

HUMAN RIGHTS COMMISSION File No. 16 EN 235

BETWEEN:

TYSON SYLVESTER,

Complainant,

- and -

GOVERNMENT OF MANITOBA
(MANITOBA HEALTH, SENIORS AND ACTIVE LIVING),
(MANITOBA FAMILIES), and
WINNIPEG REGIONAL HEALTH AUTHORITY,

Respondents.

REPLY OF THE WINNIPEG REGIONAL HEALTH AUTHORITY
TO THE COMPLAINT OF DISCRIMINATION
HUMAN RIGHTS COMMISSION FILE NO. 16 EN 235

1. Unless specifically admitted herein, the Respondent, Winnipeg Regional Health Authority ("WRHA"), denies the allegations contained in the Complaint.
2. In response to the Complaint as a whole, the WRHA says that it administers The Manitoba Home Care Program (hereinafter referred to as the "MHCP") only within the Winnipeg-Churchill Health Region and in accordance with the policies established by the Respondent, Manitoba Health, Seniors and Active Living ("MHSAL").
3. In response to the Complaint as a whole, the WRHA says that the Respondent, the Government of Manitoba's Department of Family Services ("MFS"), administers two programs throughout Manitoba to deliver services for

persons with disabilities: (1) the Children's disABILITY Services Program ("CDSP"); and (2) the Community Living disABILITY Services ("CLDS").

4. The WRHA is not responsible for the administration of CDSP or CLDS programs and is only aware of the purpose of those programs. In respect to the MHCP which the WRHA does administer within its specified geographic area, the WRHA says that the purpose of the MHCP, as set out by MHSAL, is to *supplement* the role of family and other informal support networks in providing personal care assistance to individuals in their homes with a view to:

- (a) Facilitating, if safely and sustainably possible to do so, early hospital discharge; and
- (b) Deferring, if safely and sustainably possible to do so, entry into long term care facilities.

5. The WRHA says that the MHCP was not intended to eliminate the role of families in providing personal care assistance to loved ones in the home or to eliminate the role of long term care facilities in providing care to individuals whose needs cannot safely and sustainably be met in their own homes.

6. In answer to paragraph 2 of the Complaint, the WRHA admits that the Complainant did not receive the same services when he transitioned from childhood to adulthood. The WRHA says that the services available to an individual under the CDSP and/or CLDS are not the same as the services available under the MHCP. However, the WRHA denies that the provision of different services available under different programs constitutes discrimination on the basis of disability, age or otherwise in contravention of *The Human Rights Code* (the "Code"). The WRHA says it is not discrimination or a contravention of the Code to make reasonable accommodation for the special needs of an individual or group, if those special needs are based in whole or in part upon a characteristic such as age, physical or mental disability. Nor is it discrimination or

a contravention of the Code where there exists a *bona fide* and reasonable cause to provide the services in the manner that differentiates on the basis of a characteristic such as age, physical or mental disability.

7. In answer to paragraph 3, the WRHA admits that the Complainant is 20 years of age and has been diagnosed with cerebral palsy.

8. In answer to paragraph 4, the WRHA admits that the Complainant resides at _____ in Winnipeg which is a _____ not owned or operated by the WRHA. The WRHA does fund _____ through a service purchase agreement.

9. In answer to paragraph 5, the WRHA says that it is a corporation established pursuant to *The Regional Health Authorities Act*, C.C.S.M. c. R34 (the "RHA Act"), with responsibility for providing for the delivery of and administering health services within the Winnipeg-Churchill Health Region.

10. In further answer to paragraph 5, the WRHA admits that its authority is derived from the RHA Act. The WRHA says that the duty to "*ensure that health services are provided in a manner which is responsive to the needs of individuals and communities in the health region and which coordinates and integrates health services and facilities*" is one of many duties required of the organization. The WRHA says that other duties include but are not limited to:

- (a) the requirement to "*manage and allocate resources, including, but not limited to, funds provided by the government for health services*" in accordance with the RHA Act and the WRHA health plan;
- (b) in providing for the delivery of health services ensure that there is "*reasonable access to health services*"; and
- (c) the requirement to monitor and evaluate the delivery of health services and compliance with prescribed standards and provincial

objectives and priorities, in accordance with guidelines provided or prescribed by the minister.

11. In further answer to paragraph 5, the WRHA denies that it administers the MHCP. The WRHA says, as the facts are, that the MHCP is a program of provincial scope and that the WRHA only administers the program within the Winnipeg-Churchill Health Region.

12. In further answer to paragraph 5, the WRHA says that SFMC Program enables the individuals or families of clients with assessed Home Care needs to accept full responsibility for the personal care of the client. The individual or family manager who chooses this option to meet the client's needs is responsible for coordinating, managing, and directing the non-professional services needed by their family member to continue living at home and in the community.

13. The WRHA has no knowledge in respect to the allegations contained in paragraphs 6, 7, 9, 10, 11, 12, 13, 14, 15, and 16.

14. The WRHA admits paragraph 17.

15. In answer to paragraph 18, the WRHA denies that the Complainant is part of a minority that use the MHCP to live at home in combination with assistance from his family and friends. The purpose of the MHCP is to support individuals and their families in assisting the individual to remain living in the community as long as possible. The vast majority of clients of the MHCP utilize the program in the same manner as the Complainant. The MHCP is a *supplemental* program and as such, individuals and/or their families need to ensure a backup plan is in place in the event Home Care services are not available as anticipated.

16. In answer to paragraphs 18 through 25, the WRHA says that Home Care workers perform and complete the tasks they are assigned. The duration of these

tasks may be adjusted based on assessment. The MHCP is a supplemental program which is not designed to replace hospital, long term care or other in-patient facilities. The MHCP provides support to a client's family or informal support network and is not a guaranteed service. There is no obligation on the WRHA to ensure that an individual has someone in attendance with a client twenty-four hours a day, seven days a week. Nor is the MHCP a service that is designed to cater to the social needs of Manitobans.

17. In further answer to paragraph 19, the WRHA says that in-home services available under the MHCP include:

- (a) personal care services;
- (b) meal preparation services;
- (c) household maintenance and laundry service;
- (d) nursing services;
- (e) therapy assessments;
- (f) Manitoba Ostomy Program services;
- (g) Manitoba Home Nutrition services;
- (h) community intravenous therapy;
- (i) medical equipment and supplies;
- (j) respite care provided in the home;
- (k) palliative care; and
- (l) assistance with medication management.

18. In answer to paragraphs 20 and 21, the WRHA says as the facts are, that Home Care workers are trained and certified. The Home Care workers that provide services to the Complainant at _____ are employed by _____ who control the staffing schedule as it relates to the Complainant. The WRHA further says that it cannot guarantee the same support worker is assigned to the Complainant for his Home Care services on each occasion as the WRHA services a multitude of Home Care clients. In the event that the Complainant wanted to ensure greater consistency in the particular Home Care employee that

attends for his services, the Complainant has the option to apply for the SFMC Program which would allow the Complainant or a family member to control the hiring of support workers. To date the Complainant has not applied for SFMC.

19. In answer to paragraphs 24 and 25, the WRHA says that the Complainant is eligible for and is an appropriate candidate to receive services under the MHCP. The WRHA further says that personal care home placement is not confined to individuals of a specified age.

20. In answer to paragraph 26(c), the WRHA says that Manitoba Health Service Level Policy 207.3 (the "Service Level Policy") provides a maximum number of hours of Home Care Service of 55 hours per week unless the WRHA authorizes a care plan that exceeds the service limit in accordance with the Service Level Policy.

21. The Complainant has never made an application to exceed the maximum hours pursuant to the Service Level Policy. The WRHA says that the Complainant's needs would have to be assessed to determine whether he would qualify to receive hours of service above the normal 55 hour maximum.

22. In answer to paragraph 27, the WRHA says that it does not expect the Complainant's mother to supplement the role of Home Care providers, as the role of Home Care providers is to supplement the role of the mother. The MHCP is a program designed to provide support to existing family supports until such time as the individual is no longer able to be cared for safely in the community. The MCHP is not a primary or complete health care service.

23. In answer to paragraph 28, the WRHA specifically denies that the allegation that there is a widely recognized term known as "gappers" used in the health care field to describe individuals receiving services such as the Complainant.

24. In answer to paragraphs 29 and 30, the WRHA does not administer either the CDSP or CLDS programs and as such has no knowledge with respect to the allegations contained therein.

25. In answer to paragraphs 31, 32, 33 and to the Complaint as a whole, the WRHA states that the Complaint does not disclose on its face any material facts to support the allegation that the Complainant was discriminated against on the basis of age, physical or mental disability by the WRHA. The WRHA states that the Complaint discloses no prima facie case of discrimination as there are no allegations that support a Complaint that WRHA discriminated against the Complainant in the course of administering the MCHP to the Complainant. The WRHA states that the Complaint ought to be dismissed peremptorily under section 29(1)(b) of the Code as the acts or omissions described in the Complaint do not contravene the Code.

26. The WRHA further states that:


- (a) the Complaint is frivolous or vexatious; or
- (b) the acts or omissions described in the Complaint do not contravene the Code; or
- (c) the evidence in support of the Complaint is insufficient to substantiate the alleged contravention of the Code;

and accordingly the Complaint should be dismissed pursuant to section 29 of the Code.

27. In the alternative, if it is determined that the WRHA did provide differential treatment in the provision of services to the Complainant on the basis of age, physical or mental disability, such treatment was provided in order to make reasonable accommodation for the special needs of an individual or group and therefore did not amount to discrimination or a contravention of the Code.

28. In the further alternative, if it is determined that the WRHA did provide differential treatment in the provision of services to the Complainant on the basis of age, physical or mental disability, such treatment was provided for a bona fide and reasonable cause.

All of which is respectfully submitted this 19th day of October, 2016.

PER: 
DANIEL P. RYALL
Counsel for the Respondent,
Winnipeg Regional Health Authority