

BEFORE THE MONTANA DEPARTMENT
OF LABOR AND INDUSTRY

IN THE MATTER OF HUMAN RIGHTS BUREAU CASE NOS. 0105014403;
0105014404; & 0103014405:

SUMMER STRICKER, Personal)	Case Nos. 1043-2011 and 1044-2011
Representative of the Estate of)	
ALLEN J. LONGSOLDIER, JR.,)	
)	
Charging Party,)	
)	HEARING OFFICER DECISION
vs.)	AND SEALING ORDER
)	
BLAINE COUNTY and HILL COUNTY)	
)	
Respondents.)	

* * * * *

I. Procedure and Preliminary Matters

Dayna Bear, Personal Representative of the Estate of Allen J. Longsoldier, Jr., filed a complaint with the Department of Labor and Industry on May 17, 2010. That complaint alleged that Northern Montana Hospital, Blaine County, Montana, and Hill County, Montana, discriminated against her son, Allen J. Longsoldier, Jr., because of his race, national origin or color (Native American) and disability (alcoholism) in failing and refusing to provide him with necessary medical care while he was incarcerated in the Hill County Detention Center on November 19-22, 2009, in custody as an adult Blaine County prisoner, causing his death.

On December 22, 2010, the department gave notice the estate's complaint against all three respondents would proceed to hearing, and appointed Terry Spear as hearing officer. During the course of the contested case proceedings, Summer Stricker replaced Dayna Bear as the designated representative of Longsoldier's estate and was substituted as the charging party in this case, and shortly before hearing, Northern Montana Hospital settled the estate's claims against it.

The contested case hearing on the claims against the two Counties proceeded on September 12-15, 2011, at the Hill County Detention Center in Havre, Montana. Summer Stricker attended on behalf of Longsoldier's estate, with counsel for the

estate, Patrick F. Flaherty, Steven T. Potts and Daniel J. Flaherty.¹ Hill County attended through its designated representative, Deputy Sheriff and Detention Administrator James Dahl, with counsel Maureen H. Lennon, Montana Association of Counties Legal Counsel. Blaine County attended through its designated representative, Blaine County Sheriff Glenn Huestis, with counsel Mark F. Higgins, Ugrin, Alexander, Zadick & Higgins, PC.

Exhibits 1, 4-5, 7-8, 11-13 (all three exhibits were sealed), 14, 16A-18 (16A was admitted, not 16, but 16A was sometimes erroneously referred to on the record as 16), 21-24, 27, 29-31, 36 (not to prove its truth, but to prove it was said), 37, 39, 42 (pages 93 and 214 only), 44-48 (44 was admitted conditionally subject to a ruling upon the availability of wrongful death damages, and 48 was admitted and sealed), 50 (sealed), 54 (only Table III as 54-1 and Table II as 54-2), 56 (admitted at p. 4, line 9, although not listed in the Index of Exhibits in the Transcript), 58-63² and 101-102 were admitted into evidence.³

Ralph Page, Tina Mord, Ronald Peterson, M.D., Kaela Mellgren, Neil Wiken, Cynthia Chapman, Ph.D., Debbie Cornell, Frank Billmeyer II, Roger Curtiss, Julie Messerly, John Thomas Bulger, M.D., Sharon Skyberg, Arlyn William Johnson, Christine Wold, Sheriff Glenn Huestis, Jesse Dibblee, Dana Seidel, James Dahl, Claudia Bear and Summer Stricker testified under oath at hearing. The deposition testimony of Brandon Wilkes, Steve Wallace and David Henry was made part of the record. Upon filing of the final post-hearing argument, the case was submitted for decision.

¹ Daniel Flaherty's name does not appear on the transcript cover pages, but the contents do accurately reflect that he was a third attorney participating on behalf of Longsoldier's estate at hearing, and the Hearing Officer therefore includes him as such.

² Exhibits 58-60 were not listed in the Index of Exhibits in the Transcript. Exhibit 58 was admitted by stipulation, with its number written out in the transcription, at p. 4, lines 11 and 12. Exhibit 59 was admitted as documentation of witness Roger Curtiss' qualifications, to save hearing time, at p. 396, line 19. Exhibit 60 was admitted at p. 705, line 23.

³ The Index of Exhibits in the Transcript lists Exhibit 220, which actually was page 220 of Exhibit 42, and which was refused. Exhibit 42, considerably more than 200 pages long, was counsel's "best faith effort to replicate" the State of Montana's Juvenile Probation file on Longsoldier (Transcript, p. 24, lines 20-22, and p. 33, line 18 through p. 34, line 4). Counsel neglected to clarify that examination of Tina Mord about "document 220" was actually with regard to Exhibit 42, page 220. Page 220 of Exhibit 42 was ultimately refused. See, Transcript, p. 50, line 11 ("Go to document 220. What is this document?") through p. 52, line 7 ("I would offer 220"), and on through p. 52, line 8 ("I would object on the basis of hearsay. . . .") through p. 53, lines 4-8 ("I'm going to refuse the exhibit . . . I think what the witness got out of it and relied on in treating or supervising the young man is now part of the record.").

II. Issues

The key issue in this case is whether either or both counties illegally discriminated against Longsoldier in government services, because of race and/or disability. A full statement of the issues appears in the final prehearing order.

III. Findings of Fact

1. Allen J. (also known as “A.J.”) Longsoldier, Jr., was an 18-year old Native American man who died from delirium tremens. He is survived by his mother, Dayna Bear, his father, Allen Longsoldier, Sr., and his siblings, Trey Birdtail, TaNiesha Birdtail, Tayonnah Birdtail and Dezmond Snell.

2. Longsoldier excelled at basketball in high school and had the ability to play college basketball. His career goal was to play basketball professionally, or, if he was not successful in that endeavor, to make a career for himself in sports medicine. He was an intelligent and gifted young man.

3. Longsoldier also was an alcoholic. He had been diagnosed with alcohol dependency and depression. He had attended chemical dependency treatment twice, had been in other treatment placements prior to November 2009, and was planning to attend a third in-patient treatment. Blaine County Sheriff Glenn Huestis had transported him to North Carolina for one such inpatient treatment.

4. Because of prior juvenile court proceedings, all of which were for matters in which alcohol abuse was at least indirectly involved, in 2009 Longsoldier was under the supervision of Tina Mord, deputy juvenile probation officer for the Seventeenth Judicial District.

5. Longsoldier had been out of Montana, attempting to earn an intercollegiate basketball scholarship and attend college. He turned 18 years old in June 2009. In October 2009, his mother was arrested and a funeral of a family member was scheduled. Longsoldier returned to Montana temporarily, intending to leave again soon and resume his efforts to enroll in college for spring semester 2010.

6. Mord attempted to contact Longsoldier while he was back in Montana, leaving messages for him to call her and come to see her. She wanted to document and close his file, since he was no longer a juvenile. Longsoldier did not respond.

7. On November 10, 2009, Mord requested a “pick up and hold” (arrest) of Longsoldier for his failure to report. Mord expected that Longsoldier would be picked up and taken to the Hill County Detention Center (since he was now an adult and Blaine County had no adult corrections facility). She expected that he would be there until she came and concluded her supervision of him, at which time he would

be released. She did not expect any harm to come to him. She had no idea that Longsoldier's arrest would trigger a series of events that would result in his death.

8. Longsoldier was arrested pursuant to this status offense citation at approximately 3:30 a.m. on Thursday, November 19, 2009, in Blaine County, by Blaine County Deputy Sheriff Timothy Richman. Blaine County's adult prisoners are held in the Hill County Detention Center, pursuant to an agreement between the two counties. Deputy Richman transported Longsoldier to the Hill County Detention Center. This was Longsoldier's first experience with an adult correctional facility. His previous custodial stays had been in the Blaine County youth facility.

9. The Detention Center has a written admissions policy, providing, in pertinent part, that all inmates must receive a medical screening. Longsoldier's file does not contain the required medical screening form. The Detention Center also seeks information about chronic illnesses such as asthma or diabetes so that it can make accommodations for those illnesses. There is no evidence either that the failure to complete the medical screening form or that the failure to seek more information about possible chronic illnesses from an 18-year old apparently healthy young male were because Longsoldier was Native American. There is no evidence that the Detention Center personnel knew or reasonably should have known at the time of Longsoldier's arrival at the Detention Center that he was an alcoholic, and therefore the failures to seek more information could not have been motivated by any discriminatory animus toward Longsoldier because of his alcoholism.

10. The Detention Center provides a licensed medical doctor and nurse for on-site medical evaluation. The doctor and nurse were not called to evaluate Longsoldier, who had no immediately apparent medical needs. The doctor is to provide on-site medical evaluation and treatment of inmates which are medically necessary and appropriate in outpatient setting. An assessment by a medical provider shall occur generally within 14 days of the inmate's admittance.

11. When Longsoldier was arrested, and when he was placed in the custody of the Hill County Detention Center, he showed no signs of intoxication. According to Summer Stricker, he had been drinking heavily for several days ("binge drinking"), but had spent the night before the arrest in jail in Fort Belknap, and therefore had not been drinking immediately before his arrest. The precise details of how long it had been since Longsoldier had last been drinking, and how much alcohol, if any, may still have been in his system when he arrived at the Hill County Detention Center, were not proved.

12. Longsoldier was placed in one of the holding cells in the reception area of the Detention Center. There is conflicting testimony about whether all or only one

or perhaps more of these holding cells are covered with padded foam rubber. The padded holding cell or cells are also called “rubber rooms” or “safety cells.” The holding cells are supposed to contain nothing that an inmate can use for self-injury. Each holding cell has a grate in the floor, with a recessed toilet receptacle beneath it. The only other furnishings put in these rooms are a four-inch thick mattress and a blanket. There is nothing else in the holding cells that an occupant can pick up, move or handle. There is a food port door in the cell door through which a meal tray, with food upon it, can be passed. There is no sink, water fountain or other source of water. For an occupant to drink, a container of water has to be passed through the food port by one of the Detention Officers.

13. Another prisoner, Ralph Page, who had “trustee” status and did facility laundry, typically in the middle of the night, observed Longsoldier in the reception area early Thursday morning. Page did not notice any indications that Longsoldier was intoxicated or ill at that time. This must have occurred earlier that morning of November 19, 2009, than the time of the first Daily Log entry regarding Longsoldier, which reported that he was sleeping (see next Finding).

14. After Longsoldier was brought into the reception area and placed in Hill County’s custody, references to him were recorded in a series of Daily Log entries (Exhibit 29). The first entry at 5:38 a.m. on Thursday, November 19, 2009, was made by Detention Officer David Klobofski, indicating “Longsoldier sleeping.” The log entries regarding Longsoldier are included in these findings, in chronological order, with the rest of the findings.

15. At 6:52 a.m. on Thursday, November 19, 2009, the Daily Log for the Detention Center has an entry, made by Detention Officer Brandon Wilkes, indicating “H102 AJ Longsoldier,” meaning that Longsoldier was in holding cell number 102.

16. At 9:15 a.m. on Thursday, November 19, 2009, the Daily Log for the Detention Center has an entry, made by D.O. Wilkes, indicating “Booking in Allen Longsoldier.”

17. At 9:47 a.m. on Thursday, November 19, 2009, the Daily Log for the Detention Center has an entry, made by D.O. Wilkes, indicating “All ok at this time, waiting for warrant on Allen Longsoldier.”

18. At 10:09 a.m. on Thursday, November 19, 2009, the Daily Log for the Detention Center has an entry, made by D.O. Wilkes, indicating “Jim from Judge Miller’s Office called and he is wanting to see Allen Longsoldier at 1045 hrs.”

19. At 10:34 a.m. on Thursday, November 19, 2009, the Daily Log for the Detention Center has an entry, made by D.O. Wilkes, indicating “Recieved [sic] a call from Judge Miller stating that he will not see Allen Longsoldier today as the county attorney is waiting to see what they are going to do with him.”

20. At 10:55 a.m. on Thursday, November 19, 2009, the Daily Log for the Detention Center has an entry, made by D.O. Wilkes, indicating “Recieved [sic] a call from jim at judge millers office [sic] and they are going to see longsoldier [sic] at 1245 hrs.”

21. At 10:59 a.m. on Thursday, November 19, 2009, the Daily Log for the Detention Center has an entry, made by D.O. Wilkes, indicating “Recieved [sic] a pick up and hold order for Mr. Longsoldier.”

22. At 11:18 a.m. on Thursday, November 19, 2009, the Daily Log for the Detention Center has an entry, made by D.O. Wilkes, indicating “S81 and s81.5⁴ taking Longsoldier to court via vision-net.”

23. At 1:40 p.m. on Thursday, November 19, 2009, the Daily Log for the Detention Center has an entry, made by D.O. Wilkes, indicating “Booked in and finished A. Longsoldier he is going to remain in booking until next shift, I asked for his middle finger and he thought it would be funny to flip me off.” In his deposition, Wilkes testified that Longsoldier became uncooperative during the fingerprinting process (“smart talk” and some “vulgar” language), so Wilkes returned him to his holding cell. Wilkes also testified that overall at that time, Longsoldier was “very coherent, certainly one of the better inmates that we had, or that I dealt with” Wilkes testified that he later completed Longsoldier’s booking process near the end of his shift on Thursday, November 19, 2009. At no time during that shift that day did Wilkes observe any signs that Longsoldier was intoxicated.

24. At 2:00 p.m. on Thursday, November 19, 2009, the Daily Log for the Detention Center has an entry, made by Detention Officer Randall Ellis, indicating “two in holding ok (Allen Longsoldier [other name blacked out]).”

25. At 2:35 p.m. on Thursday, November 19, 2009, the Daily Log for the Detention Center has an entry, made by D.O. Ellis, indicating “RN1 [the Detention Center’s Nurse] called & advised her wont [sic] be back this afternoon she is sick.” The wording suggests that the nurse had been at the facility earlier that day. This is the last indication of any Hill County medical personnel at the Detention Center while Longsoldier was there, who could have observed his condition or provided

⁴ Numbers following either large or small “s” designations refer to Detention Center employees.

assistance in assessing his condition. There is no evidence that the nurse ever examined or even observed Longsoldier on November 19, 2009. There is also no evidence that Longsoldier exhibited any indications of a need for medical attention while the nurse might have been there on November 19, 2009.

26. At 11:59 p.m. on Thursday, November 19, 2009, the Daily Log for the Detention Center has an entry, made by D.O. Klobofski, indicating “Let Longsoldier shower and changed him into our clothes.”

27. At 1:02 a.m. on Friday, November 20, 2009, the Daily Log for the Detention Center has an entry, made by D.O. Klobofski, indicating “All ok Longsoldier still awake and sweating.”

28. At 1:20 a.m. and again at 3:07 a.m. on Friday, November 20, 2009, the Daily Log for the Detention Center has two entries by D.O. Klobofski, each indicating that Longsoldier was “still awake.”

29. For the first 24 hours of his incarceration at the Hill County Detention Center, Longsoldier appeared to have no particular medical issues, although he had not slept since early Thursday morning, November 19, 2009. But at 3:28 a.m. on Friday, November 20, 2009, the Daily Log for the Detention Center has an entry, made by D.O. Klobofski, indicating “Longsoldier has been asking to go to the hospital. Saying he can’t hold water down. I have not heard him throw up since I have been on shift.” No action was taken on Longsoldier’s request. There is no evidence that the Detention Center would routinely start the process of granting a request to go to the hospital by any inmate, of any race or national origin, whether or not regarded as alcoholic, based upon a report by that inmate that he could not hold water down, but who had not been observed vomiting.

30. Approximately 24 hours after inmate “trustee” Page first saw Longsoldier (when he was brought into the Detention Center early on Thursday morning), Page again observed Longsoldier. Page was again doing laundry tasks, near the holding cells and had another opportunity to observe Longsoldier. Page saw and heard Longsoldier, at that time, walking aimlessly in his cell and crying for help, saying things like “My hands are melting. Help me.” He felt there was something definitely wrong with Longsoldier. He observed the Detention Center staff taking no action in response to Longsoldier’s cries for help (“It was kind of like a baby in the background, you know, just all this noise and everybody went along their business, you know”). Based on Page’s testimony, this episode, during which Longsoldier’s behavior suggested that he was hallucinating, more likely than not took place within an hour after the D.O. Klobofski’s 3:28 a.m. Daily Log entry on November 20, 2009.

31. At 5:02 a.m. on Friday, November 20, 2009, the Daily Log for the Detention Center has an entry, made by D.O. Klobofski, indicating “Longsoldier laying down still awake.”

32. At 7:07 a.m. on Friday, November 20, 2009, the Daily Log for the Detention Center has an entry, made by D.O. Wilkes, indicating “Allen Longsoldier woke up and started pounding on the door, saying, help me, help me, s47⁵ and myself responded and he stated that someone pulled a piece of his hair out of his head and put it on the floor. Nobody is in the cell with him and he keeps asking for help.” This entry indicates that Wilkes thought that Longsoldier slept at least briefly on the morning of November 20, 2009. From other log entries, Longsoldier at most might have gotten less than two hours of sleep on the night of November 19 and the morning of November 20, after getting not more than three hours of sleep on the morning of November 19. By the morning of November 20, 2009, Longsoldier had gotten less than five hours of sleep since November 18, 2009.

33. At 8:10 a.m. on Friday, November 20, 2009, the Daily Log for the Detention Center has an entry, made by D.O. Wilkes, indicating “A. Longsoldier handcuffed to the bench, I asked how he was doing and he stated that he was not doing any better or any worse. He is still a little jumpy as the doors pop and he thinks that someone is going to get him.” There was no explanation in either the Detention Center Log or in Wilkes’ deposition testimony of any specifics about when, why or for how long Longsoldier was handcuffed to a bench, apparently outside of the holding cells and in the booking area.

34. For more than 11 hours, there are no references of any kind to Longsoldier in the Detention Center log. Then, at 6:58 p.m. on Friday, November 20, 2009, the Daily Log for the Detention Center has an entry, made by D.O. Ellis, indicating “Allen Longsoldier says he has the wrong hands & he’s yellow. Still having DT’s.”

35. This is the earliest documented reference in the record to Longsoldier suffering from “DTs.” There is substantial and credible evidence that the Detention Center staff had no training on what delirium tremens was, and considered “DTs” a name given to the shakiness, disorientation, nausea and sometimes hallucinations they often observed in inmates who came into the Detention Center intoxicated and then remained there while their bodies processed and excreted the alcohol from their systems. The staff also called these signs of impairment “detox,” “detoxing” and “alcohol withdrawal.”

⁵ The designation “s47” or “S47” identifies D.O. Ricky A. Eckhardt, see, Exhibit 29, page 157. Wilkes’ deposition testimony identified the other officer on this incident as being D.O. Shawn Dahl.

36. Detention Officer Sharon Skyberg was working the night shift at the Detention Center in November 2009. She had been working at the Detention Center for almost thirteen years at that time.⁶ She had not worked on Thursday night, November 19, 2011. She came to work at 10:00 p.m. on Friday night, November 20, 2009. At 10:13 p.m. that Friday, she noted in the Daily Log for the Detention Center that Longsoldier was in the holding area. This was her first observation of Longsoldier while he was a prisoner in the Detention Center.

37. D.O. Skyberg had received limited training on the signs of alcohol withdrawal and drug withdrawal. She had learned to keep an eye on prisoners who obviously had been drinking just before they were brought into the Detention Center. She made mental notes of prisoners to monitor because they might suffer alcohol withdrawal after coming to the facility under the influence. When an inmate began obvious suffering from alcohol withdrawal, Skyberg understood the accepted protocol was to bring the inmate to the holding area and observe him. Typically, this occurred with inmates who came to the facility intoxicated and stayed for several days. Those inmates who did suffer from alcohol withdrawal would typically improve within a few days.

38. Skyberg did not initially think of Longsoldier as a person who had been drinking before he was brought in. From her testimony, it is not clear exactly when she deduced that he was suffering from alcohol withdrawal. When she first observed Longsoldier, he was sitting in his cell in the holding area crying. At 12:49 a.m. on Saturday, November 21, 2009, the Daily Log for the Detention Center has an entry, by Skyberg, indicating “Allen Longsoldier awake, was crying earlier, is wanting shower.” The entry goes on to state “am waiting to see if [name blacked out] is going to be bonded out,” which suggests that Skyberg was waiting to see if a prisoner was bonding out before commencing the process of having Longsoldier shower.

39. Skyberg testified that Longsoldier was crying throughout the night of Friday, November 20, and the early morning of Saturday, November 21, 2009. She observed that he thought that his mother was “next-door or outside the door” and asked to see her. She also observed that he “had some hallucinations” and “was seeing people that weren’t there.”

40. At 5:55 a.m. on Saturday, November 21, 2009, Skyberg made another entry in the Daily Log for the Detention Center, indicating that Longsoldier was “awake and talking to someone in his cell and outside his cell” although there was no

⁶ Skyberg testified that she worked at the Detention Center for thirteen years when she retired in February 2010, just months after Longsoldier’s death.

one there. By this time she probably sensed that he might be suffering from alcohol withdrawal.

41. Skyberg went off duty at 6:00 a.m. For almost the entire next twelve hours, there are no Daily Log entries on Longsoldier. During that period, at least one prisoner was identified as needing to go the Northern Montana Hospital, and was taken to the hospital within an hour. There were also multiple bookings and new prisoner arrivals. A Detention Officer's search of a cell disclosed some drugs and paraphernalia. It was a fairly busy day.

42. Apparently around 1:30 Saturday afternoon, Skyberg was called by a Detention Center supervisor and requested to report to work at 6:00 p.m., because a staff person had called in sick.

43. At 5:34 p.m. on Saturday, November 21, 2009, the Daily Log for the Detention Center has an entry, by D.O. Wilkes, indicating "All ok at this time, moved Allen Longsoldier to H100 as he has been acting more violent. He is now pounding on the door and starting to really 'freak out.' "

44. At hearing, Skyberg testified that she was directed by a supervisor she identified as Jeremy Schmidt to call and have Longsoldier seen at the hospital, because Schmidt thought Longsoldier was worse. Her testimony did not identify when that conversation occurred, whether before she came to work or when she arrived at work.

45. At 6:03 p.m. on Saturday, November 21, 2009, Skyberg, having come to work a few minutes early, called the Blaine County Sheriff's Office and reported to the Dispatcher, Jo Lynn Russell, that Longsoldier needed to go to the hospital. Skyberg told Russell that Longsoldier had "been in DTs for three days has not slept is hallucinating he needs to be evaluated." Exhibit 16A.

46. At 6:04 p.m., Russell called Sheriff Huestis, who authorized sending a deputy to take Longsoldier to Fort Belknap (Indian Health Services, or "IHS"), rather than Northern Montana Hospital in Havre. Russell called Skyberg and told her that a Blaine County deputy would be coming to Havre from Harlem, and would be taking Longsoldier to Fort Belknap. Skyberg reiterated the details of Longsoldier's condition. Russell then called the IHS Emergency Room in Fort Belknap and told Velvet Werk, who answered the phone, that Longsoldier would be transported from the Hill County Detention Center to Fort Belknap for evaluation. Werk soon called Russell back, and told her that "if he is really that bad off" (Russell had described Longsoldier's condition) "he should go to Havre" (Northern Montana Hospital).

47. Harlem, Montana, is 44 miles due east of Havre, Montana, just north of Highway 2. Fort Belknap is approximately 47 miles due east of Havre, Montana, just south and west from Highway 2. To take Longsoldier to Fort Belknap, a deputy in Harlem would have to drive west to Havre, pick up Longsoldier, then drive back past the turn off for Harlem and drive a few more miles east to Fort Belknap. To take Longsoldier to Northern Montana Hospital, that same deputy would have to drive west to Havre, pick up Longsoldier, then drive just a few blocks across Havre to the hospital, which would take less than half as long as delivering him to Fort Belknap.

48. Russell called the Detention Center and spoke to Blaine County Deputy Frank Billmayer, who had just arrived at the Detention Center to take Longsoldier to Fort Belknap, telling him that IHS said Longsoldier should be taken to the hospital in Havre instead of to IHS. Deputy Billmayer verified that he would take Longsoldier to the hospital in Havre. Russell then called Sheriff Huestis and advised of the change, which was okayed after the fact by the Sheriff.

49. At 6:57 p.m. on Saturday, November 21, 2009, the Daily Log for the Detention Center has an entry, made by D.O. Skyberg, indicating “Blaine County here to transport Allen Longsoldier to NMHER for an evaluation. He has not slept in three days and has been hallucinating.” At 7:06 p.m. on Saturday, November 21, the Daily Log for the Detention Center has an entry, made by D.O. Skyberg, indicating “Contacted the ER to inform them that Blaine County is inroute [sic] with Allen Longsoldier.” It took roughly an hour from the initial call to Sheriff Huestis until the deputy took Longsoldier out of the Detention Center, due first to the logistics involved in deciding who would transport the inmate, and then to the time it took for the deputy to drive to the Havre Detention Center from Harlem, Montana, in Blaine County, where he had been patrolling.

50. There is no evidence that either or both counties took longer to arrange and provide transportation to the hospital for Longsoldier because he was Native American or because he was an alcoholic.

51. Before Longsoldier arrived at Northern Montana Hospital, Nurse Neil Wiken, who obtained an Associate Degree in Nursing from MSU Northern in 1995 and had worked at the hospital ever since, took a phone call from the Detention Center about Longsoldier. Wiken recalls that the Detention Center call indicated that Longsoldier had been seeing and hearing things and wouldn't eat or drink. Wiken's notes from November 21, 2009, reflect that Deputy Billmayer told him that Longsoldier was hearing voices in his head and answering back with his mind and seeing bugs and wavy objects at the edges of his vision, and that Longsoldier had been in “rehab” in North Carolina and left without notice.

52. Wiken examined Longsoldier, who talked responsively with Wiken, complained of thirst and dehydration and described wavy lines in his right peripheral vision and something flying in his left lower vision field. He also noted that Longsoldier “sees something behind the open exam room door that frightens him, but will not specify.” Wiken testified at hearing that Longsoldier “just seemed lost and confused.” and that the first thing Longsoldier asked for was a drink of water and that he drank profusely.

53. Dr. Ron Peterson was the staff Emergency Room physician on-call at Northern Montana Hospital, who saw, examined and talked with Longsoldier. At the time he saw Longsoldier, Dr. Peterson had a license to practice medicine in Montana, was certified in emergency medicine and either was or had been certified in addiction medicine. He had been practicing medicine for over 30 years, much of time in emergency medicine, with more a decade of emergency medicine practice in Montana, first in Great Falls and then in Havre since 2007. Working in the E.R. at Northern Montana Hospital, working six 24-hour shifts a month, Dr. Peterson typically saw at least one inmate from the Hill County Detention Center each shift, usually for various kinds of pain complaints, but once or twice a month he would see inmates with symptoms of alcohol withdrawal.

54. Alcohol withdrawal is a complex of symptoms that can commence when a person whose system is accustomed to functioning with alcohol present stops drinking alcohol. Not every person who drinks heavily enough so that their system is accustomed to functioning with alcohol present will develop the symptoms. In those who do develop the symptoms, the symptoms will vary, along a progression of manifestations. How far the progression will go, or to what degree of severity, is also variable.

55. Usually the physical manifestations of alcohol withdrawal start with mild nausea and poor appetite, followed with tremors or shaking. Unless the person is drinking fluids, the body starts getting dehydrated. Although the symptoms can appear while there is still a falling concentration of blood alcohol present, usually the symptoms start after the person has been without alcohol for a significant amount of time.

56. The symptoms of alcohol withdrawal can sometimes progress to a severity that substantially limits life activities. People whose alcohol withdrawal is growing more severe lose their appetites to the point of not eating solid food. The nausea can prevent them from keeping liquids down, and they can physically weaken. Their balance can be affected. Their interactions with others can be affected. Visual hallucinations, paranoia and anxiety can set in, and their perception of reality can be altered.

57. If alcohol withdrawal progresses to its most severe stage, it can become delirium tremens, which can be life-threatening. Delirium tremens is sometimes abbreviated as “DTs” or “the DTs.” This is a far more specific technical usage than using “DTs” interchangeably with “alcohol withdrawal” or “detox” as labels for the entire spectrum of ceasing to drink alcohol and experiencing varying degrees of unpleasant to life-threatening effects. Medical professionals typically reserve “DTs” (if using the shorthand reference at all) for actual cases of delirium tremens.

58. The substantial and credible evidence of record in this case established that the non-medical people working in custodial law enforcement in Hill and Blaine Counties used “DTs” and “the DTs” interchangeably with and to mean the same thing as “alcohol withdrawal” or “detox” or “detoxing.” The substantial and credible evidence of record established that none of them considered “DTs” or “the DTs” (meaning the same thing as “alcohol withdrawal” or “detox” or “detoxing”) to be a disabling or even life-threatening condition.

59. Actual delirium tremens can develop as much as five or ten days after the person stopped drinking alcohol. Delirium tremens has to be treated vigorously, and direct medical supervision of the care of the person is indicated. In delirium tremens, the person typically is delirious in the literal sense of not being in touch with reality, and may also develop a fever. The person usually cannot or does not (absent close supervision) take oral fluids and so becomes more dehydrated. He or she can become very agitated and difficult to care for or control. Full-blown seizures can develop. Based upon the evidence adduced, one out of five (or more) persons who go into delirium tremens while not under direct medical care die. Under direct medical care, perhaps one out of ten or twenty persons who go into delirium tremens die despite immediate and direct medical care.

60. Treatment for delirium tremens is based upon evaluation of the particular manifestations at hand. If the person is tremulous, benzodiazepines, such as Ativan, are often given. If the person is nauseated, anti-nausea medication can be given. If the person is unable to drink liquids, an IV can be started, and IV fluids and medications provided. There are various medications for various combinations of signs and symptoms.

61. Dr. Peterson was aware that the Hill County Detention Center had reported that Longsoldier had hallucinated, had been nauseated and was unable to hold fluids. Dr. Peterson did an initial evaluation, ordered some lab tests, administered a shot of Ativan, and had Longsoldier observed while awaiting the lab results. Longsoldier seemed better. He was able to, and did, drink quite a bit of water, with no apparent difficulty and without nausea. Longsoldier’s lab results did not indicate any alcohol in his system.

62. Dr. Peterson released Longsoldier back to custody, with prescriptions for Cymbalta and Ativan, and directed that he be provided with medication (6 Ativan tablets), apparently since it was Saturday night and filling the prescriptions might take until Monday.

63. Dr. Peterson also testified that he released Longsoldier with instructions to the “person escorting him to the Emergency Department” that “if he became worse, if he became more tremulous, if he again became nauseated, or couldn't hold down fluids, he should be brought back to the Emergency Department for reevaluation, and that he should be reevaluated at Fort Belknap in several days for evaluation of his mental status.”

64. Wiken gave Longsoldier an oral Cymbalta (a pill) which he swallowed. No other pills were provided. He was then returned to Deputy Billmayer, who was given the prescriptions and the “Emergency Department Aftercare Instructions.”

65. Deputy Billmayer does not recall getting any spoken instructions from Dr. Peterson or anyone else. The deputy was not given any medication to take back to the Detention Center for Longsoldier to take over the remainder of the weekend. The hand-written instructions on the Aftercare Instructions did not contain any “return if . . . “ or “return as necessary” instructions; neither did the Emergency Room note dictated by Dr. Peterson that night.

66. Despite Dr. Peterson’s testimony to the contrary, the evidence does not credibly establish that Blaine County received any instructions from the hospital about bringing Longsoldier back if his condition worsened. The handwritten note on the Emergency Department Aftercare Instructions, which did not refer to any kind of return to Northern Montana Hospital’s Emergency Room did indicate that Longsoldier should “Follow- up with provider at Fort Belknap in 3-5 days.” The inclusion of one instruction and exclusion of the other undercuts the credibility of Dr. Peterson’s testimony about giving instructions to return Longsoldier to the Emergency Room if he became more tremulous or nauseated or couldn’t hold down fluids.

67. At 9:00 p.m. on Saturday, November 21, 2009, the Daily Log for the Detention Center has an entry, made by Skyberg, indicating “Blaine County back with Allen Longsoldier from the ER, he will have to be evaluated by a psychiatrist.” The prescriptions that accompanied Longsoldier were kept in the reception area for the rest of the weekend. There were no notes about taking Longsoldier back to the hospital if he got worse, or giving him pills (which were in any event not provided) over the rest of the weekend.

68. At 9:01 p.m. on Saturday, November 21, 2009, the Daily Log for the Detention Center has an entry by Skyberg that “Allen Longsoldier is talking to himself in H100, he was given a shot of Ativan and Cymbalta [sic] at the hospital.” In Skyberg’s testimony at hearing, she indicated that Longsoldier, when he returned to the Detention Center from the hospital, “seemed better,” “was talking. . . . He was looking at me. He was coherent.” She testified that “he said he felt better.” This testimony is inconsistent with contemporaneous reports she made in the Daily Log, which are more credible, since they were made at the time, not after Longsoldier’s terrible death. Thus, the substantial and credible evidence established that almost immediately after he returned to the Detention Center after his hospital visit, the Detention Officers noticed that Longsoldier’s condition was getting worse again.

69. Within an hour of Longsoldier’s return to the Detention Center, Blaine County brought in another prisoner, who arrived in severe pain and throwing up blood. Transport to the hospital was arranged and arrived in 21 minutes. There is no evidence whether the prisoner involved was Native American. There is also no evidence about where the deputy who transported this prisoner had been when assigned to come to the Detention Center (Daily Log entries by Skyberg, p. 162 of Exhibit 29, at “2156” and “2216”). No comparisons can be made between these situations, because there are insufficient facts in the record to weigh similarities or differences between them.

70. At 12:09 a.m. on Sunday, November 22, 2009, the Daily Log for the Detention Center has an entry, by Skyberg, indicating “Have been monitoring Allen Longsoldier, he has not stopped talking to whoever is in his cell, he is complaining that his fingers are falling off and he wants his friends to help him fix them.”

71. At 1:55 a.m. on Sunday, November 22, 2009, the Daily Log for the Detention Center has an entry by Skyberg, indicating “Allen Longsoldier still talking to himself.”

72. At 2:59 a.m. on Sunday, November 22, 2009, the Daily Log for the Detention Center has an entry by Skyberg, indicating “Heard someone gaging [sic] and found it was Longsoldier in H100, Shawn and I entered found Longsoldier on his back gaging [sic] and trying to vomit. We rolled him on his side and he was very hot and sweating.” Her account at hearing, in many respects, bears out the facts she documented in the Daily Log at the time. After coming back from the hospital on Saturday night, November 21, 2009, Longsoldier rapidly returned to a level of alcohol withdrawal symptoms often seen in the Detention Center (cf. Findings of Fact Nos. 35 and 58). However, shortly after 2:30 a.m. that Sunday morning, his condition deteriorated substantially.

73. Skyberg was alarmed at the deterioration in Longsoldier's condition. She called her supervisor, Chief Detention Officer Schmidt, who told her to call Blaine County. At 2:37 a.m., she did. After that conversation, she made the log entry of 2:59 a.m., which concludes, "I called Blaine County and informed them that they may need to take Longsoldier back to the ER. The Dispatcher stated she would call me back right after called the ER and the Sheriff."

74. The Blaine County Dispatcher who talked to Skyberg was Debbie Cornell. After her conversation with Skyberg, Cornell called Northern Montana Hospital, and asked for the Emergency Room. Nurse Wiken took that call. He knew that Northern Montana Hospital had a policy not to give medical advice over the phone.

75. Cornell reiterated what Skyberg had told her – that Longsoldier was "on the floor . . . really hot, kinda burning up. And he's got the dry heaves, basically."⁷ Nurse Wiken responded that "we did all the lab work on him. He showed no sign of infection or illness." He then went on to tell Cornell, "He just needs to drink fluids and uh, I mean if they need to bring him back for re-evaluation, but I think he's playing them." Cornell responded, "You think so?" Wiken replied, "Oh yeah. Yeah." He went on to say, "I think he's, I'm not sure what he's got going on." He told Cornell, "But he's not ill. He's not physically ill." He told her that Longsoldier's lab results were negative for drugs and alcohol. He told her that Longsoldier's CBC tests were negative. He repeated "He doesn't show any signs of infection. His electrolytes were fine. His urine was a little concentrated. He just needs to hydrate more." Later in the brief conversation he would add, "He just doesn't like being there."

76. Nurse Wiken's comments, in flagrant violation of the hospital's policy against giving medical advice over the phone, were made to Cornell, a dispatcher in the Blaine County Sheriff's Office, who had not seen Longsoldier's present condition, but only heard about it in telephone conversation with Skyberg. She had no reason to disbelieve the conclusions expressed by Nurse Wiken, and she did believe those conclusions.

77. Cornell called Skyberg back. She reported to Skyberg that "the hospital" said that "all his test results and electrolytes and all that stuff come back good." She told Skyberg that the hospital "Said he has no infection, no nothing and that. Um, he does need to drink a lot of fluids." Skyberg responded, "He can't, yeah, we can't get him to do it. He's uh, laying on his side right now."

⁷ The quotations in Findings 71 through 75 come from Exhibit 16A, transcripts of various recorded telephone calls between the hospital, Blaine County Dispatch and the Detention Center.

78. In the course of the rest of the conversation, Skyberg struggled and failed to communicate that Longsoldier seemed to her to be genuinely and seriously ill. Cornell, persuaded by Nurse Wiken that Longsoldier was “playing them,” responded that it was “just DTs [alcohol withdrawal that cleared up in days, as usually seen in the Detention Center],” and added, “And there’s, I talked to the hospital and they said there’s nothing they can do for him.” Cornell noted Nurse Wiken’s diagnosis by telephone that Longsoldier was slightly dehydrated and needed some liquids, and suggested (apparently from experience with Longsoldier in the Blaine County Juvenile Detention Facility) that ice water (which wasn’t readily available) would help. Skyberg, unable to convince Cornell that what was happening was not what Wiken thought was happening, finally said “We can give him cold water. And it’s cold right now, so. We’ll give him, I’ll get him to drink some for me.”

79. At 3:00 a.m. on Sunday, November 22, 2009, the Daily Log for the Detention Center has an entry, made by Detention Officer Shawn Dahl, indicating “Helping S21 [Skyberg] with A. Longsoldier.”

80. At 3:03 a.m. on Sunday, November 22, 2009, the Daily Log for the Detention Center has an entry by Skyberg stating, “The Dispatcher from Blaine County called back and stated that the nurse at the ER stated that they could not do any more for Longsoldier and that we should be giving him cold ice water and that Longsoldier was going through DTs, because he had did that [sic] before as a juvenile. Longsoldier is laying on his bank silently talking to someone in his cell.”

81. There are no indications that Skyberg was ever able, that Sunday morning, to get Longsoldier to drink any water, cold or otherwise.

82. At 4:55 a.m. on Sunday, November 22, 2009, the Daily Log for the Detention Center has an entry, made by D.O. Skyberg, indicating “Longsoldier awake and still talking and laughing to whomever is in his cell.”

83. D.O. Skyberg went off-duty at 6:00 a.m. on Sunday, November 22, 2009. In her testimony at hearing, she reported that during that early Sunday morning, she observed Longsoldier (1) getting up and fighting with someone (who wasn’t there); (2) trying to get out of his cell, trying to find a place to get out of the cell; (3) acting as if his girlfriend was in his cell; (4) crying; and (5) hitting the wall, apparently thinking it was a door that would open if he hit it. Skyberg also credibly testified that she reported to D.O. Wilkes, who was coming on-duty at 6:00 a.m., that Longsoldier needed to be watched and probably would have to go back to the Emergency Room because something was wrong.

84. At 6:20 a.m. on Sunday, November 22, 2009, the Daily Log for the Detention Center has an entry, made by D.O. Wilkes, indicating “Allen Longsoldier is up talking.”

85. At 7:27 a.m. on Sunday, November 22, 2009, the Daily Log for the Detention Center has an entry, made by D.O. Wilkes, indicating “Allen Longsoldier is still talking and eventually raising his voice. He is Detoxing (sic) really bad and he is visualizing his mom and grandma.”

86. At 8:03 a.m. on Sunday, November 22, 2009, the Daily Log for the Detention Center has an entry, made by D.O. Wilkes, indicating that Longsoldier (identified in Wilkes’ deposition testimony as the inmate to whom this note referred) “is starting to yell and scream at his friends. Apparently they are being chased by the cops, and he is getting very detailed on what crimes they committed [sic] and who is with him, and he is challenging the officers.”

87. At 8:49 a.m. on Sunday, November 22, 2009, the Daily Log for the Detention Center has an entry, made by D.O. Wilkes, indicating that “Allen is being chased by 2 bulldogs now.”

88. At 8:55 a.m. on Sunday, November 22, 2009, the Daily Log for the Detention Center has an entry, made by D.O. Wilkes, indicating “Asked Allen Longsoldier if he was hungry once again and he said yes.” There is no indication that Longsoldier ever actually ate.

89. Detention Officer Christine Wold arrived at the Detention Center at approximately 2:00 p.m. on Sunday, November 22, 2009. As she entered the booking area, she could hear someone talking in H100. D.O. Wilkes told her that it was Allen Longsoldier, who was going through the DT’s, had been awake for a couple of days, and also had not eaten or drank anything for the last two days.⁸ Wilkes also informed Wold that Longsoldier had been talking to himself and imagining things all morning.

90. Wold tried to retrieve Longsoldier’s lunch tray (apparently with the food still on it), but he refused to pass it through the food port to her. When she asked if he was done with it, he said, “no,” but she wasn’t sure if he was answering her or just talking. She left the food port open, so that he could put his tray out. Minutes later,

⁸ Wold prepared a written report on November 24, 2009 (Exhibit 30), in which she stated that Wilkes told her that Longsoldier “was going the DT’s and that he had been awake for the last couple of days, and that he had eaten or drank anything for the last 2 days as well.” Clearly, this was a mistaken transcription of Wilkes telling Wold that Longsoldier was going through the DT’s, had been awake for the last couple of days, and had NOT eaten or drank for the last two days as well.

she saw him trying to exit his cell through the food port, having a leg and an arm hanging out of the port, which was too small for him to climb through, and she could hear him “talking to someone” (there was no one there but Longsoldier), saying that he was almost out. He pulled himself back in and then said (as if again talking to another person in his cell) that he was out. She closed the food port.

91. Detention Officer Jesse Dibblee arrived at the Detention Center for his 3-11 p.m. shift at about 2:45 p.m. on Sunday, November 22, 2009.⁹ In the booking area, he saw another D.O., Conner Tilleman, looking through into H100 through the window. D.O. Dibblee looked through that window and observed the occupant of that cell “wiggling out.” Not being familiar with the prisoner, Dibblee asked D.O. Wold about him, and she informed him that it was Allen Longsoldier, that he was “going through DTs” and that he had been taken to the E.R. on the previous evening (Saturday, November 21, 2009) and was soon released back into Detention Center’s custody by the E.R. Dibblee walked around the booking desk and saw written prescriptions for Ativan and Cymbalta for Longsoldier that had not yet been filled. Dibblee had the cell door opened and went in and retrieved the lunch tray that was still in the cell, with all of the food still on it. He tried to talk to Longsoldier, who did not even acknowledge that he was there. Longsoldier did try to leave the cell through the open door, but Dibblee blocked his path and Longsoldier stopped trying to get out of the cell.

92. Dibblee had first observed Allen Longsoldier in custody at the Detention Center on Thursday, November 19, 2009, and at that time Longsoldier didn’t appear to be hallucinating, nor shaking, nor failing to respond to questions, nor lacking orientation to time and place, nor shadowboxing, nor appearing hot (feverish), nor trying to vomit – in short, at that time, Dibblee had observed no indications of any medical problem or emergency with Longsoldier.

93. On Sunday, November 22, 2009, when he again observed Longsoldier and then entered into his cell, Dibblee had already heard from Wold that (a) Longsoldier had been transported to the Emergency Room at Northern Montana Hospital shortly after 6:00 p.m. the day before; (b) before being taken to the E.R. the day before, Longsoldier was exhibiting a very similar range of problems to those that he was showing on that Sunday afternoon and (c) Longsoldier was seen and treated in the E.R. and then released back into custody and returned to the Detention Center. Dibblee did not see symptoms on Sunday afternoon that appeared to be significantly

⁹ Dibblee’s written report of the events of that night (Exhibit 31) was prepared the next night, according to his testimony, which would mean it was prepared on November 23, 2009.

different than he understood they had been when Longsoldier was seen at the E.R. the evening before.

94. Dibblee continued to monitor Longsoldier as the afternoon shift continued. Due to his assigned duties, he could only observe Longsoldier about every “couple of hours” when his duties brought him to the booking area. As his shift went on, he observed that Longsoldier was getting worse. Dibblee was not aware at that time that alcohol withdrawal could be life-threatening. In his experience with prisoners in the Detention Center suffering from what he understood to be alcohol withdrawal, their symptoms would subside and cease. Before November 23, 2009, he had no experience with any prisoner dying in custody from alcohol withdrawal, while in the jail or immediately after being in the jail.

95. During Wold’s shift that Sunday afternoon, she observed that Longsoldier was up in his cell, moving around and talking. When she offered him his sack dinner for Sunday evening, a few minutes after six p.m., she could not get his attention. He was “facing the Northeast corner of the padded cell talking to someone that was not there.” She called to him “roughly 4 to 5 times” but could not get him to respond to her. At 6:21 p.m. on Sunday, November 22, 2009, the Daily Log for the Detention Center has an entry, made by D.O. Wold, indicating “Handed out meals, Allen Longsoldier did not eat.”

96. Until approximately 9:00 p.m., every time D.O. Wold checked on Longsoldier after that 6:21 p.m. entry on Sunday evening, he was moving around his cell, or talking. At 8:19 p.m. on Sunday, November 22, 2009, the Daily Log for the Detention Center has an entry, made by D.O. Wold, indicating “Allen Longsoldier still talking to himself.”

97. Around 9:00 p.m., Longsoldier quieted down. At 9:07 p.m. on Sunday, November 22, 2009, the Daily Log for the Detention Center has an entry, made by D.O. Wold, indicating “Allen Longsoldier still awake.” At approximately 9:30 p.m., D.O. Dibblee remarked that Longsoldier seemed to be getting worse, and told Wold to contact Blaine County and “give them a heads up” that he might be going back to the hospital.

98. Wold called the Blaine County dispatcher, Debbie Cornell, and reported that Longsoldier wasn’t doing so well and more than likely would have to be sent back to the hospital and that he hadn’t eaten or drank anything in a couple of days. The dispatcher asked why Longsoldier wasn’t eating or drinking and Wold told her that “he would not take anything” from the Hill County Detention personnel. Wold also told the dispatcher that the Detention Center had a “couple for prescriptions” for Longsoldier that the Blaine County Deputy had forgotten to fill when he brought

Longsoldier back to the Detention Center from Northern Montana Hospital on Saturday evening (the evening before), and the dispatcher reportedly told Wold that Detention Center personnel were supposed to contact the Fort Belknap doctor about filling the prescriptions. From this reported exchange, it is clear that the Blaine County Sheriff's Office as well as the Hill County Detention Center already had known that Longsoldier was given prescriptions at the hospital on Saturday, and that the prescriptions had not yet been filled. There is no credible evidence that either the Blaine County Sheriff's Office or the Hill County Detention Center knew that the hospital had failed to provide the deputy who brought Longsoldier back to the Detention Center on Saturday with the six Ativan pills that should have been dispensed to Longsoldier for his use as needed over the rest of the weekend.

99. At 9:43 p.m. on Sunday, November 22, 2009, the Daily Log for the Detention Center has an entry, made by D.O. Wold, indicating "Contacted BC [Blaine County], informed them about Allen Longsoldier, he is not doing well, hasn't eaten or drank anything in 2 days."

100. At 9:49 p.m. on Sunday, November 22, 2009, the Daily Log for the Detention Center has an entry, made by D.O. Wold, indicating "Checked on Allen Longsoldier, he is laying on the floor, very shaky."

101. According to Wold's written statement, given on November 24, 2009 (Exhibit 30), D.O. Sharon Skyberg entered the Detention Center at about quarter to eleven that night, immediately went to check on Longsoldier, and told Wold that he "looked horrible, that he doesn't look good at all." At 10:44 p.m. on Sunday, November 22, 2009, the Daily Log for the Detention Center has an entry, made by D.O. Skyberg, indicating "Had looked in on Longsoldier and saw that he was shivering and non responsive [sic]. I contacted Blaine County to inform them of his condition. She was going to contact the Sheriff and call me back."

102. At 10:54 p.m. on Sunday, November 22, 2009, the Daily Log for the Detention Center has an entry, made by D.O. Skyberg, indicating "Sheriff Hustis [sic] called back and asked if one of our deputies could take Longsoldier to the hospital. I contacted CDO Schmidt and asked him if he could go with Allen to the hospital. CDO Schmidt stated he would call AD Dahl and call me back."

103. At 11:17 p.m. on Sunday, November 22, 2009, the Daily Log for the Detention Center has an entry, made by D.O. Skyberg, indicating "CDO Schmidt called me back and stated that he could not go with Longknife [sic] and to contact Blaine County to have one of their deputies take him, I did inform CDO Schmidt that Longsoldier would have to be taken by ambulance because he had become non responsive."

104. Wold's statement (Exhibit 30) indicates that the ambulance showed up at about 11:15 p.m. At 11:19 p.m. on Sunday, November 22, 2009, the Daily Log for the Detention Center has an entry, made by D.O. Skyberg, indicating "I contacted Blaine County Dispatch to inform them that we had an ambulance inroute [sic] for Longsoldier because he had become non responsive."

105. At 11:44 p.m. on Sunday, November 22, 2009, the Daily Log for the Detention Center has an entry, made by D.O. Skyberg, indicating "I contacted Sheriff Glen Hustis and informed him that I had asked for an ambulance because he [Longsoldier] had become nonresponsive. It was decided by CDO Schmidt that one of the Detention Officers would ride with the ambulance until a Blaine County Deputy could get to the hospital. Sheriff Hustis said he would be contacting his dispatch to get a Deputy to meet them at the E.R.

106. At 11:59 p.m. on Sunday, November 22, 2009, the Daily Log for the Detention Center has an entry, made by D.O. Skyberg, indicating "Once the ambulance came to transport Longsoldier he had become afraid of the ambulance and officers in the cell and had a primal cry and was trying to roll up into a fetal position. They did get him onto the gurney but he was still not responding to anyones [sic] questions or commands, he held his arms up on his chest with his hands clenched. He was making noises. DO Jesse Dibblee rode in the ambulance to the hospital."

107. At 12:09 a.m. on Monday, November 23, 2009, the Daily Log for the Detention Center has an entry, made by D.O. Skyberg, indicating "Contacted CDO Schmidt concerning [name blacked out]. She needs to go to the hospital. She is in great pain and is throwing up. She states she has a gall bladder problem and she has a pain in her right side and is very tender to touch." At 12:18 a.m., nine minutes later, on Monday, November 23, 2009, the Daily Log for the Detention Center has an entry, made by D.O. Skyberg, indicating "CDO Schmidt here to transport [name blacked out] to the hospital. I had contacted the ER to inform them that our deputy was transporting [name blacked out] to the ER for a possible gall bladder attack."

108. From early Thursday morning, November 19, 2009, until he was brought to the Northern Montana Hospital Emergency Room on Saturday evening, November 21, 2009, at approximately 7:16 p.m. by Blaine County Deputy Sheriff Frank Billmayer, Longsoldier, while in the custody of Hill County Detention Center, was held in the booking area and in the holding cells beside the booking area. During that time, from early Thursday morning until Saturday evening, he did not eat and he did not drink any fluids.

109. He drank copious fluids while at the hospital on Saturday evening, and was given medication, after which his anxiety and hallucinations seemed to lessen.

110. From his return to the Hill County Detention Center, on Saturday evening, November 21, 2009, at approximately 9:00 p.m., until he was again transported, this time by ambulance, to Northern Montana Hospital's E.R., shortly before midnight on November 22, 2009, by which time he was irretrievably dying, Longsoldier did not receive any medication, did not eat and did not drink any fluids, and was partially or completely out of touch with reality most of the time.

111. Longsoldier died at the hospital at approximately 2:00 a.m. on Monday, November 23, 2009. Detention Officer Sharon Skyberg got the news of Longsoldier's death at work, by telephone. Trustee Ralph Page happened to be present when she took that call. He observed her begin to cry and heard her say that she wished she could have done something different for Longsoldier.

112. Most of the inmates in the Hill County Detention Center are typically Native American. Most of the inmates, whether Native American or not, have alcohol problems, often with drug problems as well.

113. The Hill County Detention Center has a written policy governing medical and dental issues of inmates. The medical and dental policy provides in relevant part as follows:

No officer or other employee of the facility will ever summarily or arbitrarily dismiss or deny an inmate's reasonable request for medical services or non-emergent health care.

Inmates arriving at the facility will receive an initial medical, dental and medical health screening in accordance with procedures outlined in Chapter 19 of this manual.

All other areas of the facility, including but not limited to programs, library, visiting, recreation and courtroom are also ADA compliant.

All prescriptions shall be dispensed in the prescribed dosage and at the prescribed time by detention staff.

Inmates with a serious or chronic illness such as asthma or diabetes, or those that are convalescing from a recent illness and/or surgery shall be provided with the proper essentials to ensure that they maintain their present level of health.

Essentials include but are not limited to the following:

Medications; and

Limited medical assessment and/or evaluations.

114. Hill County, the Hill County Sheriff and the Sheriff's Office employees, including the Detention Center staff, during Longsoldier's incarceration in the

Detention Center in November 2009, with the information they had about what alcohol withdrawal was and how it progressed, with no training or information about delirium tremens, and with the information provided by Blaine County Dispatch regarding what “the hospital” thought, felt and believed about Longsoldier’s condition, did not knowingly violate the requirements of the medical and dental policies. There is no evidence that their actions or inactions, or the lack of either better information about alcohol withdrawal or any training or information about delirium tremens before November 2009, were the result of any discriminatory animus on the part of Hill County, the Hill County Sheriff and the Sheriff’s Office employees, including the Detention Center staff, toward either alcoholics or Native Americans.

115. Blaine County, the Blaine County Sheriff and the Sheriff’s Office employees, including Dispatch, during Longsoldier’s incarceration in the Hill County Detention Center in November 2009, with the information they had about what alcohol withdrawal was and how it progressed, with no training or information about delirium tremens, and with the information received by Blaine County Dispatch regarding what “the hospital” thought, felt and believed about Longsoldier’s condition, did not knowingly violate the requirements of care and protection of their prisoners in the Detention Center. There is no evidence that their actions or inactions, or the lack of either better information about alcohol withdrawal or any training or information about delirium tremens before November 2009, were the result of any discriminatory animus on the part of Blaine County, the Blaine County Sheriff and the Sheriff’s Office employees, including Dispatch, toward either alcoholics or Native Americans.

116. Medical supervision has trained staff for many medical conditions at the Detention Center; medical supervision has never trained staff on alcohol-related problems. As of this hearing, in September 2011, there has still been no training of the Detention Center staff regarding the full range of alcohol withdrawal problems that inmates can face, including delirium tremens.

117. Should another inmate suffer alcohol withdrawal that progresses to delirium tremens, the custodial Sheriff or Sheriffs, Sheriff’s Office employees and Blaine County Dispatch and Hill County Detention Center personnel will not be able to defend any failure promptly to seek proper medical care on the basis of ignorance.

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IV. Opinion¹⁰

The issues involved in this heartbreaking case are in three distinct categories. Was Longsoldier denied a “government service”? Did he have a disability? And, finally, did either county take adverse action against him because of his race or his disability?

I. Failure to Provide Timely Medical Care for a Prisoner Is Failure to Provide Adequate Medical Care, Which Is a “Government Service.”

First, there are issues of whether incarceration constitutes a government service. If Longsoldier was not denied access to a government service, there is no reason to proceed to the other issues.

Although the Due Process Clause of the Fourteenth Amendment of the United States Constitution generally does not impose a positive duty upon the individual States to assist their citizens, in certain contexts it, together with the Eighth Amendment, does require that states provide some affirmative assistance. In particular, there is a duty to provide adequate medical care to prisoners. In *re T.W.*, ¶42, 2005 MT 340, 330 Mont. 84, 126 P.3d 491; citing *Estelle v. Gamble*, 429 U.S. 97, 103-04, 97 S.Ct. 285, 290-91, 50 L.Ed.2d 251, 259-60 (1976). A prisoner lacks the power to obtain his own medical services, and is at the mercy of his keepers. Thus, the duty to provide such care is imposed upon the state whenever it takes away a person’s liberty. Thus, whether or not incarceration itself reasonably can be considered a “government service” (most of its recipients might dispute it), the provision of adequate health care to incarcerated persons is clearly required, and is therefore a government service for every prisoner.

It is “an unlawful discriminatory practice for the state or any of its political subdivisions . . . to refuse, withhold from, or deny to a person any . . . services . . . because of race . . . [or] physical or mental disability, . . . unless based on reasonable grounds.” Mont. Code Ann. §§49-2-308(1) and (1)(a). “All services of every state or local governmental agency must be performed without discrimination based upon race . . . [or] physical or mental disability.” Mont. Code Ann. 49-3-205(1).

The evidence in this case clearly established that Allen Longsoldier’s alcohol withdrawal progressed to the point where he needed medical care, which was not forthcoming soon enough, and he died. Whether medical care, had it been timely provided the second time, after he was discharged by Northern Montana Hospital the first time, would have saved his life is uncertain. What is clear is that because such

¹⁰ Statements of fact in this opinion are hereby incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

medical care was not timely provided, he faced a substantially larger risk of harm from the progression of his withdrawal, and ultimately died. On the face of the evidence, Longsoldier was denied a government service, since failure to provide timely medical care is certainly failure to provide adequate medical care.

2. Longsoldier Was an Otherwise Qualified Person with a Disability.

Second, there are issues of whether Allen Longsoldier had a disability. If he was not an otherwise qualified individual with a disability, there is no reason to proceed to any further issues. Under the facts of this case, he did have a disability and he was an otherwise qualified individual with a disability.

As this Hearing Officer has previously held, alcoholism can be a disability when the sufferer is not drinking, if it at that time it constitutes “a physical or mental impairment that substantially limits one or more of a person's major life activities.” Mont. Code Ann. § 49-2-101(19)(a)(I). *Gordon v. Interbell Tele. Coop. Inc.*, HRB No. 0071012467, Case No. 1243-2008 (Nov. 13, 2008).

The arguments made by the counties that Longsoldier did not have a physical or mental impairment that substantially limited one or more of his major life activities are without merit, for one simple reason. Allen Longsoldier died in the most extreme form of alcohol withdrawal, delirium tremens. It beggars the imagination to picture a convoluted rationale whereby a physical impairment sufficiently severe to kill the sufferer does not substantially limit one or more of his life activities. Never mind the havoc that his drinking played upon Longsoldier’s youth – the run-ins with the law that led to his prolonged probation, the stays in the Blaine County juvenile correction facility, the changes in schools, the denial of a chance to enroll in a college and be eligible to play intercollegiate basketball because of his record – set all of that aside, even though it is clearly sufficient to establish his disability, since most of those limitations came when during times when he was not drinking. A.J. Longsoldier, Jr., a likeable and talented young man, died at age 18 because of his alcoholism, because his body stopped functioning without a medically supported withdrawal from alcohol. Alcoholism is permanent, which certainly makes it long-term. In this young man’s case, it proved to be fatal, which goes far beyond substantially limiting one or more of his major life activities.

Since Longsoldier was a prisoner in the Hill County jail, subject to the directions of Blaine County regarding handling of his medical issues, he was entitled to provision of adequate medical care, and was an “otherwise qualified” individual.

3. Not Taking Longsoldier Back to the Hospital Until After He Had Become Non-Responsive Was an Adverse Action, But Not an Adverse Action Taken Because of Either His Race or His Disability.

Third, there is no question about whether the counties together took any adverse action against Longsoldier. Failing to take him back to Northern Montana Hospital, until after he became non-responsive and was dying, was an adverse action. There need be no further discussion about that fact.

However, there is no evidence that either county participated in this adverse action because Longsoldier was either Native American or alcoholic. Indeed, the substantial and credible evidence of record established that neither county knew that Longsoldier's condition put him in danger of dying. Relying upon what Nurse Wiken said to the Blaine County Dispatcher, with no clear directions from the hospital to the contrary, the employees of both counties not knowing the severity of Longsoldier's condition, accidentally took adverse action.

The tragedy of this case is that a nurse, and to a lesser extent, a doctor failed to put together the indications that Longsoldier was in alcohol withdrawal and showing signs of worsening. The dispatcher who talked to that nurse, the day after Longsoldier's all too brief evaluation at the hospital, had not been interacting with Longsoldier and wasn't filled with the same sense of alarm as at least many of the jailers who were interacting with him. The nurse persuaded that dispatcher that Longsoldier was probably faking it and just wanted out of jail. The dispatcher communicated to the jailers that the "hospital" (not just a nurse who was violating hospital rules and guidelines) didn't want Longsoldier back and couldn't (didn't need to) do anything for him.

The jailers, some with sense of foreboding, did what they believed was appropriate, given the information they had. Until Longsoldier "crashed" and became non-responsive, they relied upon their prior observations of inmates with what they considered "DTs", who had gotten better after a day or two. Then, when it was already too late, they did what they had wanted to do and tried to do sooner – they sent him back to the hospital.

Denial of a government service because of disability is illegal unless based on reasonable grounds. Mont. Code Ann. §49-2-308(1)(a). Here, the people in both Blaine County law enforcement and Hill County law enforcement involved with this case had reasonable grounds not to move faster to get Longsoldier the medical help that, as it turned out, he really needed. With the information they had, they reasonably believed he would be okay. They did not deny him medical help they knew he needed.

Even more important to the outcome in this case is that there is no credible and substantial evidence that anybody delayed getting Longsoldier medical help because of hostility toward him due to his race or disability. Other prisoners were

taken the hospital more quickly, but there is no evidence that any of those other prisoners were not also Native American. There is also no evidence of any hostility toward Longsoldier because of his alcoholism. Indeed, none of the other prisoners who received more rapid transit to medical care had been recently seen by the hospital, after which the hospital had advised law enforcement for either county that nothing could be done for the prisoner, who was probably faking the problem complained of. In addition, Hill County personnel only came to surmise about his alcoholism as the weekend wore on, and the Blaine County personnel who knew about his alcoholism had no inkling that his “detoxing” was turning out to be fatally different than those Longsoldier had suffered in the Blaine County juvenile facility.

Perhaps the cruelest irony of all in these sad circumstances was that the ER at Fort Belknap suggested, early Saturday evening, based on the apparent severity of Longsoldier’s signs and symptoms, that it would be better to take him the shorter distance to Northern Montana Hospital rather than to bring him the longer distance to Fort Belknap. This suggests that at least one medical professional did suspect the seriousness of Longsoldier’s condition. Perhaps if Longsoldier had been taken to Fort Belknap on Saturday evening, a medical professional there would have seen the danger and kept him under direct medical care. Out of apparent concern for Longsoldier’s well-being, Fort Belknap had suggested by phone that he be taken to the closer facility in Havre, contributing inadvertently to the cascade of events that led to his death.

In this case, on this record, there was a reasonable basis for the Counties’ delay in returning Longsoldier to the hospital. That reasonable basis was Nurse Wiken’s response to the telephone inquiry of Blaine County. There also was no proof that Longsoldier was at any time denied prompt medical attention by the Counties because of race or disability. Therefore, the complaint must be dismissed.

V. Conclusions of Law

1. The Department has jurisdiction over this case. §49-2-509(7) MCA.
2. The evidence did not establish that either Blaine or Hill County illegally discriminated against Allen Longsoldier in provision of government services because of race or disability.

VI. Order

1. Judgment is found in favor of Blaine County and Hill County and against the Estate of Allen J. Longsoldier, Jr., on the charge that the counties illegally discriminated against him in the provision of government services because of race or disability.

2. The complaints against both counties are dismissed.
3. No action is taken on the settled complaint against Northern Montana Hospital.

SEALING ORDER: Portions of the record (exhibits, transcription, recordings, etc.) that were sealed by order of the Hearing Officer, whether an order specific to particular information and/or documents or a general protective order, are and shall remain sealed from the public, with the parties' access to sealed information limited to counsel and the party or designated representative for the party. Both parties and all other persons who know or have learned of the sealed information through access during these proceeding to sealed portions of this file are likewise ordered NOT to provide sealed information to persons or entities not entitled to access these sealed documents themselves.

This decision is a public record, and provides adequate public access to the facts, authorities and arguments herein. With regard to the portions of this file and this record that remain sealed, rights of privacy and other kinds of confidentiality interests clearly outweigh the merits of public disclosure beyond the decision and the already public portions of the file.

Any modification sought hereafter to the sealing order herein can only be by request for such modification submitted to a tribunal exercising jurisdiction over such issue. Except to the extent that such a tribunal or tribunal shall modify the sealing orders herein, the above sealing order remains in full force and effect for so long as any of the sealed contents of the Hearings Bureau files are retained by the department.

Dated: April 20, 2012

/s/ TERRY SPEAR

Terry Spear, Hearing Officer

Montana Department of Labor and Industry

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NOTICE OF ISSUANCE OF ADMINISTRATIVE DECISION

To: Patrick Flaherty, Steven Potts and Daniel Flaherty, attorneys for the Estate of Allen J. Longsoldier; Mark Higgins, attorney for Blaine County and Maureen Lennon, attorney for Hill County:

The decision of the Hearing Officer, above, which is an administrative decision appealable to the Human Rights Commission, issued today in this contested case. Unless there is a timely appeal to the Human Rights Commission, the decision of the Hearing Officer becomes final and is not appealable to district court. Mont. Code Ann. § 49-2-505(3)(c)

TO APPEAL, YOU MUST, WITHIN 14 DAYS OF ISSUANCE OF THIS NOTICE, FILE A NOTICE OF APPEAL, WITH 6 COPIES, with:

Human Rights Commission, c/o Marieke Beck
Human Rights Bureau, Department of Labor and Industry
P.O. Box 1728
Helena, Montana 59624-1728

You must serve ALSO your notice of appeal, and all subsequent filings, on all other parties of record.

ALL DOCUMENTS FILED WITH THE COMMISSION MUST INCLUDE THE ORIGINAL AND 6 COPIES OF THE ENTIRE SUBMISSION.

The provisions of the Montana Rules of Civil Procedure regarding post decision motions are NOT applicable to this case, because the statutory remedy for a party aggrieved by a decision, timely appeal to the Montana Human Rights Commission pursuant to Mont. Code Ann. § 49-2-505 (4), precludes extending the appeal time for post decision motions seeking relief from the Hearings Bureau, as can be done in district court pursuant to the Rules.

The Commission must hear all appeals within 120 days of receipt of notice of appeal. Mont. Code Ann. § 49-2-505(5).

IF YOU WANT THE COMMISSION TO REVIEW THE HEARING TRANSCRIPT, include that request in your notice of appeal. The original transcript is in the contested case file.