

- (1) ORDER PROHIBITING PUBLICATION OF NAME, ADDRESS OR IDENTIFYING PARTICULARS OF AGGRIEVED PERSON
- (2) ORDER PREVENTING SEARCH OF THE TRIBUNAL FILE WITHOUT LEAVE OF THE TRIBUNAL OR OF THE CHAIRPERSON
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IN THE HUMAN RIGHTS REVIEW TRIBUNAL

[2015] NZHRRT 25

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Reference No. HRRT 029/2015

UNDER SECTION 50 OF THE HEALTH AND  
DISABILITY COMMISSIONER ACT 1994

BETWEEN DIRECTOR OF PROCEEDINGS

PLAINTIFF

AND PASIFIKA INTEGRATED HEALTHCARE  
LIMITED

DEFENDANT

AT AUCKLAND

BEFORE:

Mr RPG Haines QC, Chairperson  
Dr SJ Hickey MNZM, Member  
Mr RK Musuku, Member

REPRESENTATION:

Ms N Wills, Director of Proceedings  
Mr SE Greening for defendant

DATE OF DECISION: 2 July 2015

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## DECISION OF TRIBUNAL

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[1] These proceedings under s 50 of the Health and Disability Commissioner Act 1994 were filed on 22 June 2015.

[2] The parties have resolved all matters in issue and the Tribunal is asked to make a consent declaration. To that end the parties have filed:

**[2.1]** A Consent Memorandum dated 30 June 2015.

**[2.2]** An Agreed Summary of Facts, a copy of which is annexed and marked "A".

**[3]** The Consent Memorandum is in the following terms:

**MAY IT PLEASE THE TRIBUNAL**

1. The plaintiff and defendant have agreed upon a summary of facts on the basis of which the parties seek a declaration in paragraph 2(a) below. A signed copy of the agreed facts is filed with this memorandum. The parties are agreed that it is not necessary for the Tribunal to consider any other evidence for the purpose of making the declaration sought. The parties request that the agreed summary of facts be published by the Tribunal as an addendum to the decision.
2. The plaintiff requests that the Tribunal exercise its jurisdiction in respect of the following matters:
  - (a) A declaration pursuant to s 54(1)(a) of the Health and Disability Commissioner Act 1994 ("the Act") that the defendant has breached the Health and Disability Commissioner (Code of Health and Disability Services Consumers' Rights) Regulations 1996 ("the Code") in respect of:
    - (i) Right 4(1) by failing to provide services to the aggrieved person with reasonable care and skill.
3. The plaintiff seeks a final order prohibiting publication of the name of the aggrieved person in this matter.
4. The defendant consents to the Tribunal making the above declaration based on the facts set out in the agreed summary of facts, and the non-publication order sought in paragraph 3.
5. The other aspects of the relief claimed by the plaintiff, that being:
  - (a) damages pursuant to s 57(1); and
  - (b) costshave been resolved between the parties by negotiated agreement.
6. The defendant does not seek any order prohibiting publication of the defendant's name.

**[4]** Having perused the Agreed Summary of Facts the Tribunal is satisfied on the balance of probabilities that an action of the defendant was in breach of the Health and Disability Commissioner (Code of Health and Disability Services Consumers' Rights) Regulations 1996 and that a declaration should be made in the terms sought by the parties in paragraph 2 of the Consent Memorandum.

**DECISION**

**[5]** By consent the decision of the Tribunal is that:

**[5.1]** A declaration is made pursuant to s 54(1)(a) of the Health and Disability Commissioner Act 1994 that the defendant breached the Health and Disability Commissioner (Code of Health and Disability Services Consumers' Rights) Regulations 1996 in respect of Right 4(1) by failing to provide services to the aggrieved person with reasonable care and skill;

**[5.2]** A final order is made prohibiting publication of the name, address and any other details which might lead to the identification of the aggrieved person. There is to be no search of the Tribunal file without leave of the Tribunal or of the Chairperson.

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**Mr RPG Haines QC**  
Chairperson

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**Dr SJ Hickey MNZM**  
Member

.....  
**Mr RK Musuku**  
Member

**“A”**

This is the Agreed Summary of Facts marked with the letter “A” referred to in the  
annexed decision of the Tribunal delivered on 2 July 2015.

**BEFORE THE HUMAN RIGHTS REVIEW TRIBUNAL**

**UNDER** Section 50 of the Health and Disability Commissioner Act 1994

**BETWEEN** **DIRECTOR OF PROCEEDINGS**, designated under the Health and  
Disability Commissioner Act 1994

**Plaintiff**

**AND** **PASIFIKA INTEGRATED HEALTHCARE LIMITED** of Auckland,  
Disability Services Provider

**Defendant**

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**AGREED SUMMARY OF FACTS**

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## SUMMARY OF FACTS

### BACKGROUND

1. The aggrieved person is a Fijian Indian man who has a significant intellectual impairment. In March 2007 the aggrieved person was 28 years old and was living at home with his mother, who was his primary caregiver. The aggrieved person has limited eyesight in his left eye, but he is independent with his personal cares. He speaks Hindi but very little English.
2. Pasifika Integrated Healthcare Ltd (the defendant) is a provider of home based support services for people living with disabilities or intellectual impairments. Home based support services include house cleaning, cooking, laundry, and assistance with bathing, dressing/grooming and mobility.
3. The aggrieved person was a client of the defendants between 30 March 2007 and 8 July 2013. Between 20 June 2010 and 8 July 2013 (the relevant period), the defendant was contracted to provide personal care services to the aggrieved person for ten hours per week. The care took place for five hours on Mondays and Fridays.

### FRAMEWORK FOR SERVICES

4. During the relevant period the defendant was contracted to the Ministry of Health (MOH contract) to provide Home Community Support Services to service users eligible for funding (as determined by a needs assessment service coordination organisation (NASC)). Home and Community Support services include personal support (such as support with showering and dressing), household support (such as meal preparation and cleaning), and services to enable access to community activities through networks such as family/whanau, friends, marae, neighbours and others.
5. The MOH contract records that services may be delivered flexibly and that any flexibility in the provision of services should be recorded in the Individual Service Plan for the service user.
6. The MOH contract required the defendant to (among other things):

- a. deliver services to service users in accordance with an Individual Service Plan that was;
  - i. based on an assessment of the service user's needs;
  - ii. included appropriate consultation with the service user and family members (where appropriate);
  - iii. facilitated the achievement of the goals identified for the service user.
- b. ensure services were delivered by suitably trained support workers to meet the goals of the service user (as identified in their support plan);<sup>1</sup>
- c. contact the NASC to arrange a new needs assessment for the service user if the defendant considered that support needs or goals had changed;
- d. Ensure that service users were safeguarded from physical, mental, emotional, financial and sexual maltreatment or neglect.

#### *Community Engagement Programme*

7. For the relevant period the defendant operated a "Community Engagement Programme" which was designed to "encourage special need clients to live independent and near a normal life as they possibly can" (sic).
8. The Community Engagement Programme included, but was not limited to, the following specifications:
  - a. Community Engagement was defined as taking service users out to involve them in community based activities such as sports, entertainment and music, and to assist the service user with basic socialising skills and integration with other people;

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<sup>1</sup> Support plan is defined in the contract as "A plan agreed with the NASC or ACC Staff Member and the Person [service user] that specifies their overall goals and type or amount of services. The services will be specified as core services and other services. For ACC claimants this is termed an individual rehabilitation plan."

- b. Activities that were part of the programme were to be strictly consented to by a service user's family and were to be supervised by the support worker at all times;
  - c. An activity plan was to be recorded and used as a guide to ensure the service user's safety;
  - d. The plan was to be individualised to service users and to identify each service user's potential.
9. Support workers providing the Community Engagement Programme were required to notify the parents or caregivers of a service user in writing prior to picking a client up for an outing.
10. The service co-ordinator was responsible for writing up an individual programme plan for each service user involved in the Community Engagement Programme. The programme plan was to meet service users' individual needs and highlight the strengths and weaknesses of the service user and their likes and dislikes. A copy of the programme plan was to be given to the family or caregiver of the service user.
11. Prior to joining the Community Engagement Programme the service user was required to be assessed by the Service Co-ordinator for suitability.
12. Transport for the Community Engagement Programme was to be supplied by the defendant. Two staff members were required to travel with service users at all times. One staff member to drive and the other to sit in the back with the service user.
13. All staff administering the Community Engagement Programme were to attend extra training appropriate to the service user's needs.

*Mr F*

14. Mr F was a support worker employed by the defendant to provide care to service users of the defendant. Mr F had been employed by the defendant for a period of two years prior to caring for the aggrieved person, whom he provided care to (under a Community Engagement Programme) between 2010 and 2013.

15. Mr F has limited English and literacy skills and does not speak any Hindi. Mr F and the aggrieved person were largely unable to communicate in English and accordingly communicated by way of signs, gestures and simple English words such as “toilet” and “eat”.
16. The defendant had a policy that all staff were to complete NZQA Level 3 and 4 certificates in the Care of the Older Person. The defendant had not undertaken any disability services focussed training and did not have an NZQA qualification. According to Mr F’s Worker Competency Form, Mr F had “7 years [e]xperience in care of disability. On the job training, orientation & supervision by experience[d] [service co-ordinator].”

*The defendant’s policies*

17. The defendant’s policy “Support Worker Taking Service User to their Own Home” provides that support workers are not permitted to take service users to their own home without seeking permission from their service co-ordinator, and approval can be granted only once the service co-ordinator has discussed it with the service user’s next of kin.
18. The service co-ordinator is required to assess the support worker’s current living arrangements to ensure the health and safety of the environment to which the service user might be exposed, and an agreement must be signed by all parties prior to the support worker taking the service user to his or her own home. The policy requires that every visit is closely monitored by the service co-ordinator by way of:
  - a. Phone contact (unscheduled);
  - b. Personal visit to the home;
  - c. Next of kin contacted by phone;
  - d. Proof of activities matched against the care planned and activity planned.

19. The "Service User Personal Care Policy" states that no service user is to be left unattended or unsupervised, or allowed to participate in any activity without the support and attendance of the support worker.

## **SERVICES PROVIDED TO THE AGGRIEVED PERSON**

### *2007-2010*

20. According to an Admission to Service form completed for 30 March 2007 (but signed on 20 June 2010), the aggrieved person was referred to the defendant by the NASC in order "to assist [him] with daily activities out in the community due to [his] intellectual disability".
21. At the time of the aggrieved person's admission to the service in March 2007, his mother informed the defendant that she did not need support for the aggrieved person at home, but rather he needed to be taken out on the days of his allocated care. The aggrieved person's mother was not consulted about a care plan and was not provided with a care plan for the aggrieved person. She was unaware of the activities he would be engaged in on while in the defendant's care.
22. Between March 2007 and June 2010 the aggrieved person was cared for outside of the aggrieved person's home by a female support worker employed by the defendant. There are no individual service plans for the aggrieved person for this period.

### *2010 care*

23. On 13 April 2010 a NASC Service Authorisation form was completed which authorised funding for the defendant to provide the aggrieved person with ten hours of personal care.
24. A document provided to the aggrieved person on 20 June 2010 confirmed that Mr F would be the aggrieved person's new home support worker and that he would take the aggrieved person out for "community engagement". The aggrieved person was pleased to have a male support worker at that time.



25. The aggrieved person was not assessed by the service co-ordinator to ascertain suitability of the Community Engagement Programme, nor was an individual programme or activity plan put in place. There is no record of consultation with the aggrieved person or family members about suitable activities for the aggrieved person.
26. After Mr F started provided the aggrieved person with care, a typical day for the aggrieved person involved Mr F picking up the aggrieved person from his home and taking him in Mr F's van to Mr F's home where they would often watch television. On at least one occasion Mr F fell asleep while the aggrieved person watched television.
27. On occasion, the aggrieved person and Mr F watched movies that were inappropriate for the aggrieved person's mental capacity and comprehension.
28. Occasionally Mr F and the aggrieved person would go fishing. The aggrieved person enjoyed the fishing trips but was left in Mr F's van alone watching Mr F fish on more than one occasion.
29. Mr F and the aggrieved person also engaged in "rugby like" tackling or rough play. The aggrieved person does not enjoy rough play, and does not like others in his personal space but could not communicate that to Mr F.
30. Mr F regularly transported the aggrieved person in his own vehicle without the support of an extra worker, contrary to the defendant's Community Engagement Programme policy.
31. Mr F regularly took the aggrieved person to his own home contrary to the defendant's "Support Worker Taking Service User to their Own Home" policy (detailed in paragraphs 17-18 above).
32. Mr F did not record any progress notes about his care of the aggrieved person or provide any report on his progress.

33. The defendant did not have adequate monitoring processes in place, so the lack of planning, documentation and policy breaches throughout this period were not detected.

#### *2011 plan*

34. On 18 May 2011 the NASC Service Authorisation was reviewed and a new form completed. The 2011 Service Authorisation form stated that the goal for the aggrieved person was “to have options to go out and have social opportunities”. Ten hours of personal care was allocated, with no flexible funding.

35. On 20 June 2011 a Client Individual Service Plan (2011 plan) was completed for the aggrieved person. The plan was dated as having been completed on 20 June 2010 and reviewed and signed on 20 June 2011.

36. The 2011 plan form did not refer specifically to the Community Engagement Programme and did not contain an activity plan or detail the likes/dislikes of the aggrieved person. However short and long term goals for the aggrieved person were identified.

37. The short term goals listed in the 2011 plan were to go out with the carer every day, to learn how to read/draw pictures, to have fun and meet new people. The long term goals were to continue to live with his parents, to go to “work” on a regular basis and to do more tasks and be more independent.

38. The reference to “work” is a reference to a workshop at Creative Abilities and Associates Ltd (Creative Abilities) which the aggrieved person attended three days per week.

39. Following completion of the 2011 plan, the day to day activities for the aggrieved person remained unchanged. As in 2010 and the first half of 2011, Mr F would pick the aggrieved person up from his home and drive him to Mr F’s home where they would often watch television. Occasionally Mr F engaged in other activities with the aggrieved person, such as visiting a mall. Mr F did not attempt to teach the

aggrieved person to read or draw pictures. He did not take the aggrieved person out to meet and interact with new people.

40. The services provided did not accord with the goals set out in the 2011 plan. Mr F did not attempt to enhance the aggrieved person's independence, social network or ability to undertake a wider range of "tasks".
41. Mr F did not record any progress notes about his care of the aggrieved person or provide any report on his progress. No assessment was made of the extent to which any of the identified goals had been achieved.
42. The defendant's monitoring processes remained inadequate, so the lack of planning, documentation and policy breaches throughout this period were not detected.

#### *2012 plan*

43. The NASC completed a review of the Service Authorisation on 13 April 2012. The 2012 Service Authorisation form stated that the goals for the aggrieved person were to:
  - a. "Continue having his job at abilities
  - b. continue living with his parents
  - c. have options to go out and have social opportunities".
44. On 10 July 2012 the Client Individual Service Plan (2012 plan) was reviewed and completed. The 2012 plan noted that the aggrieved person has a problem with his eyesight and needs assistance most of the time to avoid accidents. The goals in the plan include the aggrieved person having more activities in the community, learning how to draw and read, and mingling with other people.

45. The 2012 plan stated: “[C]lient place is safe, but he cannot be left alone. Always communicate with family if any changes with his support.” It was noted that, as the aggrieved person is a Muslim, he would always bring his own food and drinks, that he was not allowed to have any food or drink anywhere else, and that he was to be at home before sunset.
46. The 2012 plan noted that the carer was to pick up from home and drop off the aggrieved person on the allocated days, and that the family had agreed and consented to the carer entering their home when visiting the aggrieved person and attending to his cares. The plan did not specify where the carer was to take the aggrieved person. No reference to Mr F taking the aggrieved person to Mr F’s home was recorded in the 2012 plan.
47. The care provided by Mr F to the aggrieved person carried on as it had in 2010 and under the 2011 plan. During 2012 Mr F also occasionally took the aggrieved person on a paper run during which Mr F and the aggrieved person would walk the paper route while Mr F delivered pamphlets.
48. The activities of the aggrieved person while on Mr F’s care under the 2012 plan did not accord with the goals set out in the 2012 plan. Mr F did not assist the aggrieved person to make new friends, or to undertake activities and mingle with people in the community. He did not teach him to draw or read.
49. Mr F was not authorised by the defendant to take the aggrieved person to his home. Consent for the same was not obtained from the aggrieved person’s family.
50. Mr F did not record any progress notes about his care of the aggrieved person or provide any report on his progress. No assessment was made of the extent to which any of the identified goals had been achieved.
51. The defendant’s monitoring processes remained inadequate, so the lack of planning, documentation and policy breaches throughout this period were not detected.
52. From early 2012 the aggrieved person began to indicate to his mother that he did not wish to go with Mr F on the days which Mr F was allocated to provide care. When he

came home from being with Mr F he told his mother that Mr F had pinched him on the ear and hit him over the head. He also said that Mr F had become cross with him and had yelled at him.

53. The aggrieved person's sister complained to the aggrieved person in March 2013 shortly after which the aggrieved person ceased to use the defendant's services.

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Nicola Wills

**Director of Proceedings**

**Pasifika Integrated Healthcare Limited** agree that the facts set out in this Summary of Facts are true and correct.

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Representative

**Pasifika Integrated Healthcare Ltd**

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Date