

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

SUMMER STRICKER, PERSONAL
REPRESENTATIVE OF THE ESTATE OF
ALLEN J. LONGSOLDIER, JR.,
Charging Party/Appellant,

HRB CASE NO. 0105014403
& 0105014404

FINAL AGENCY DECISION

-v-

BLAINE COUNTY & HILL COUNTY,
Respondents/Appellants.

Charging Party, Summer Stricker, Personal Representative of the Estate of Allen J. Longsoldier, Jr., filed a complaint with the Department of Labor and Industry (Department), which alleged unlawful discrimination on the basis of race (Native American) and disability (alcoholism). Following an informal investigation, the Department determined that a preponderance of the evidence supported Stricker's allegations. 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 hearings officer issued a Decision on April 20, 2012, which was appealed by Stricker to the Montana Human Rights Commission (Commission).

By Order dated September 20, 2012, the Commission modified certain findings of the hearing officer and determined that Blaine and Hill Counties were liable for discrimination against Allen J. Longsoldier, Jr., on the basis of his disability of alcoholism when law enforcement failed to supply and administer physician-ordered medications to treat Longsoldier's medical symptoms while Longsoldier was incarcerated. At 18 years of age, Longsoldier died as a result of the medical complications of untreated alcohol withdrawal. The Commission remanded the matter to the Hearings Bureau with direction to determine an appropriate damage award for Charging Party and to order affirmative relief to insure that Hill

County and Blaine County law enforcement will not discriminate in the future against persons on the basis of the disability of alcoholism.

The Hearings Bureau's Decision on Remand, issued March 19, 2013, awarded \$300,000.00 in emotional distress damages for the suffering Longsoldier experienced for six hours following his return from the Northern Montana Hospital emergency room at 9:00 p.m. on November 21, 2009, until about 3:00 a.m. the next morning. The hearing officer theorized that Hill and Blaine Counties were liable only for this discrete time period because the nurse at Northern Montana Hospital offered inappropriate and incorrect medical advice to Blaine County dispatch regarding Longsoldier's condition and dissuaded law enforcement from returning Longsoldier to the emergency room for treatment. The hearing officer also ordered affirmative relief in the form of training for detention officers in the administration of prescriptive medications.

All parties filed appeals with the Commission. The Commission considered the cross-appeals on July 18, 2013. Dan Flaherty, attorney, appeared and presented oral argument on behalf of Stricker, as the personal representative of the Estate of A.J. Longsoldier. Mark Higgins, attorney, appeared and presented oral argument on behalf of Blaine County, and Maureen Lennon, attorney, appeared and presented oral argument on behalf of Hill County.

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.

DISCUSSION

After careful consideration of the complete record and the argument presented by the parties, the Commission determines that the hearing officer erred when he established a discrete period of six hours for which Hill County and Blaine County were liable for the suffering that resulted from discrimination against Longsoldier on the basis of alcoholism. The Commission further determines that additional affirmative relief is required to address the apparent lack of knowledge possessed by law enforcement of Hill and Blaine Counties regarding the medical dangers of untreated alcohol withdrawal.

The liability of Hill County and Blaine County in this case is established by direct evidence of discrimination on the basis of Longsoldier's disability of alcoholism. The discrimination was demonstrated by the deliberate indifference of law enforcement regarding Longsoldier's prescriptive medications, which resulted in law enforcement's failure to obtain and administer the medications ordered by the Northern Montana Hospital emergency room physician. The Commission specifically finds that the 3:00 a.m. call to the hospital placed by Blaine County dispatch on November 21, 2009, does not constitute an "intervening cause" of Longsoldier's continued suffering. While the Commission concurs with the hearing officer's observation that Longsoldier's suffering might well have ended had he been transported to the hospital where his withdrawal from alcohol dependence would have occurred under medical supervision, the incorrect assessment of Longsoldier's condition on the telephone by the emergency room nurse does not relieve the Counties of liability for the continued failure to

obtain and administer physician-ordered medications to Longsoldier, as directed. The Commission finds that Longsoldier's emotional distress did not end with the 3:00 a.m. Sunday morning call between Blaine County dispatch and Nurse Wilken. For the remainder of that Sunday, Longsoldier's prescriptions for medications ordered by the emergency room physician remained unfilled by either Hill County or Blaine County law enforcement.

The hearing officer found Longsoldier's suffering "was profound and prolonged" and that Longsoldier continued "his descent into delirium, which is documented in excruciating detail in the jail log." *Finding of Fact (Finding) No. 120.* To cover the discrete six-hour time period, the hearing officer set the amount of emotional distress damages awarded to the Estate of Allen J. Longsoldier at \$300,000.00. *Finding No. 121.*

To address the error in the hearing officer's findings, the Commission increases the emotional distress award to encompass the 27 hours between Longsoldier's return to the jail from the emergency room and his subsequent transport to the hospital by ambulance at midnight Sunday, November 21, 2009. Longsoldier died at the hospital two hours later. Using the monetary award established by the hearing officer as a basis for calculation, the Commission finds that \$1,350,000 is an appropriate award for emotional distress damages in this case.

Accordingly, the Commission modifies the hearing officer's Finding of Fact No. 121, with portions deleted and modifications underscored, as follows:

Taking into account all of the relevant facts, a reasonable amount to rectify the emotional distress Longsoldier suffered is ~~\$300,000.00~~ \$1,350,000, for which the two counties are jointly and severally liable. No offset for the hospital's settlement is appropriate, because the failure of the counties to obtain and administer the medications prescribed for Longsoldier was the sole effective cause of the emotional distress Longsoldier suffered from this return to the Detention Center on Saturday evening until ~~shortly after 3:00 a.m., Sunday morning, when the telephone call between Nurse Widen and Blaine County Dispatch proximately caused a decision by the counties not to return Longsoldier to the hospital. But for that decision, Longsoldier would have received his medication upon his return to the hospital in the early hours of Sunday morning,~~

~~as well as coming under direct medical supervision, which together would have brought an end to the suffering proximately caused by the counties' failure to obtain and administer his medications~~ Longsoldier became entirely unresponsive 27 hours later and was transported by ambulance to the hospital.

The record shows that no initial medical screening was completed for Longsoldier at his admission to the Hill County Detention Center, as required by the facility's written policy.

Finding No. 9. The hearing officer found the Detention Center provided a licensed medical doctor and nurse for on-site medical evaluation. *Finding No. 10.* However, no on-site medical evaluation occurred in this case, even when Longsoldier's symptoms of disorientation, agitation, and hallucinations were so severe as to cause Longsoldier to be unable to eat, drink or sleep for consecutive days. *Finding No. 10.*

Delirium tremens, the most dangerous stage of alcohol withdrawal, may develop up to five to ten days after a person stops drinking alcohol. *Finding No. 59.* Without medical care, approximately 20% of persons experiencing *delirium tremens* will die. *Finding No. 59.* The death toll is reduced by half or more if medical care is provided in a timely manner. *Finding No. 59.* Dr. Peterson testified that he saw one or two inmates with the symptoms of alcohol withdrawal during his six shifts at the Northern Montana Hospital emergency room each month. *Finding No. 53.* Most of the inmates of Hill County Detention Center have alcohol problems, often coupled with drug problems. *Finding No. 111.* As of the date of the hearing in this matter in September 2011, the hearing officer noted that "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*." *Finding No. 116.*

The Commission finds that additional training for law enforcement personnel in Hill County and Blaine County is necessary to prevent future discrimination on the basis of the disability of alcoholism in all county detention facilities. Additionally, the Commission observes that effective medical oversight of detainees and inmates must be insured, together with

effective communication between health care providers and detention facility staff, in order to reduce the risk of suffering from untreated alcohol withdrawal by inmates in the future.

ORDER

IT IS HEREBY ORDERED, that the Commission affirms, adopts and incorporates the Hearing Officer Decision and Sealing Order on Remand, with the exception of the finding of fact the Commission MODIFIES and the conclusion of law the Commission REVERSES, as detailed by this Order.

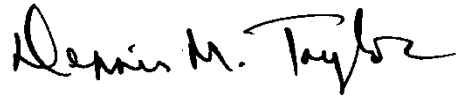
IT IS FURTHER ORDERED, that Blaine County and Hill County are jointly and severally liable to the Estate of Allen J. Longsoldier, Jr., for the sum of One Million, Three Hundred and Fifty Thousand Dollars (\$1,350,000.00) for the emotional distress Longsoldier suffered during his incarceration at the Hill County Detention Center following his return from the Northern Montana Hospital emergency room at approximately 9:00 p.m. on Saturday, November 21, 2009, until Longsoldier was transported back to the hospital by ambulance at midnight on November 22, 2009.

IT IS FURTHER ORDERED, that, in addition to the training ordered by the hearing officer to assure that medications are obtained, prescriptions filled, and the drugs are administered to prisoners, as directed, Blaine County and Hill County will provide training for all law enforcement and detention officers on the symptoms of alcohol withdrawal and the appropriate care of incarcerated persons experiencing withdrawal symptoms. The training must, at a minimum, include recognition of the onset and course of alcohol withdrawal symptoms; use of the Clinical Institute of Withdrawal Scale; and the care and monitoring of persons experiencing withdrawal from alcohol and other substances.

Either party may petition the district court for judicial review of the Final Agency Decision. *Sections 2-4-702 and 49-2-505, MCA.* This review must be requested within 30 days

of the date of this order. A party must promptly serve copies of a petition for judicial review upon the Human Rights Commission and all parties of record. *Section 2-4-702(2), MCA.*

DATED this 5th day of August, 2013.

Handwritten signature of Dennis M. Taylor in black ink.

Dennis M. Taylor, 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 ORDER was mailed to the following by U.S. Mail, postage prepaid, on this 5th day of August, 2013.

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