

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

SUMMER STRICKER, PERSONAL
REPRESENTATIVE OF ALLEN J.
LONGSOLDIER, JR.,

Charging Party/Appellant

-v-

BLAINE COUNTY & HILL COUNTY,

Respondent

Case # 0105014403 & 0105014404

REMAND ORDER

Charging Party, Dayna Bear, Personal Representative of Allen J. Longsoldier, Jr. (Longsoldier), filed a complaint with the Department of Labor and Industry (Department), which alleged discrimination on the basis of race (Native American) and disability (alcoholism). Summer Stricker replaced Dayna Bear as the designated representative of the Estate of Allen J. Longsoldier and was substituted as the Charging Party in this case. The case went before the Hearings Bureau of the Department of Labor and Industry, which held a contested case hearing, pursuant to § 49-2-505, MCA. The hearing officer issued a decision on April 20, 2012. The hearing officer determined that the evidence failed to establish that either Blaine or Hill County illegally discriminated against Longsoldier on the basis of race or disability.

Stricker filed an appeal with the Montana Human Rights Commission (Commission). The Commission considered the matter on July 18, 2012. Dan Flaherty, attorney, appeared and presented oral argument on behalf of Stricker. Maureen Lennon, attorney, appeared and presented oral argument on behalf of Hill County. Mark Higgins, attorney, appeared and presented oral argument on behalf of Blaine County. The Commission determined to reverse the decision of the hearings officer and remand to the Hearings Bureau for further proceedings.

On September 19, 2012, the Commission considered a draft order to remand this case to the Hearings Bureau for further proceedings. Attorney Lennon, appearing on behalf of Hill County, and Mark Higgins, appearing on behalf of Blaine County, objected to the Commission proceeding with the consideration of a draft order in the absence of an audio recording and transcript of the Commission's deliberations of July 18, 2012. The Commission overruled the objection. The Commission approved the draft order, with some revisions, which have been incorporated in this Remand Order.

STANDARD OF REVIEW

The Commission may reject or modify the conclusions of law and interpretations of administrative rules in the hearing officer's decision but may not reject or modify the findings of fact unless the Commission first reviews the complete record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. *Admin. Rules of Mont. 24.9.123(4)*. A factual finding is clearly erroneous if it is not supported by substantial evidence in the record, if the fact-finder misapprehended the effect of the evidence, or if a review of the record leaves the Commission with a definite and firm conviction that a mistake has been made. *Denke v. Shoemaker*, 2008 MT 418, ¶ 39, 347 Mont. 322, ¶ 39, 198 P.3rd 284, ¶ 39. The Commission reviews conclusions of law to determine whether the hearing officer's interpretation and application of the law is correct. *See, Denke*, ¶ 39.

SUMMARY OF HEARING OFFICER DECISION

The following summary of the hearing officer's decision is provided for the purpose of the Commission's Order. The summary does not replace or supplant of the findings of fact presented by the hearing officer, except as explicitly stated in this Order.

Longsoldier was an 18-year old Native American man who died from delirium tremens after his incarceration at the Hill County Detention Center in Havre, Montana, from Thursday, November 19, 2009, through Sunday, November 22, 2009. *Findings of Fact (Findings), 1, 111.* Prior to his incarceration, Longsoldier had been diagnosed with alcohol dependency and depression. *Findings, 3.* He had attended court-ordered, in-patient treatment repeatedly and had been placed under the supervision of juvenile detention and probation by the Seventh Judicial District Court, Blaine County. *Findings, 3, 4.* After Longsoldier's 18th birthday in June 2009, his juvenile probation officer was unable to contact him. *Findings, 6.* The probation officer requested that Longsoldier be arrested and held in the Hill County adult detention facility until he could be brought before the District Court for proceedings to terminate his juvenile supervision. *Findings, 7.* Blaine County law enforcement officers arrested Longsoldier at 3:30 a.m. on Thursday, November 19, 2009, and transported him to the Hill County Detention Center. *Findings, 8.*

The hearing officer's findings recount in detail the deterioration of Longsoldier's medical condition while incarcerated for four days and nights. *Findings, 27-35; 38-45.* By 7:00 p.m. Saturday, jail personnel reported that Longsoldier had been in alcohol withdrawal three days and needed to be medically evaluated because he was hallucinating and unable to sleep. *Findings, 45.* The Blaine County Sheriff authorized Longsoldier to be transported to the Indian Health Service at Fort Belknap, approximately 47 miles distant. *Findings, 46, 47.* Personnel at the Indian Health Center advised Detention Center employees to take Longsoldier, instead, to the Northern Montana Hospital (NMH) in Havre, located only a few blocks from the jail. *Findings, 46, 48.* Within an hour, Longsoldier was transported to NMH for medical evaluation and treatment. *Findings, 49.*

At the emergency room, Longsoldier reportedly consumed copious amounts of water and was administered doses of Ativan and Cymbalta. *Findings, 52, 61, 64.* Longsoldier's blood

work showed no alcohol in his system. *Findings, 61.* The emergency room doctor prescribed follow-up dosages of Ativan and Cymbalta for Longsoldier, and directed the Blaine County Sheriff's deputy who transported Longsoldier be provided six Ativan tablets upon discharge to cover Longsoldier's needs until the prescriptions could be filled at a pharmacy. *Findings, 62.* The Blaine County deputy received the doctor's after-care instructions and written prescriptions but no medications upon discharge. *Findings, 65.* The Blaine County deputy returned Longsoldier to the jail by 9:00 p.m. and handed the prescriptions to jail personnel. *Findings, 67.* The two written prescriptions issued by Longsoldier's treating physician were kept in the Detention Center reception area and never filled. *Findings, 67, 91, 98.*

Longsoldier's medical condition continued to decline. *Findings, 70-73.* At approximately 3:00 a.m. on Sunday, November 22, 2012, Detention Center personnel called the Blaine County dispatcher and informed her that Longsoldier might need to return to the hospital. *Findings, 73.* The dispatcher called the NMH emergency room and spoke with the nurse. *Findings, 75.* The dispatcher described Longsoldier's symptoms, detailing that he still had not eaten or slept, had the dry heaves, and was "hot, burning up." *Findings, 75.* The dispatcher had prior experience with Longsoldier going through alcohol withdrawal in the Blaine County Juvenile Detention Facility. *Findings, 78, 80.* The emergency room nurse reassured the dispatcher that Longsoldier's blood work showed no signs of illness and speculated that Longsoldier was not actually physically ill, but was "playing them." *Findings, 75.* Detention Center personnel understood the medical direction reiterated by the dispatcher was to give Longsoldier "cold ice water and that Longsoldier was going through DTs, because he had did that [sic] before as a juvenile." *Findings, 80.*

The hearing officer found no evidence that Detention Center personnel were able to get Longsoldier to drink any water or eat any food during his entire incarceration. *Findings, 81, 88-91, 95, 98, 99, 108, 110.* Longsoldier continued to hallucinate and act out his hallucinations for

the next 20 hours. *Findings, 80, 82-87, 89-91, 94-97.* By late Sunday evening, Detention Center personnel found Longsoldier “shivering and nonresponsive” in his cell. *Findings, 101.*

Transported by ambulance back to NMH at approximately midnight, Longsoldier died two hours later. *Findings, 106, 111.*

The hearing officer determined that Montana Human Rights Act (MHRA) and the Governmental Code of Fair Practices (GCFP) require Blaine and Hill Counties to refrain from discrimination on the basis of race or disability in the provision of timely, adequate medical care while Longsoldier remained in county detention. *Opinion, Issue (Issue) #1.* The hearing officer further concluded that Longsoldier’s alcoholism constituted a disability that was a physical or mental impairment that substantially limited Longsoldier’s major life activities. *Issue #2.* The failure of law enforcement officers to provide timely, adequate medical care to Longsoldier, who was an otherwise qualified individual with a disability, violated both §§ 49-2-308(1) and 49-3-205(1), MCA, unless the failure to act was “based upon reasonable grounds.” *Issue #3.*

The hearing officer determined that the direct evidence adduced at the hearing established that Longsoldier was denied adequate, timely medical care during his incarceration at the Hill County Detention Center. *Issue #3.* The hearing officer determined that the law enforcement personnel involved in Longsoldier’s detention did not act with discriminatory animus based on Longsoldier’s race or disability and were not sufficiently educated in the care and treatment of an inmate suffering from alcohol withdrawal to be aware that their failure to act placed Longsoldier in danger of dying. *Issue #3.* During the early hours of morning on November 22, 2011, when Longsoldier was reportedly “burning up” and continuing to hallucinate, the nurse from the NMH emergency room advised the Blaine County dispatcher by telephone that Longsoldier was not physically ill and was likely faking. *Findings, 75.* The dispatcher conveyed the nurse’s assessment to the Detention Center staff. *Findings, 75.* Consequently, the hearing officer concluded that the Hill and Blaine County law enforcement personnel who relied upon the NMH

nurse's medical advice had reasonable grounds upon which to deny or delay medical care to Longsoldier. *Issue #3.*

To summarize, the hearing officer noted that "denial of a government service because of disability is illegal unless based on reasonable grounds." *Section 49-2-308(1)(a), MCA.* The hearing officer determined that:

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.

Issue #3. Consequently, the hearing officer concluded that 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. *Conclusion of Law #2.*

DISCUSSION

The MHRA provides that "discrimination based on, because of, on the basis of, or on the grounds of physical or mental disability includes the failure to make reasonable accommodations that are required by an otherwise qualified person who has a physical or mental disability."

Section 49-2-101(19)(b), MCA. An accommodation that would require an undue hardship or that would endanger the health or safety of any person is not a reasonable accommodation. *Section 49-2-101(19)(b), MCA.* Regarding discriminatory acts of the State or any of its political subdivision, the MHRA states, in pertinent part:

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, creed, religion, sex, marital status, color, age, physical or mental disability, or national origin, unless based on reasonable grounds.

Section 49-2-308(1), MCA.

Pursuant to the GCFP, every local governmental agency must perform all services without discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability or national origin. *Section 49-3-205(1), MCA*. The GCFP further directs that “[e]ach state or local government agency shall analyze all of its operations to ascertain possible instances of noncompliance with the policy of this chapter and shall initiate comprehensive programs to remedy any defect found to exist.” *Section 49-3-205(3), MCA*. While discrimination in the provision of governmental services is prohibited by both the MHRA and the GCFP, the clause “unless based on reasonable grounds” appears only in the MHRA.

As long as Longsoldier was Blaine County’s detainee at the Hill County Detention Center, his physical safety was the shared responsibility of law enforcement personnel of the two counties. After careful consideration of the complete record and the argument presented by the parties, the Commission affirms the hearing officer’s determination that timely, adequate medical care is a service that local governments are required to provide to incarcerated individuals, without consideration of race or disability, pursuant to the MHRA and the GCFP. *Sections 49-2-308(1) and 49-3-205(1), MCA; Issue #1*. The Commission also affirms the hearing officer’s determination that Longsoldier was an individual with the disability of alcoholism. *Issue #2*. However, the Commission finds the hearing officer misapprehended the effect of the evidence regarding the failure of law enforcement personnel of Hill and Blaine Counties to have the prescriptions issued to Longsoldier by the NMH treating physician on Saturday, November 21, 2009, filled and the failure of Detention Center personnel to administer those medications, as directed by the doctor.

The NMH emergency room physician prescribed 1 mg. of Ativan every 4 hours, as needed, and 20 mg. of Cymbalta twice daily to address Longsoldier’s symptoms of anxiety,

agitation, nausea, inability to sleep, eat or drink fluids, and visual and auditory hallucinations. *Exhibit 56; Hearing Transcript (Trans.), 66.* The doctor's after-care instructions directed that Longsoldier be administered these medications, as prescribed. *Exhibit 8; Trans., 382.* Hill County Detention Center's written policy regarding prescriptive medication states: "All prescriptions shall be dispensed in the prescribed dosage and at the prescribed time by detention staff." *Findings, 113.*

The hearing officer found that the Blaine County Sheriff's Office and the Hill County Detention Center were both aware of Longsoldier's unfilled prescriptions. *Findings, 98.* The NMH emergency room nurse neglected to provide law enforcement with the six doses of Ativan ordered by the doctor and the commercial pharmacies in Havre were closed on Saturday evening. *Findings, 65; Trans., 200.* However, the nurse testified that law enforcement could have had the prescriptions filled on Saturday evening at the hospital. *Trans., 258.* On Sundays, prescriptions for Detention Center prisoners were typically filled at the local K-Mart or Western Drug pharmacies. *Trans., 200, 655-59, 716, 804-5.* But this typical practice was not followed. The Blaine County dispatcher advised Detention Center personnel to contact a doctor at the Indian Health Services in Fort Belknap Reservation about filling Longsoldier's prescriptions. *Findings, 98; Trans., 177-79.* The evidence does not show detention officers or the Blaine County Sheriff's office contacted the Indian Health Services about filling Longsoldier's prescriptions. Instead, the record indicates no effort was made to have Longsoldier's doctor-ordered prescriptions filled or medications administered during Longsoldier's incarceration. *Findings, 98, 110; Trans., 766-72.*

The Detention Center's policy states that "emergency services are provided to inmates through the health care provider, which is currently Northern Montana Hospital." *Exhibit 24;*

Trans., 759. The Commission finds the attempts to transfer responsibility for the medical care of Longsoldier, an incarcerated Native American, to the Indian Health Services suggest that racial bias played a role in law enforcement's failure to provide Longsoldier the timely medical attention he desperately needed. However, the Commission also finds the record fails to substantiate the claim of racial discrimination because insufficient comparative data demonstrates law enforcement's alleged disparate treatment of Longsoldier on the grounds that he was a Native American detainee.

Detention Center policy also ensures that prisoners with serious or chronic medical conditions such as asthma or diabetes, or those that are convalescing from a recent illness or surgery, are provided with "the proper essentials, such as medications, to ensure that they maintain their present level of health" while incarcerated. *Findings*, 113. The Detention Center administrator admitted that this policy was not applied to Longsoldier. *Trans.*, 759, 812.

Testimony by Blaine and Hill County law enforcement officers affirmed that at least 50% of the Detention Center inmates have alcohol-related issues. *Trans.*, 662, 782. The NMH emergency room usually treats a few Detention Center inmates each month who are experiencing alcohol withdrawal. *Findings*, 53. While many inmates have suffered alcohol withdrawal while in jail, the testimony at the hearing indicates that Longsoldier was the first detainee or inmate to die. *Trans.*, 808.

The Commission finds the failure of law enforcement of Hill and Blaine Counties to fill and administer the doctor-ordered prescriptive medications manifests a discriminatory indifference to Longsoldier's medical needs based on his disability. Whether the prescribed dosage of the benzodiazepine Ativan might have benefited Longsoldier by alleviating the symptoms of alcohol withdrawal enough to allow Longsoldier to drink water, eat or sleep while

incarcerated was a matter of disputed medical speculation at the hearing. *Trans.*, 106, 520-23.

Regardless of the efficacy of the prescribed medication, the Commission finds law enforcement's failure to follow the Detention Center's own written policy regarding prescriptive medication and the NMH treating physician's after-care instructions constitutes direct evidence of withholding or denying medical services to Longsoldier.

Alcoholism is a mental and physical impairment, which requires the accommodation of medically supervised withdrawal in certain instances. Approximately 20% of alcoholics who go into delirium tremens while not under direct medical care will die. *Findings*, 59. Longsoldier's withdrawal while incarcerated fell within this 20%. In addition to denying direct medical supervision to accommodate Longsoldier's disability, law enforcement failed to provide Longsoldier with "the proper essentials, such as medications," to ensure that Longsoldier would maintain the level of health he exhibited upon his arrival at the Detention Center during the early hours of the morning of Thursday, November 19, 2009. The Commission finds that law enforcement's apparent lack of knowledge regarding the life-threatening reality of delirium tremens does not provide "reasonable grounds" for their failure to fill and administer the prescriptive medications ordered by the NMH treating physician. The emergency room nurse's failure to provide the Blaine County deputy who transported Longsoldier with six doses of Ativan and that nurse's improper speculation that Longsoldier was "playing them" did nothing to obviate or override the treating physician's orders pertaining to the timely administration of prescriptive medications.

Accordingly, the Commission determines that Findings of Fact 114 and 115 are clearly erroneous, and modifies these findings, with additions underlined and deletions stricken, as follows:

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~~" the NMH nurse thought, felt and believed about Longsoldier's condition, ~~did not knowingly violate~~ violated the requirements of the medical and dental policies by failing to ensure that the prescriptions issued by Longsoldier's treating physician were filled and the medications administered, as prescribed, during Longsoldier's incarceration. 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. However, law enforcement personnel's failure to obtain and administer the physician-ordered medications to Longsoldier, as prescribed, constitutes direct evidence of discrimination on the basis of disability.

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 the Blaine County Dispatch regarding what "~~the hospital~~" the NMH nurse thought, felt and believed about Longsoldier's condition, ~~did not knowingly violate~~ violated the requirements of care and protection of their prisoners in the Detention Center by failing to ensure that the prescriptions issued by Longsoldier's treating physician were filled and the medications administered, as prescribed, during Longsoldier's incarceration. 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. However, law enforcement personnel's failure to obtain and ensure that the physician-ordered medications were administered to Longsoldier, as prescribed, constitutes direct evidence of discrimination on the basis of disability.

Direct evidence of discrimination adduced at the hearing shifted the burden to Hill and Blaine Counties to prove by a preponderance of the evidence that an unlawful motive played no role in the challenged action or that the direct evidence of discrimination was not credible and was unworthy of belief. *Rule 24.9.610(5), ARM.*

Law enforcement's failure to follow both the doctor's after-care instructions and the Detention Center's own written policies is undisputed. Further, the Commission finds that law enforcement's failure to obtain and administer the prescriptive medications occurred because Longsoldier was a person with the disability of alcoholism and was one of many Detention Center inmates with alcohol problems who experienced withdrawal symptoms while incarcerated. The discriminatory indifference of law enforcement to Longsoldier's disability was demonstrated by law enforcement's decision to leave Longsoldier to "detox" in a jail cell with neither medical supervision nor the medications ordered by his treating physician after Longsoldier's return from the emergency room by 9:00 p.m. on Saturday night. The doctor's after-care instructions directed that Longsoldier receive doses of Ativan around the clock, every four hours. The Commission finds the demonstrated indifference to Longsoldier's critical medical need constitutes clear evidence of unlawful motive.

In summary, the hearing officer concluded that law enforcement's ignorance about delirium tremens and reliance upon improperly issued medical advice from a nurse constituted "reasonable grounds" for not returning Longsoldier to the emergency room for further treatment. However, the Commission concludes that the record reveals no reasonable grounds to excuse the failure of Hill and Blaine County law enforcement to fill Longsoldier's prescriptions and to ensure that those medications were administered, as directed by the treating physician. Failure to provide Longsoldier with the prescriptive medications manifests an institutionalized indifference to the suffering of a disabled detainee in the throes of alcohol withdrawal. Law enforcement allowed Longsoldier to continue to hallucinate, suffer anxiety and agitation, act out his hallucinations or lie in the fetal position in his cell, without the capacity to drink water, eat or sleep for four days and nights. Therefore, based on the modified findings, the Commission

reverses Conclusion of Law #2 and determines that the discriminatory indifference of law enforcement personnel of Blaine and Hill Counties to Longsoldier's disability and medical needs violated both §§ 49-2-308(1) and 49-3-205(1), MCA.

ORDER

IT IS HEREBY ORDERED, the Commission affirms, adopts and incorporates the hearing officer's Findings of Fact, with the exception of Findings of Fact 114 and 115, which the Commission MODIFIES, as detailed by this Order.

IT IS FURTHER ORDERED, the Commission affirms, adopts and incorporates Conclusion of Law #1 and REVERSES the hearing officer's Conclusion of Law #2, as detailed by this Order;

THEREFORE, the Commission REMANDS this matter to the Hearings Bureau for further proceedings consistent with this Order to determine appropriate affirmative relief and reasonable measures to rectify the harm caused by the unlawful discrimination against Allen J. Longsoldier, pursuant to § 49-2-506(1), MCA. The Commission further directs the Hearings Bureau to explicitly address the requirements of § 49-3-205(3), MCA, pertaining to law enforcement operations in Hill and Blaine Counties when ordering affirmative relief. The Commission is particularly concerned about the apparent lack of training of law enforcement officers in both counties regarding the symptoms and dangers of medically unsupported alcohol withdrawal. The Commission directs the affirmative relief ordered by the Hearings Bureau to include periodic and recurrent training for law enforcement personnel of Hill and Blaine Counties regarding the medical risks and appropriate treatment of persons experiencing alcohol withdrawal while under County supervision. The hearing officer shall have the discretion to conduct any additional fact-finding deemed necessary.

DATED this 20th day of September, 2012.

____/l.m.minich/_____
L.M. Minich, Chair
Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned secretary for the Human Rights Commission certifies that a true and correct copy of the foregoing REMAND ORDER was mailed to the following by U.S. Mail, postage prepaid, on this 20th day of September, 2012.

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