

BEFORE THE MONTANA DEPARTMENT
OF LABOR AND INDUSTRY

IN THE MATTER OF HUMAN RIGHTS BUR. CASE NOS. 0131015859 & 5860:

HEIDI SAGEN,)	Case Nos. 5-2014
)	& 6-2014
Charging Party,)	
)	ORDER GRANTING SUMMARY
vs.)	JUDGMENT TO CONSUMER
)	DIRECT PERSONAL CARE, LLC,
CONSUMER DIRECT PERSONAL CARE,)	AND NOTICE EXPLAINING
LLC, AND THOMAS CURRAN,)	APPEAL RIGHTS FROM ORDER
)	
Respondents.)	

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1. Background

On December 6, 2012, Heidi Sagen filed a complaint with the Department of Labor & Industry’s Human Rights Bureau, alleging that she was employed by Consumer Direct Personal Care, LLC (CDPC), as a “caregiver” (technically, a Personal Care Assistant, or “PCA”) in the home of Thomas Curran, and that she discovered that Thomas Curran had been surreptitiously taking and preserving pictures and/or videos of her when she used the bathroom in her workplace. She further alleged that when she reported this discovery to CDPC, it directed her not to return to work and discharged her from employment. She charged that both Thomas Curran and CDPC thereby engaged in illegal sex discrimination and harassment, and retaliation.

On June 28, 2013, the Human Rights Bureau forwarded Sagen’s complaint, designated as HRB Case No. 0131015859 against CDPC and No. 0131015860 against Thomas Curran, to the Department’s Hearings Bureau, for contested case proceedings on both cases. On July 9, 2013, counsel for CDPC acknowledged service of Notice of Hearing in the CDPC case, represented that he had the authority to accept that service on CDPC’s behalf, and mailed a request for additional time to file a preliminary prehearing statement to the Hearings Bureau, thereby appearing on CDPC’s behalf. On July 9, 2013, Thomas Curran signed and returned an acknowledgment of service of Notice of Hearing in the Thomas Curran case. On July 10, 2013, counsel for Sagen acknowledged service of Notice of Hearing in both cases, and represented that he had the authority to accept that service on Sagen’s behalf.

On July 12, 2013, the Hearing Officer issued his “Order Setting Contested Case Hearing Date and Prehearing Schedule,” with a caption reflecting that it applied in both cases. That order set the Hearing for October 16-18, 2013, in Kalispell, Montana. That order also set the prehearing schedule, including extending the deadline for filing preliminary prehearing statements for all parties to August 2, 2013. The order was served by mail upon counsel for Sagen, counsel for CDPC and Thomas Curran, at the mailing addresses of record for each, on July 12, 2013.

On July 16, 2013, the Hearing Officer issued his “Notice Regarding Consolidation of Cases,” noting that the cases could either be consolidated for hearing or held one after another (starting with CDPC case being heard first) and that the Hearing Officer would later decide whether to consolidate the cases.

Sagen and CDPC timely filed and served their preliminary prehearing statements in the CDPC case. Sagen timely filed and served her preliminary prehearing statement in the Thomas Curran case. Thomas Curran did not timely file a preliminary prehearing statement.

On September 3, 2013, CDPC timely filed a motion to postpone the hearing and extend the motions deadlines, serving it by mail upon counsel for Sagen and Thomas Curran. Neither Sagen or Curran opposed the motion.

On September 10, 2013, after a telephone conference with counsel for Sagen, counsel for CDPC and Thomas Curran, regarding CDPC’s motion, the Hearing Officer issued his “Rescheduling Order,” resetting contested case hearing for February 25-27, 2014, in Kalispell, and resetting the prehearing scheduling, including setting September 16, 2013, as the new deadline for Thomas Curran to file his preliminary prehearing statement and extending the deadline for filing prehearing motions to January 10, 2014.

On September 16, 2013, Thomas Curran timely filed his preliminary prehearing statement. It does not appear that he served it upon either of the other parties in these cases, and therefore the Hearings Bureau has sent electronic copies to counsel for both other parties in these cases.

2. CDPC’s Summary Judgment Motion

On October 31, 2013, CDPC filed and served its motion for summary judgment to dismiss all claims against it, with supporting affidavits and a brief. The gist of that motion is that Thomas Curran’s wife, Mary Anne Curran, was the person for whom Sagen was a caregiver and was Sagen’s actual employer, with CDPC being an “employer of record” for bookkeeping and reporting, without the power to hire, fire, train, discipline, direct or evaluate Sagen, that CDPC had no notice of the

alleged conduct of Thomas Curran until a phone call from Sagen making the allegations, that CDPC had no power to direct Sagen not to return to the home and had not given any such direction, that Sagen had decided not to return to the home, effectively leaving employment with Mary Anne Curran, that CDPC had not purported to discharge Sagen (which it had no power to do), and that CDPC had done everything it could to offer assistance to Sagen in finding new employment as a caregiver by putting her on its list of caregivers, for consumer consideration.

On November 25, 2013, Sagen filed her response opposing summary judgment. The gist of her opposition is that summary judgment is premature because there are genuine issues of material fact, based on factual inferences that can and must be drawn in her favor as the non-moving party. The factual inferences appear to be with regard to whether CDPC, as a co-employer or agent of Mary Anne Curran had a duty to train, assist, coach, supervise or otherwise aid Mary Anne Curran with regard to at least two caregiver employees – her husband, Thomas Curran, and the charging party, Heidi Sagen. The basis for argument that there could be factual inferences drawn that CDPC was a co-employer or agent of Mary Anne Curran in her employment of these two caregivers come from words and phrases in materials submitted by CDPC in support of its motion. The phrases are drawn from the BSB Orientation Manual that define CDPC’s role as “Independent Advisor” to Mary Anne Curran.

On November 27, 2013, CDPC filed its reply brief, asserting that Sagen’s response brief, without any factual evidence supported by affidavit(s), was nothing more than speculation and failed to present any genuine issues of material fact.

3. Material Facts Supporting Grant of the Motion

Mary Anne Curran employed Charging Party Heidi Sagen as a caregiver. Affidavit of Katie Spaid (10/28/13) [“Spaid Aff.”], p. 2, ¶2; Affidavit of DeAndria Gutzmer, (10/28/13) [“Gutzmer Aff.”], p. 2, ¶4. Mary Anne Curran was and is a consumer (an enrolled participant) in the Big Sky Bonanza Waiver Program, Spaid Aff., p. 2, ¶3; Gutzmer Aff., p. 1, ¶2. The Big Sky Bonanza Waiver Program is part of the Montana Department of Public Health and Human Services’ Home and Community Based Services Program, Spaid Aff., p. 2, ¶4.

Among the web documents cited by movant, there is a pamphlet published by the Montana Department of Public Health and Human Services entitled “Big Sky Bonanza – Montana’s New Consumer Directed Medicaid Waiver,” (“CSBSB”) which can be found online at <http://www.dphhs.mt.gov/sltc/aboutsltc/reports/CSBSB.pdf>. A copy accessed and printed on January 27, 2014, is filed with this order in the Hearings Bureau files for this case. The pamphlet dates from the 2008 inauguration

of this “consumer directed waiver” Medicaid funded long-term care program “that offers advanced consumer-direction,” *CSBSB*, p. 6. The BSB Waiver allows the consumer – the person in need of and receiving personal care assistance – to “set your personal care schedule and . . . judge the results.” *Id.* “You are responsible for hiring and firing. You develop a back up plan so that your needs get met.” *Id.* Under the Big Sky Bonanza Waiver Program, “you not only plan and direct your own care, but you are responsible for budgeting and spending.” *Id.* The Big Sky Bonanza Waiver Program, “puts you, the Consumer, in charge of directing services and managing a monthly budget that is based on your needs. You use this budget to meet your long-term needs and goals.” *Id.* In addition, “you direct your own care in areas of planning, budgeting, and spending. *Id.* In essence, “[t]his waiver allows you additional choice and control over your life. You will educate yourself, assert your rights, and take action on your own behalf.” *Id.*

The whole point of the BSB Waiver is to put the individual who is receiving the Medicaid funded services in charge of the services – restoring that individual to more control over the course of her life. The individual, in summary has choice, flexibility, control and responsibility:

- You decide what services and purchases you need.
- You develop a spending plan.
- You manage your individual budget.
- You train workers on how you want things done.
- You decide if you are happy with the quality of what is done, and if things are working out.
- You resolve any problems you may have with your workers and even replace them, if necessary.
- Your BSB Independence Advisor and Financial Manager are there to help you.
- You become the leader and coordinator of your services.
- You are responsible for your Medicaid Consumer-Directed spending dollars.

CSBSB, p. 11.

As one of the movant’s affiants stated under oath, the Big Sky Bonanza Waiver Program is a self-directed model developed for consumers who want to direct their own care instead of having that care directed by one or more case workers. Under the BSB Waiver, the consumer hires, trains and manages (and has the power to discharge) her caregivers. *Spaid Aff.*, p. 2, ¶6.

To participate in the BSB Waiver, this consumer-directed program, the consumer must satisfy DPHHS that she is eligible for full Medicaid benefits and that she is capable of self-directing the services funded by those benefits. Spaid Aff., p. 3, ¶7. Once DPHHS has approved the consumer, it is the consumer who can select and hire her caregivers. *Id.* The Community Services Bureau, within DPHHS’s Senior & Long Term Care Division, maintains an on-line directory of “Self Directed Personal Assistance Services Providers” (accessed by clicking a link on the agency’s website). This resource for eligible consumers is a listing of approved providers across Montana. In the current directory, accessed through DPHHS website links on January 27, 2014, CDPC is listed with offices in Billings, Havre and Missoula.

Thus, the consumer is guided by DPHHS to find her prospective care givers through one of the approved providers, also called “the agency.” The provider then also provides “back-office payroll services to insure that proper wages are paid and withholdings are made.” Spaid Aff., p. 3, ¶7. Most important, for the present case, is the limited role the approved provider plays as the “employer of record”:

However, while the agency [approved provider] is the “employer of record,” the consumer is the “managing employer,” solely responsible for hiring the caregiver and managing the caregiver's work schedule, length of employment and training. While the agency [approved provider] has the authority and responsibility to report serious incidents and Medicaid fraud and the ability to discontinue services to the consumer with 30 days advance notice, it does not have the authority to hire, fire, supervise or direct the activities of the consumer's selected caregiver.

Spaid Aff., p. 3, ¶7 (emphasis added).

CDPC established, with its affidavits, as well as the materials and authorities cited in its initial brief, that Mary Anne Curran hired (as caregivers) and was solely responsible to hire, fire, schedule, train and supervise, both her husband, Thomas Curran, and Heidi Sagen. Spaid Aff., p. 5, ¶¶14-15; Gutzmer Aff., p. 2, ¶¶3-4. It also established that no CDPC employee had knowledge of the conduct that Sagen alleged she discovered Thomas Curran was engaged in, until Sagen’s June 18, 2012, telephone phone call to Gutzmer. Spaid Aff., p. 5, ¶16; Gutzmer Aff., p. 2, ¶5, p. 3, ¶10. CDPC established that it had no authority to investigate Sagen’s allegations, and that it did what it was responsible to do – it reported Sagen’s allegations to DPHHS. Spaid Aff., p. 5, ¶17; Gutzmer Aff., pp. 2-3, ¶¶5-6-7.

CDPC established that Sagen told Gutzmer, during their June 18, 2012, telephone conversation, that she, Sagen, was not going to go back into the Curran

house, that she, Sagen, had already called the police with her allegations, and that Gutzmer then advised Sagen to call DPHHS's Adult Protective Services. Spaid Aff., p. 5, ¶16; Gutzmer Aff., p. 5, ¶5.

In addition to the facts already recited herein as established by CDPC, its two affidavits also contained:

- Denials under oath that CDPC discharged Sagen, which it had no power to do. Spaid Aff, p. 6, ¶19; Gutzmer Aff., p. 3, ¶9.
- Denials under oath that CDPC hired or had the right to hire Thomas Curran as a caregiver to his wife and that CDPC supervised or had the right to supervise Thomas Curran in any aspect of his employment as a caregiver to his wife. Spaid Aff., p. 6, ¶21; Gutzmer Aff., p. 3, ¶11.
- Denials under oath that CDPC, after becoming aware of Sagen's allegations about Thomas Curran's conduct, had the right to suspend or to terminate the employment of Thomas Curran as a caregiver to his wife – only Mary Anne Curran had that authority. Spaid Aff., p. 6, ¶22; Gutzmer Aff. p. 3, ¶12.
- Affirmative statements under oath that CDPC waited “until the appropriate authorities completed their investigation and took action,” but when that process “dragged on until the end of August,” CDPC gave Mary Anne Curran “the required notice of its decision to discontinue providing services to her.” Spaid Aff., pp. 6-7, ¶23; Gutzmer Aff., p. 4, ¶13.

The affidavits also established the role of the “Independence Advisor.” The Independent Advisor assists with advice to the consumer as she devises her support service and spending plan, and acts as a resource to the consumer. Spaid Aff., p. 4, ¶10. The Independent Advisor cannot make decisions for the consumer; interview, hire, train, supervise or fire the consumer's employees; tell the employees if the consumer is unhappy with them; fill out the employment form package; find emergency back up employees or providers for the consumer; and the Independent Advisor cannot be accountable for the consumer's choices. *Id.*

The affidavits also established the role of the “Financial Manager,” as follows. Spaid Aff., p. 4, ¶¶11-12. The Financial Manager performs related functions to the employer's hiring and paying workers – the consumer manages the workers, as the managing employer, and the Financial Manager acts as the “employer of record” on behalf of the consumer. The Financial Manager receives the completed employment packet and issues paychecks to the employees selected and managed by the consumer. The Financial Manager deducts the payroll and taxes from the consumer's budget, completes and files tax forms with the federal and state governments and

pays the employer taxes for the consumer, as well as maintaining Workers' Compensation and unemployment insurance coverage for the consumer's employees, and files any claims.

The Finance Manager cannot make decisions for the consumer; interview, hire, train, supervise or fire the consumer's employees; tell the employees if the consumer is unhappy with them; fill out the employment form package; find emergency back up employees or providers for the consumer; and the Financial Manager cannot be accountable for the consumer's choices. Spaid Aff., pp. 4-5, ¶13.

4. Sagen's Alleged Genuine Issues of Material Fact

Sagen's introductory paragraph to her argument about genuine issues of material facts is instructive:

Respondent admits that it was the claimant's employer of record. That is critical. The more critical is that Respondent voluntarily agreed to act as Mrs. Curran's Financial Counselor [sic] and Independence Counselor, and was compensated for such. By doing so, Respondent contracted to provide substantial service and guidance to Mrs. Curran as she navigated all of the legal requirements placed upon employers in Montana.

“Claimant's Response to Consumer Direct's Motion for Summary Judgment” (filed, 11-25-13), p. 2, lines 14-18 [emphasis added].

What CDPC actually contracted to do was to provide services, under the constraints and requirements of the DPHHS Big Sky Bonanza Waiver Program. Those services involved providing access to potential employees as requested. Those services involved acting on behalf of the managing employer, the consumer, in receiving completed employment packets, issuing paychecks to the employees selected and managed by the consumer, after calculating and taking out deductions, paying employment taxes, completing and filing tax forms with the federal and state governments, maintaining Workers' Compensation and unemployment insurance coverage for the consumer's employees, and filing any claims. Those services involved advising Mary Anne Curran as she devised her support service and spending plan, and involved acting as a resource to her.

Despite counsel for Sagen's able and adept argument, CDPC was never responsible, under the constraints and requirements of the DPHHS Big Sky Bonanza Waiver Program, “to provide substantial service and guidance to Mrs. Curran as she navigated all of the legal requirements placed upon employers in Montana.” CDPC's status as “employer of record” clearly did not include any power or responsibility for

managing Mary Anne Currant’s caregivers. CDPC’s services clearly did not involve making decisions for the consumer; interviewing, hiring, training, supervising or firing the consumer’s employees; telling the consumer’s employees if the consumer is unhappy with their work; filling out the employment form package; finding emergency back up employees or providers for the consumer; and CDPC’s services clearly did not involve being accountable for the consumer’s choices.

Sagen’s arguments are based upon a BSB Waiver pamphlet’s use of words – “trainer” and “consultant” and “coach” and “resource person” and “partner” – without regard to the clear limitations upon those words. “Training” Mary Anne Curran in some specific aspects of her role as a consumer of self-directed Medicaid funded services specifically did not include hiring, training, supervising or firing her caregivers. “Consulting” with her did not include making her employment management decisions. “Coaching” her did not include being responsible for (without having any reason or way to know) how one of her caregivers might (allegedly) have treated another. “Partnering” her regarding her independence did not include being legally liable for alleged sexual harassment of one caregiver by another.

Sagen took the words she cited in her response brief from a 23-page online pamphlet, “Big Sky Bonanza (BSB) Waiver Montana’s New Consumer-Directed Medicaid Waiver Orientation”¹ [cited hereafter as “*BSBW3/06*”], which bears a date on the lower left hand corner, p. 23, of “3/06.” This was an information source drafted earlier than *CSBSB*.² As with *CSBSB*, a printed copy of *BSBW3/06*, accessed and printed January 28, 2013, is filed with this order in the Hearings Bureau files for this case.

The lack of merit to Sagen’s argument about the impact of the words she cited, when those words are considered in context, can be seen by reading *BSBW3/06*. The word “partner,” is an easy example. Forms of that word appear in several places in *BSBW3/06*, but the key occurrence is on the same page as a clarification of what the “partner” (the Independence Advisor) does not do, and is quoted below, in more detail than the quotation offered by CDPC in its reply brief. This key occurrence appears at p. 14 of *BSBW3/06*. The entire page is quoted below.

The Independence Advisor is a *Partner*: [*emphasis added*] The Independence Advisor will review your **Support Service and Spending**

¹ This pamphlet was also quoted by CDPC in its reply brief, and can be found online at http://www.nasuad.org/sites/nasuad/files/hcbs/files/95/4747/BSB_Orientation_Manual-final.pdf.

² *See*, p. 3, *supra*, “Big Sky Bonanza – Montana’s New Consumer Directed Medicaid Waiver.”

Plan (SSSP) and monthly purchases to ensure that you spend your BSB Consumer-Directed budget on meeting the long-term care goals and needs. The Independence Advisor will assist you in evaluating your SSSP and make changes when necessary.

The Independence Advisor will not . . .

- Make decisions for you
- Interview, hire, train, supervise or fire your employees
- Tell your employees if you are unhappy with their work
- Fill out the employment form package
- Find emergency back up employees or providers for you
- Take more than their reasonable responsibility for assisting you in developing your **SSSP**
- Be able to get you extra money if you spend more than your monthly budget
- Be accountable for your choices

Nothing on this page suggests in any way that the Independence Advisor is a “partner” in employing caregivers, thereby assuming responsibility and liability for any failure to control the conduct of one caregiver toward another caregiver. Indeed, this page states exactly the opposite.

Each of Sagen’s arguments from words in the pamphlet involves quoting a word out of context and then speculating about what it might mean with regard to the issues in this case. Her counsel’s speculations cannot overcome the plain facts established by CDPC, as demonstrated in the affidavits and supporting documents.

Sagen’s arguments are also based upon the use of phrases, taken out of context from *BSBW3/06*. These are phrases about making “sure you [Mary Anne Curran] have the skills and knowledge you need to manage your services,” and about providing “ongoing training and support that is adjusted to meet your individual needs such as budgeting, management and assertiveness” and about “providing other Human Resources functions.” Once again, these arguments ignore the clear limitations upon the phrases, as they appear in context.

The first quote comes from a paragraph in *BSBW3/06*, p. 13:

The Independence Advisor is a Trainer: The Independence Advisor *makes sure you have the skills and knowledge you will need to manage your services [emphasis added]*. The Independence Advisor will provide support and training information to help you develop your Support Service and Spending Plan (SSSP). The

Independence Advisor will also discuss and develop your emergency back up plan. The Independence Advisor will provide ongoing training and support that is adjusted to meet your individual needs such as budgeting, management and assertiveness.

This paragraph regarding the functions of the Independence Advisor is part of the same discussion that culminates, on the very next page, with the abundantly clear statement of what the Independence Advisor does not do, quoted on p. 9 of this brief, which emphasizes, by putting each “does not” in a separate bullet point, that the Independence Advisor does not make decisions for the consumer (in this case, Mary Anne Curran); interview, hire, train, supervise or fire Mary Anne Curran’s employees; tell Mary Anne Curran’s employees if Mary Anne Curran is unhappy with their work; fill out the employment form package; find emergency back up employees or providers for Mary Anne Curran; take more than their reasonable responsibility for assisting Mary Anne Curran in developing Mary Anne Curran’s SSSP; does not get Mary Anne Curran extra money if Mary Anne Curran spends more than Mary Anne Curran’s monthly budget and is not accountable for Mary Anne Curran’s choices. Since this is made clear in the same document from which Sagen drew her quoted phrases, there is no room to speculate about what the evidence at hearing might be. Sagen has not produced any evidence to raise a genuine issue of material fact about CDPC being somehow implicated in supervising, training or otherwise controlling caregivers at work for Mary Anne Curran.

Exactly like her arguments from words from *BSBW3/06*, taken out of context, her arguments from phrases from the same source, also taken out of context, do not generate any genuine issues of material fact. The evidence adduced by CDPC makes it entirely clear that Mary Anne Curran and not CDPC makes decisions; interviews, hires, trains, supervises and fires the consumer’s employees; tells the consumer’s employees if the consumer is unhappy with their work; fills out the employment form package; finds emergency back up employees or providers for the consumer; and Mary Anne Curran and not CDPC is accountable for Mary Anne Curran’s choices, including choices about hiring, training, supervising and firing employees.

Obviously, the precise same analysis applies to all of the phrases taken out of context. Whatever providing “ongoing training and support that is adjusted to meet your individual needs such as budgeting, management and assertiveness” might mean, it could not mean being legally liable for alleged sexual harassment of one caregiver by another, when that specific sort of responsibility is expressly disclaimed repeatedly in the source document. Whatever “providing other Human Resources functions” could mean, it could not mean assuming legal liability for the alleged

conduct of one caregiver toward another, when that specific sort of responsibility is expressly disclaimed repeatedly in the source document.

Sagen's final argument also depends upon alleged lack of clarity about what responsibilities CDPC could be inferred to have assumed toward Mary Anne Curran regarding controlling the conduct of one of her hired caregivers toward another of her hired caregivers. Based upon this alleged lack of clarity, Sagen argues that she has an absolute entitlement to an inference that CDPC stands in Mary Anne Curran's shoes for any liability Mary Anne Curran may have for Thomas Curran's alleged discriminatory conduct toward Sagen. Given the crystal clear limitations upon what CDPC undertook, within the scope of the DPHHS Big Sky Bonanza Waiver Program, Heidi Sagen is not entitled to any such inference. Sagen has not presented one shred of evidence that she reasonably believed that CDPC was responsible for controlling the conduct of any caregiver employed by Mary Ann Curran. She has not presented one shred of evidence, period, regarding what she might have known, thought, inferred or surmised, and there are no inferences to be made in her favor, in the face of what amounts to overwhelming evidence defining CDPC's responsibilities to Mary Anne Curran.

There are no genuine issues of material fact that must be resolved before ruling upon the legal question of whether CDPC can be liable for the conduct of Thomas Curran toward Heidi Sagen while both were employed by Mary Anne Curran as her caregivers, on the theory that CDPC was legally Curran and Sagen's employer or an agent of their employer for purposes of controlling their conduct at work. CDPC established that there are no genuine fact disputes and that it should be dismissed forthwith from these contested case proceedings for two reasons.

First, CDPC established, by proving facts and citing applicable law, that it had no authority and no responsibility to control the conduct of Thomas Curran toward Heidi Sagen while both were employed by Mary Anne Curran as her caregivers. CDPC was not, in fact, and not, in law, the employer of Thomas Curran and Sagen. CDPC was not, in fact, and not, in law, an agent of Mary Anne Curran in her role as the employer of Thomas Curran and Sagen. With regard to this summary judgment motion, Sagen did not proffer any proof that created a genuine issue of material fact regarding CDPC's lack of authority and lack of responsibility to control the conduct of Thomas Curran toward Sagen while they were employed as Mary Anne Curran's caregivers.

Second, CDPC established, by proving facts and citing applicable law, that it could not in any event be liable vicariously for the actions of Thomas Curran. CDPC proved that it had no notice or reasonable knowledge of those actions until June 18, 2012, after the last time Sagen was at the Curran residence – in other words, after the

last incident of alleged surreptitious surveillance and/or picture taking. CDPC also proved that, at that time, it took the actions it was empowered to take, including the actions it could take to provide Sagen's information to any other consumers who might want to retain her caretaker services. Even aside from the absence of any duty or power to control Mary Anne Curran's caretakers' conduct at work, CDPC established its right to summary judgment on the basis that it acted appropriately when given notice of the alleged discrimination and harassment. With regard to this summary judgment motion, Sagen did not proffer any proof that created a genuine issue of material fact regarding the propriety of the actions taken by CDPC when it did receive notice from her of the alleged conduct of Thomas Curran.

CDPC's counsel cogently argued that to defeat summary judgment once a basis for granting it had been established, Sagen had the burden to "submit evidence of sufficient facts to support a genuine issue of material fact to preclude summary judgment in favor of the movant." *Meadow Lake Est. Homeow. Ass'n v. Shoemaker*, ¶38, 2008 MT 41, 341 Mont. 345, 178 P.3d 81. Sagen did not do so, and mere denial or speculation cannot substitute for "facts sufficient to raise a genuine issue." *Cecil v. Cardinal Drilling* (1990), 244 Mont. 405, 797 P.2d 232, 235. As the Montana Court stated in *Abraham v. Nelson*, ¶26, 2002 MT 94, 309 Mont. 366, 46 P.3d 628, "Unsupported, conclusory or speculative statements do not raise a genuine issue of material fact."

Sagen has presented nothing but speculation that perhaps a trial on the merits would somehow generate proof of some "breach" of some unstated "contractual promises" which somehow or another might prove her charges. The law requires more. The law requires that the "non-moving party [must] prove by more than mere denial or speculation, and by competent evidence, that a genuine issue of material fact exists." *Bridgman v. Union Pac. R.R. Co.*, ¶20, 2013 MT 289, 372 Mont. 124, 311 P.3d 416, *citing*, *Roy v. Blackfoot Telephone Coop., Inc.*, ¶ 11, 2004 MT 316, 324 Mont. 30, 101 P.3d 301.

5. Summary Judgment Granted to CDPC – Curran Complaint Remains

Summary judgment is granted in favor of CDPC on all charges against. The complaint against CDPC is DISMISSED. The complaint against Thomas Curran remains pending, and the existing schedule still applies to that remaining complaint.

DATED: January 29, 2014.

/s/ TERRY SPEAR

Terry Spear, Hearing Officer
Hearings Bureau, Centralized Services Division
Montana Department of Labor and Industry

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NOTICE OF ISSUANCE OF ADMINISTRATIVE DECISION

To: Dean Chisholm, attorney for Heidi Sagen, and Karl J. Englund, attorney for Consumer Direct Personal Care, LLC:

The decision of the Hearing Officer, above, 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).

THERE IS NO HEARING TRANSCRIPT, BECAUSE THIS DECISION IS THE GRANTING OF SUMMARY JUDGMENT UPON THE RECORD BEFORE THE HEARING OFFICER.