required assessment class through the University of Montana. Richter and Thomas were also working on certification and attending the assessment class. Final Prehearing Order, Sec. IV, "Facts and Other Matters Admitted," No. 6; testimony of Howard-Linn, Kukes, Richter and Thomas.

30. Certification involved the preparation of a portfolio, several inches thick, containing extensive work with a real client. The preparation of the

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[4] Kukes' basis for this statement appears in finding 17.

[5] Kukes did not resort to the first two levels of corrective action before giving Richter her written reprimand earlier in 1999.

[6] Kukes and Howard-Linn disagreed about whether Kukes gave her a copy of the grievance policy at the same time. Since Howard-Linn testified that she was familiar with the grievance policy, and even discussed with Halcro whether she should file a grievance about the reprimand, this disagreement is not germane to the decision.

portfolio took months of work. Candidates for certification then participated in an oral interview, requiring additional study beyond the information in the portfolio. Preparation of the portfolio and the oral interview tested 10 competencies and other sub-competencies. Testimony of Howard-Linn, Bevars, Kukes, Richter, Thomas and Halcro.

31. Kukes reviewed Howard-Linn's certification portfolio before placing Howard-Linn on probation. Kukes made negative comments on the quality of Howard-Linn's work in the portfolio. Testimony of Howard-Linn.

32. Kukes reviewed the written work of all of the specialists she supervised, but Howard-Linn's 6-month work plan required Kukes' review of all out-going correspondence, home visit reports, IFSPs, 6-month case review reports and assessment summaries. Kukes intensified her review of Howard-Linn's written work. During Howard-Linn's probation, Kukes made extensive editorial changes to that written work. Bevars had not edited Howard-Linn's work in the same fashion. Kukes did not edit other specialists' work in the same fashion. Testimony of Howard-Linn, Bevars, Thurman, Richter, Burgan, Olson and Thomas; Exhibit R106.

33. When Howard-Linn showed Kukes' edits to Bevars and other Family Support Specialists they did not see the necessity for the changes, but advised Howard-Linn to do what Kukes directed. Testimony of Howard-Linn, Bevars, Thurman, Richter, Burgan, Olson and Thomas.

34. Howard-Linn's 6-month work plan also required that Howard-Linn submit a detailed work plan by 5:00 p.m. each Friday for the following week, and schedule, in advance, weekly meetings with Kukes. Howard-Linn did not comply with these requirements. Kukes traveled outside of the Great Falls area to perform some of her job duties. When Kukes was in the office, Howard-Linn went to her regularly to ask about how Kukes wanted written work done, but did not arrange weekly meetings in advance. Instead of providing a written detailed weekly work plan each Friday, Howard-Linn provided Kukes with her schedule. Kukes sent e-mail messages to Howard-Linn to note and document her failure to meet these requirements of the 6-month work plan. Testimony of Howard-Linn and Kukes; Exhibits R106 and R128.

35. Howard-Linn's 6-month work plan also required monthly monitoring of contact reports, with random review to reconcile the contact reports with the file documentation of contacts. Howard-Linn substantially complied with this requirement. Before her probation, the corporation never told Howard-Linn that her contact reports must exactly match the contact documentation in files and that failure to comply would subject her to disciplinary action. Other specialists

only learned because of the later termination of Howard-Linn's employment that their client contact reports had to reconcile exactly with the file documentation or they would be subject to disciplinary action. Testimony of Howard-Linn, Kukes, Thurman, Richter, Burgan, Olson and Thomas; Exhibits R106 and R107.

36. Howard-Linn's 6-month work plan also required her to have all of her client files updated and current by November 1, 1999. On November 2, 1999, certification oral interviews took place at QLC's offices in Great Falls. Within half an hour before Howard-Linn's interview, Kukes came to Howard-Linn and told her that Kukes would soon begin the review of Howard-Linn's files. Kukes had actually begun reviewing the files on November 1, 1999. She found that only 1 of 6 files (4 being files she had reviewed in October) was current. Testimony of Howard-Linn and Kukes; Exhibits R106 and R107.

37. Howard-Linn, Richter and Thomas completed certification with their oral interviews on November 2, 1999. By that time, they had also completed the assessment class. Howard-Linn obtained her certification and passed the assessment class, and she, Richter and Thomas no longer had the burdens of certification and assessment class in addition to their normal workload. However, after November 2, 1999, Howard-Linn's workload still exceeded those of other specialists Kukes supervised because Kukes expected Howard-Linn to comply with all of the provisions of the 6-month work plan. Testimony of Howard-Linn, Kukes, Richter and Thomas; Exhibit R106.

38. On November 10, 1999, Kukes wrote a memo of her findings on her review of some of Howard-Linn's files on November 1-2, and her evaluation of Howard-Linn's performance to date under the 6-month plan. Kukes cleared that memo and the action described in it with Halcro. Testimony of Kukes and Halcro; Exhibit R107.

39. On November 15, 1999, Kukes met with Howard-Linn to discuss the results of her November 1 and 2 review of Howard-Linn's files and Kukes' evaluation of Howard-Linn's performance to date under the 6-month work plan. The evaluation encompassed only Howard-Linn's performance while she and other specialists were still involved in completion of the certification process and assessment class. Testimony of Howard-Linn and Kukes; Exhibit R107.

40. Kukes discussed her file findings with Howard-Linn, who presented explanations for the lack of current documentation in the file. Kukes dismissed the explanations, since the files were not current. Kukes presented the November 10 memo, written before hearing Howard-Linn's explanations, to Howard-Linn on November 15, 1999. Howard-Linn signed the memo believing that Kukes would consider her explanations and revise the memo. Kukes never

intended to revise the memo and did not revise the memo. Howard-Linn now had until December 13, 1999, in accord with the memo, to make sure that all 10 of her non-LFES files were current. Testimony of Howard-Linn, Kukes and Halcro; Exhibit R107.

41. Kukes also discussed her evaluation of Howard-Linn's performance under the 6-month work plan. Pursuant to the November 10 memo, Kukes again documented Howard-Linn's failure to submit detailed work plans on time. The language of the memo suggested that the weekly schedules Howard-Linn submitted were adequate, but had been late every time but once.[7] The memo again documented Howard-Linn's failure to schedule weekly meetings with Kukes in advance, and confirmed that Howard-Linn had now complied with that requirement for November and December. The memo also confirmed that Howard-Linn was complying with the requirement of the work plan that she submit her home visit reports every Friday for review. Testimony of Howard-Linn and Kukes; Exhibit R107.

42. The November 10 memo also documented a new requirement Kukes added to the work plan. Kukes now directed that she be present whenever Howard-Linn met with a family to discuss and agree upon an IFSP, and that Howard-Linn notify her of such meetings whenever she set them. Kukes indicated this requirement only applied to IFSP meetings regarding non-LFES families. Testimony of Howard-Linn and Kukes; Exhibit R107.

43. After the November 15, 1999, meeting, Howard-Linn knew or should have known that if she did not have all 10 of her non-LFES files current by December 13, 1999, QLC might fire her. Testimony of Kukes; Exhibit R107.

44. During her probationary period, Howard-Linn reported to both Halcro and Kukes that she was behind on her paperwork and under stress. Kukes repeatedly invited Howard-Linn to seek help and clarification from her, both in their meetings and in the memos. However, Kukes took no action to help Howard-Linn perform the 6-month work plan, other than increasing her workload by expanding the requirements of the 6-month plan and continuing to require extensive rewriting of documents Howard-Linn drafted. Testimony of Howard-Linn and Kukes.

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[7] "Number 2 of your plan states that you will turn in a detailed work plan every Friday for the following week. You have turned in one work plan on time. …. Once again Maria, a detailed work plan is due Friday for the following week." Exhibit R107. A subtle reading of the memo might support the conclusion that "work plan" did not equal "detailed work plan," but this meaning is at best obscure.

45. In November 1999, Howard-Linn requested reduction of her 6-month probation to 3 months, and requested that QLC give her the $1.00 per hour raise normally accorded to certified specialists. The corporation refused both requests. The refusals were reasonable. Testimony of Howard-Linn, Kukes and Halcro; Exhibit R108.

46. On December 13, 1999, Howard-Linn approached Kukes regarding another requirement of the 6-month plan, listening to time-management tapes. Kukes provided the tapes and Howard-Linn listened to them. Howard-Linn reasonably believed that by listening to the tapes she had met this requirement. Testimony of Howard-Linn and Kukes; Exhibit R106.

47. After the November 15, 1999, meeting, at which she received the November 10 memo, Howard-Linn scheduled only one non-LFES IFSP meeting. When Howard-Linn notified Kukes of the meeting, Kukes was unable to attend because of a scheduling conflict. Howard-Linn could have given Kukes notice of the meeting earlier than she did. Testimony of Howard-Linn and Kukes.

48. Twice during November and December 1999, Halcro discussed with Howard-Linn what QLC expected Howard-Linn to do to correct her job performance deficiencies. Halcro also told Howard-Linn that if she had disputes or disagreements with her probation, she could file a grievance with the Human Resources Office of QLC. Howard-Linn asked if filing a grievance against her immediate supervisor could have repercussions for her and Halcro said that it might. Testimony of Howard-Linn and Halcro.

49. On December 13, 1999, Kukes reviewed Howard-Linn's files. Kukes found that Howard-Linn had failed to complete a 6-month review of an IFSP. Howard-Linn told Kukes that Howard-Linn had scheduled the review for December 28. Kukes found nothing in the file to confirm such a visit, and considered this a failure to have the file current by the date the November memo set. Kukes also found that Howard-Linn had failed timely to write and file proper objectives in another file. Kukes knew that the mother of the child involved in the case file had discovered she had cancer in the fall of 1999 and had undergone surgery in December, but Kukes nevertheless considered this a failure to have the file current by the date the November memo set. Kukes also found that Howard-Linn had failed to write what Kukes considered appropriate and timely assessment summaries in some of the files. Testimony of Howard-Linn and Kukes; Exhibit R105.

50. Kukes also evaluated Howard-Linn's performance since her probation began. She again concluded that Howard-Linn had falsified contact reports, despite the improvement in this area during probation. She concluded that

Howard-Linn had failed to comply with the November directive regarding Kukes' attendance at non-LFES IFSP meetings, and decided that she had meant Howard-Linn to inform her of LFES IFSP meetings. She concluded that work plans were not detailed work plans. She concluded that Howard-Linn's earlier failure timely to submit weekly home visit reports each week still constituted non-performance despite Howard-Linn's improvement. Testimony of Howard-Linn and Kukes; Exhibit R105.

51. Kukes decided, based upon the file review and her evaluation of Howard-Linn's performance since her probation began, to recommend that QLC fire Howard-Linn. Kukes presented this recommendation, and the file documents upon which she based it, to Halcro. Halcro reviewed the documentation, listened to Kukes' reasons for firing Howard-Linn, and agreed. Halcro relied upon the information provided by Kukes in reaching the decision that QLC should fire Howard-Linn. Halcro did not know that other Family Support Specialists documented their files in the same way and with the same timeliness as Howard-Linn. Testimony of Kukes and Halcro.

52. Halcro met with the Chief Executive Officer of QLC to discuss whether to fire Howard-Linn. Based upon the information Kukes provided to Halcro, QLC decided to dismiss Howard-Linn. Testimony of Halcro.

53. On December 28, 1999, Halcro and a Human Relations employee of the corporation met with Howard-Linn and fired her. The corporation fired Howard-Linn effective December 22, 1999 by a letter bearing that date and stating the corporation's reasons for firing her. Howard-Linn received the letter at the December 28 meeting. Final Prehearing Order, Sec. IV, "Facts and Other Matters Admitted," No. 7; testimony of Howard-Linn and Halcro; Exhibit R105.

54. At the meeting, Halcro and Howard-Linn discussed grieving the discharge. Howard-Linn asked Halcro what her chances were for reinstatement if she filed a grievance. Halcro told her that her chances were "none." Howard-Linn told Halcro that the corporation was firing her for things that other specialists did without even receiving disciplinary action. Halcro said, "Prove it." Testimony of Howard-Linn and Halcro.

55. In January 2000, Howard-Linn filed a grievance. Halcro did not believe the corporation had any obligation to respond, because Howard-Linn was no longer an employee. Halcro nonetheless reviewed Howard-Linn's files and concurred with Kukes that the state of the files, together with the other reasons Kukes had presented, supported the decision to terminate Howard-Linn. Testimony of Howard-Linn and Halcro; Exhibits R109, R111 and R123.

56. As of the date of termination of her employment, Howard-Linn earned $88.00 a day, with fringe benefits of $19.20 a day. Testimony of Howard-Linn and Halcro; Exhibit CP11.[8]

57. In the file review she concluded on January 14, 2000, Halcro discovered that Howard-Linn's contact reports had far fewer inconsistencies with the file documentation than had existed in October and November. She confirmed that the file at issue did not document the December 28 IFSP review meeting for the 6-month review. She reviewed 6 non-LFES files and confirmed that in 4 of those files Howard-Linn had failed timely to write and file proper objectives. She reviewed 6 non-LFES files and confirmed that in 5 of those files that Howard-Linn had failed to write timely assessment summaries. Halcro applied the same standards Kukes applied. Halcro had already agreed with Kukes that firing Howard-Linn was appropriate. Halcro had presented that action to the CEO as proper and necessary. Testimony of Halcro; Exhibits R109 and R123.

58. As a result of QLC's action discharging Howard-Linn effective December 22, 1999, she lost the wages, including Christmas vacation, she would have earned from December 22, 1999, through March 21, 2001 (65 weeks), in the amount of $88.00 per day for wages and $25.00 per month in retirement contributions[9] for 325 working days[10] over 15 months. Howard-Linn lost $28,600.00 in wages and $375.00 in fringe benefits, for a sum of $28,975.00 to the date of judgment.

59. To date, Howard-Linn has not found regular employment. Since QLC fired her, she has earned $700.00 babysitting.[11] She has diligently pursued work, both within her past employment and outside of it. She currently is awaiting word from Golden Triangle about the funding it may have for a job for her, at $10.50 per hour (with no benefits) for an indeterminate number of hours. Howard-Linn can reasonably expect to earn $5.25 per hour on a full-time basis (half-time with Golden Triangle or another employer at $10.50 per hour with no benefits) from the date of judgment until September 19, 2001. Given the

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[8] Howard-Linn did not prove when she might have achieved entitlement to the $1.00 per hour raise for certification (i.e., when her probation would have ended), or any other raise..

[9] Howard-Linn did not prove what financial harm, if any, resulted from her loss of health insurance premium payments by QLC, nor what sick leave or unused vacation might have accrued. Thus, her fringe benefit entitlement consists solely of the retirement contribution by QLC.

[10] Paid holidays and paid vacation days are included in this calculation, by simply multiplying the 65 weeks by 5 working (or paid days off) days per week.

[11] This reduces her lost wages to $27,900.00 to the date of judgment.

attitudes of Halcro and Kukes toward her rehire, reinstatement is not a realistic option for Howard-Linn. Testimony of Howard-Linn.

60. Considering her baby-sitting earnings as if she received them all immediately after her discharge, interest on the balance of Howard-Linn's wages, with $180.00 accrued on January 6, 2000 and $880.00 accruing every two weeks thereafter, is to date (at 10% per annum) $1,624.06.

61. Howard-Linn suffered emotional distress during Kukes' supervision of her, because Kukes treated her less favorably than other specialists and did so because of her accent and her lack of complete fluency in written and conversational English. She experienced headaches, sleeplessness, and diarrhea. She feared contact with her supervisor, yet had to seek her out for approval (or more often, directions regarding rewrites) of written work. After 32 years in America, 25 of them as a citizen of the United States, she found her competence and value questioned because she did not speak or write English like a native. She found herself without a job despite her competent prior service to her employer for a period of years. She could not bring herself to seek other work, and avoided friends and the public generally in her shame and fear. Her emotional distress during her probation and after her discharge entitles her to recover $12,500.00. Testimony of Howard-Linn.

62. QLC's policies regarding receiving, documenting and investigating an employee's explanations of conduct a supervisor subjects to disciplinary action are proper and adequate, if followed. QLC engaged in discriminatory conduct against Howard-Linn because Kukes and Halcro did not receive, document or investigate her explanations. The department must assure that QLC follows its policies in the future.

IV. Opinion

Montana law prohibits discrimination in employment based on national origin. §49-2-303(1)(a) MCA. Howard-Linn produced direct evidence of discriminatory motive.

Direct evidence is "proof which speaks directly to the issue, requiring no support by other evidence" proving a fact without inference or presumption. *Black's Law Dictionary*, p. 413 (5th Ed. 1979). Direct evidence of discrimination establishes a civil rights violation unless the defendant responds with substantial and credible evidence rebutting the proof of discrimination or demonstrating a legal justification. *Blalock v. Metal Trades, Inc.*, 775 F.2d 703, 707 (6th Cir. 1985). In Human Rights Act employment cases, direct evidence relates both to the employer's adverse action and to the employer's

discriminatory intention. *Foxman v. MIADS*, HRC Case #8901003997 (June 29, 1992) (race); *Edwards v. Western Energy*, HRC Case #AHpE86-2885 (August 8, 1990) (disability); *Elliot v. City of Helena*, HRC Case #8701003108 (June 14, 1989) (age). Direct evidence cases arise when the charging party presents direct evidence of the employer's reasons for taking the challenged action, even if the parties do not agree upon the employer's reasons for that action. *Laudert v. Richland County Sheriff's Department*, 2000 MT 281, ¶¶27-31, ___ Mont. ___, 7 P.3d 386, 392 (2000).

Jan Kukes voiced her dislike of Maria Howard-Linn's accent and spoken and written English. Her denials at hearing were not credible. Howard-Linn presented a parade of witnesses who testified that they heard Kukes make the statements. Howard-Linn's former supervisor, Bobbie K. Bevars, feared that Kukes' supervision of Howard-Linn would lead to the very problems that culminated in Howard-Linn's termination. Bevars was among the employees who had heard some of Kukes comments about Howard-Linn.

Kukes' treatment of Howard-Linn as an employee under her supervision rendered Kukes' denials even less credible. Kukes subjected Howard-Linn's job performance to a degree of scrutiny far beyond that she brought to the performance of the other Family Support Specialists she supervised. Before Kukes discovered problems with Howard-Linn's files, she was already reviewing Howard-Linn's written work more closely than that of other specialists. In reviewing the files, Kukes went further than she had gone in reviewing deficiencies in Debbie Richter's files earlier the same year, while giving Howard-Linn less opportunity to correct the deficiencies that Richter received.

Kukes continued to expand her critiques of Howard-Linn's performance. For example, the language of her November 10 memo did not clearly indicate that Howard-Linn's weekly work plan submissions were insufficiently detailed, only untimely. Yet, this was ultimately one of the reasons the corporation gave for firing Howard-Linn. Kukes initially accused Howard-Linn of falsifying data and reports, both because Howard-Linn did not report the actual times in and out of work (even though there was no dispute about the total hours worked) and because Kukes could not reconcile Howard-Linn's contact reports with her file documentation of contacts. Kukes dropped the charge of falsification of hours. Despite substantial improvement in matches between contact reports and file documentation of contacts and despite the absence of any evidence that Howard-Linn ever falsified any data or report, the corporation retained "falsification" as another of its reasons for firing her.

The corporation ultimately fired Howard-Linn based upon Kukes evaluations and Priscilla Halcro's review of files and documents that Kukes selected and presented. Howard-Linn had met most of the requirements of the original 6-month action plan before her firing. Those parts of the plan she had failed to meet were deficiencies she had in common with other specialists whose jobs were not in jeopardy. Kukes' actions establish that her comments were not "statements by decision makers unrelated to the decisional process." *Price Waterhouse v. Hopkins*, 490 U.S. 228, 277, 109 S.Ct. 1775, 1804-05, 104 L.Ed.2d 268 (1989), ***quoted in*** *Laudert*, ***op. cit.*** at ¶26.

QLC argued that unless Howard-Linn proved that its animus towards her was because she was specifically Greek, she could not sustain a national origin discrimination claim. Taken to its logical extreme, this argument results in the conclusion that an employer who equally discriminates against all persons who are not at least second-generation American citizens is not breaking the law. Discrimination against anyone whose language skills do not conform to spoken and written standard American middle-class English can be national origin discrimination. In this case, it is, because, Kukes' heightened scrutiny of Howard-Linn's performance resulted directly from Howard-Linn's failure consistently to use spoken and written standard American middle-class English. That failure in turn resulted from the status of Howard-Linn as an emigrant who used English as a second language. Howard-Linn successfully performed her job as a Family Service Specialist, including speaking and writing performance, without complaints, reprimands or problems dealing with the families she served. Then her new supervisor enlarged her job requirements because Howard-Linn did not speak or write to the standards Kukes considered appropriate, not for job performance but for a genuine American. That is national origin bias in this case.

When a charging party has proved discriminatory motivation for an adverse action, the respondent must prove that it would have made the same decision in the absence of that illicit motive. *Laudert*, ***op. cit.*** at ¶41, ***citing*** Rule 24.9.611, ARM ***and*** *Price Waterhouse* at 244-45, 109 S.Ct. at 1787-88. More than half the reasons for firing Howard-Linn that Kukes brought to Halcro were unfounded. Halcro was unaware that other specialists did the same things for which Kukes recommended firing Howard-Linn. The corporation has not proved that it would have fired Howard-Linn on December 22, absent the illegal discriminatory animus Kukes held toward her.

After her discharge, Howard-Linn attempted to file a grievance. In response to her contentions regarding her firing, Halcro undertook a broader review of Howard-Linn's files. Halcro persisted in her reliance upon many of

Kukes' unfounded criticisms of Howard-Linn. Halcro was also already committed to firing Howard-Linn. Her earlier comment to Howard-Linn that filing a grievance against her immediate supervisor "might" have repercussions for her and her comment that even if Howard-Linn filed a grievance on her discharge her chances of reinstatement were "none" both demonstrate that Halcro's mind was already made up. Reviewing the files with this mind-set and with Kukes' criticism of Howard-Linn as her guide, Halcro discovered that in a majority of Howard-Linn's non-LFES files, Howard-Linn was not documenting her work to Kukes' standards.

There was no evidence that Halcro had any discriminatory animus toward Howard-Linn. Nonetheless, when Halcro rejected Howard-Linn's reasons why she should be reinstated, she did so to support Kukes and to justify the decision she had already made based upon Kukes' evaluation of Howard-Linn's work.

The damages the department may award include any reasonable measure to rectify any harm Howard-Linn suffered. §49-2-506(1)(b) MCA. The purpose of an award of damages in an employment discrimination case is to ensure that the victim is made whole. *P. W. Berry v. Freese*, 239 Mont. 183, 779 P.2d 521, 523 (1989); *Dolan v. School District No. 10*, 195 Mont. 340, 636 P.2d 825, 830 (1981); ***accord***, *Albermarle Paper Co. v. Moody*, 422 U.S. 405, 95 S.Ct. 2362 (1975).[12]

Pre-judgment interest on back pay is properly part of Howard-Linn's damage recovery. *P. W. Berry, Inc.*, ***supra***, 779 P.2d at 523; *Foss v. J.B. Junk*, HRC Case No. SE84-2345 (1987). Because she did not establish when she earned the $700.00 in babysitting wages, QLC receives the benefit of an assumption that the earnings all accrued in the first two weeks after her discharge. Thereafter her wages accrued without offset until the present. Prejudgment interest accordingly appears in finding 60.

Front pay is an amount granted for probable future losses in earnings, salary and benefits to make the victim of discrimination whole when reinstatement is not feasible; front pay is only temporary until Howard-Linn can reestablish a "rightful place" in the job market. *Sellers v. Delgado Comm. College*, 839 F.2d 1132 (5th Cir. 1988), *Shore v. Federal Expr. Co.*, 777 F.2d 1155, 1158

[12] The Montana Supreme Court has approved the use of analogous federal cases in interpreting application of Montana's Human Rights Act. *Harrison v. Chance*, 244 Mont. 215, 797 P.2d 200, 204 (1990); *Snell v. MDU Co.*, 198 Mont. 56, 643 P.2d 841 (1982).

(6th Cir. 1985); *Rasmussen v. Hearing Aid Inst.*, HRC Case #8801003988 (March 1992).

Front pay is appropriate only if it is impossible or inappropriate to reinstate Howard-Linn because of the hostility or antagonism between the parties. *Cassino v. Reichhold Chemicals, Inc.*, 817 F.2d 1338, 1347 (9th Cir.1987) (upholding front pay award based on "some hostility" in spite of testimony that plaintiff and defendant were still friends); ***see also***, *Thorne v. City of El Segundo*, 802 F.2d 1131, 1137 (9th Cir. 1986); *E.E.O.C. v. Pacific Press Publ. Assoc.*, 482 F.Supp. 1291, 1320 (N.D. Cal.) (when effective employment relationship cannot be reestablished, front pay is appropriate), ***affirmed***, 676 F.2d 1272 (9th Cir. 1982).

The department has the power to require any reasonable measure to rectify any harm Howard-Linn suffered. §49-2-506(1)(b) MCA. Given the limited proof of future employment that Howard-Linn presented, it is not reasonable to extend front pay for more than six months after judgment. There is no evidence that QLC will maintain or expand its funding. There is little evidence of the market Howard-Linn now faces. Imposing more than six months of front pay, based on half-time work at the rate apparently available from Golden Triangle, would not be reasonable. Making the victim whole, not punishing the discriminator, is the premise of damage awards.

Compensation for severe emotional distress is part of Howard-Linn's damages. Montana has a single standard for recovery for severe emotional distress. *Sacco v. High Country Independent Press, Inc.*, 271 Mont. 209, 896 P.2d 411 (1995).

Before *Sacco*, the Montana Supreme Court had distinguished between "parasitic" emotional distress claims (deriving as elements of damages from a "host" cause of action) and independent emotional distress claims (in causes of action for negligent or intentional infliction of emotional distress).[13] After *Sacco*, the Court applied the same standard to both kinds of emotional distress claims, of any derivation. "This case [*Day*] was reasoned pursuant to pre-*Sacco* derivative or 'parasitic' tort analysis, which is no longer the law in Montana." *Maloney v. Home Investment Center, Inc.*, 298 Mont. 213, 229, 994 P.2d 1124, 1135 (2000).

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[13] ***Compare*** *Day v. Montana Power Co.*, 242 Mont. 195, 789 P.2d 1224 (1990) ***and*** *Johnson v. Supersave Markets, Inc.*, 211 Mont. 465, 686 P.2d 20 (1984) (parasitic emotional distress claims) ***with*** *Lence v. Hagadone Inv. Co.*, 258 Mont. 433, 853 P.2d 1230 (1993) ***and*** *Niles v. Big Sky Eyewear*, 236 Mont. 455, 771 P.2d 114 (1989) (free-standing emotional distress claims).

Sacco held that "[a]n independent cause of action for infliction of emotional distress will arise under circumstances where a serious or severe emotional distress to the plaintiff was the reasonably foreseeable consequence of the defendant's negligent or intentional act or omission." *Sacco* at 238, 896 P.2d at 429. The Court adopted a standard for determining whether emotional distress was serious or severe:

> [Emotional distress] includes all highly unpleasant mental reactions, such as fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment, worry and nausea. It is only where it is extreme that the liability arises. Complete emotional tranquility is seldom attainable in this world, and some degree of transient and trivial emotional distress is a part of the price of living among people. The law intervenes only where the distress inflicted is so severe that no reasonable [person] could be expected to endure it. The intensity and the duration of the distress are factors to be considered in determining its severity. Severe distress must be proved....

Sacco at 234, 896 P.2d at 426 (quoting *Restatement (Second) of Torts* §46, comment j).

Sacco expressly simplified emotional distress claims by applying this single standard of proof of all such recoveries, no matter how they arose. While *Sacco* overruled the prior case law regarding standards of proof of emotional distress, the Court continued to use the prior case law to explicate the meaning of "serious or severe emotional distress." In *Maloney*, the Court considered the *Sacco* requirement that compensable emotional distress be serious or severe. Commenting on the above *Restatement* quotation from *Sacco*, the Court noted:

> Measuring this element requires <u>a careful consideration of the circumstances under which the infliction occurs, and the party relationships involved</u>, in order to determine when and where a reasonable person should or should not have to endure certain kinds of emotional distress.

Maloney at 230, 994 P.2d at 1135 (emphasis added).

In *Sacco*, the Court had already established that the fact finder decided whether the claimant had suffered serious or severe emotional distress, and that the claimant could prove such distress without necessarily providing expert testimony:

> The requirement that the emotional distress suffered because of the

defendant's conduct be "serious" or "severe" ensures that only genuine claims will be compensated. We conclude that a jury is capable of determining whether the emotional distress claimed to have been sustained is "serious" or "severe." As stated in *Molien*,[14] citing *Rodrigues*[15]:

> "In cases other than where proof of mental distress is of a medically significant nature, [citations] the general standard of proof required to support a claim of mental distress is some guarantee of genuineness in the circumstances of the case. [Citation.]" (472 P.2d at p. 520.) This standard is not as difficult to apply as it may seem in the abstract. As Justice Traynor explained in this court's unanimous opinion in *State Rubbish [Collectors] Assn. v. Siliznoff*, supra, 38 Cal 2d [330] at page 338, 240 P.2d 282, the jurors are best situated to determine whether and to what extent the defendant's conduct caused emotional distress, by referring to their own experience. In addition, there will doubtless be circumstances in which the alleged emotional injury is susceptible of objective ascertainment by expert medical testimony.

Molien, 616 P.2d at 821. (Citation omitted.)

Sacco at 233, 896 P.2d at 425. In some circumstances, expert medical testimony may be necessary to establish serious or severe emotional distress. Such testimony is not always necessary, since there are circumstances in which the fact finder can determine without expert testimony that the claimant suffered serious or severe emotional distress.

Because a fact-driven analysis is necessary to decide whether a particular claimant has proved serious or severe emotional distress, similar levels of emotional distress can sometimes be severe and other times not, as the Montana Supreme Court noted in *Mahoney*:

> Thus, the very same descriptive terms that have been used to characterize compensable emotional distress in some circumstances have also described emotional distress that has been denied recovery. ***Compare*** *Zugg v. Ramage* (1989), 239 Mont. 292, 298, 779 P.2d 913,

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[14] *Molien v. Kaiser Foundation Hospitals*, 27 Cal.3d 916, 167 Cal.Rptr. 831, 837, 616 P.2d 813, 819 (1980).

[15] *Rodrigues v. State*, 472 P.2d 509, 518 (Hawaii, 1970).

917 (affirming emotional distress damages for "chest pains," worries over financial stability, and "sleepless nights" resulting from tortious misrepresentation in sale of resort) ***and*** *Niles v. Big Sky Eyewear* (1989), 236 Mont. 455, 465, 771 P.2d 114, 119-20 (concluding that such evidence as a personality change and marital problems was sufficient to raise jury issue on negligent infliction of emotional distress) ***with*** *Lence v. Hagadone Inv. Co.* (1993), 258 Mont. 433, 444-45, 853 P.2d 1230, 1237 (concluding that evidence of one visit to a hospital emergency room "for stress and heart-related problems and circulatory problems" insufficient for recovery) ***and*** *McGregor v. Mommer* (1986), 220 Mont. 98, 111-12, 714 P.2d 536, 545 (concluding that financial problems resulting from tortious conduct, which "bothered" plaintiff "a lot" and "at times, it would show up at home," were not sufficiently serious to warrant jury instruction for emotional distress damages). ***See also*** *First Bank*, 236 Mont. at 206, 771 P.2d at 91[16] (disapproving of recovery for loss of sleep and nervous tension).

Maloney at 230-31, 994 P.2d at 1135-36.

Montana law expressly recognizes a person's right to be free from unlawful discrimination. §49-1-101, MCA. Violation of that right is a *per se* invasion of a legally protected interest. The Montana Human Rights Act demonstrates that Montana does not expect a reasonable person to endure any harm, including emotional distress, which results from the violation of a fundamental human right. *Vainio*, ***op. cit.***; *Choteau Bar and Steak House*, ***supra***; *Johnson v. Hale*, 13 F.3d 1351 (9th Cir. 1994).

Under federal civil rights law, "compensatory damages may be awarded for humiliation and emotional distress established by testimony or inferred from the circumstances, whether or not plaintiffs submit evidence of economic loss or mental or physical symptoms." *Johnson v. Hale*, ***op. cit.*** (increasing award of $125.00 to $3,500.00 for overt racial discrimination). From the victim's testimony, the fact finder can infer that serious or severe emotional distress resulted from the illegal discrimination. ***See***, *Carter*, ***op. cit.***; *Seaton*, ***op. cit.***; *Buckley Nursing Home, Inc. v. M.C.A.D.*, 20 Mass.App.Ct. 172 (1985); *Fred Meyer v. Bureau of Labor & Industry*, 39 Or. App. 253, 261-262, ***rev. denied***, 287 Ore. 129 (1979); *Gray v. Serruto Builders, Inc.*, 110 N.J.Sup. 114 (1970).

Under the facts of this case, Howard-Linn suffered severe emotional distress when her supervisor subjected her to extreme scrutiny and criticism

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[16] *First Bank of Billings v. Clark*, 236 Mont. 195, 771 P.2d 84 (1989).

motivated by national origin bias. Howard-Linn may not have asserted that her national origin (manifested through her accent and occasional problems with written or conversational English) prompted the scrutiny and criticism. She may only have asserted illegal discrimination or even recognized illegal discrimination after QLC fired her. Nonetheless, her testimony and the facts of her long-term relationship with the employer did establish severe emotional distress resulting from the invasion of her protected right to be free from national origin discrimination in the workplace. That emotional distress resulted from her treatment when her supervisor placed her on probation and while she was on probation, as well as when she lost her job.

The law requires injunctive relief when the department finds illegal discrimination. §49-2-506(1) MCA. Further affirmative relief is discretionary. §49-2-506(1)(a) and (b) MCA. In this case, requiring QLC to follow its own policies and refrain from further national origin discrimination is sufficient.

V. Conclusions of Law

1. The Department has jurisdiction over this case. §49-2-509(7) MCA.

2. The corporation illegally discriminated against Howard-Linn because of national origin (Greek) when it placed her on probation, subjected her to extreme scrutiny and decided to dismiss her from her position as a family support specialist effective December 22, 1999. §49-2-303(1)(a) MCA.

3. As a result of the illegal discriminatory action, Howard-Linn suffered harm in lost wages to date of judgment ($27,900.00), lost retirement benefit payments to date of judgment ($375.00), lost future wages ($460.00 every two weeks commencing on April 4, 2001) plus lost retirement benefits payments ($12.50 every two weeks commencing on April 4, 2001) for an additional six months, prejudgment interest ($$1,624.06) and severe emotional distress ($12,500.00). Howard-Linn is entitled to recover these amounts to rectify the harm she has suffered. §49-2-506(1)(b) MCA.

4. The law mandates affirmative relief. The department enjoins the corporation from further discriminatory adverse employment actions against employees because of their national origin. In addition, within 60 days of entry of the final order, the corporation must submit to the department's Human Rights Bureau a proposed plan to follow and enforce the corporation's existing policies regarding (a) making a written record of the responses of an employee to corrective action and (b) investigating the validity of the responses of an employee to corrective action. Upon approval by the Bureau of the

proposed plan, with any amendments or additions imposed by the Bureau, the corporation must adopt the plan (with the amendments or additions) and thereafter report to the Bureau, for such time not exceeding 1 year after issuance of the final order and in such form, as the Bureau may require regarding implementation of the plan. §49-2-506(1) MCA.

VI. Order

1. The Department finds judgment in favor of Maria Howard-Linn and against Quality Life Concepts, Inc., on the charge that it discriminated against her because of national origin (Greek) when it placed her on probation and subsequently dismissed her from her position as a family support specialist on or about December 28, 1999.

2. The Department awards Howard-Linn the sum of $42,399.06 and orders the corporation to pay her that amount immediately. Starting April 4, 2001, the Department further orders the corporation to pay Howard-Linn the sum of $472.50, and thereafter the same sum every second Wednesday, with the final payment due on September 19, 2001. Interest accrues on the judgment as a matter of law.

3. The Department enjoins and orders the corporation to comply with all of the provisions of Conclusion of Law No. 4.

4. For purposes of §49-2-505(7) MCA, the department designates Howard-Linn the prevailing party.

Dated: March 21, 2001.

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Terry Spear, Hearing Examiner
Montana Department of Labor and Industry