

**Provision of appropriate care to disability service user
(09HDC02149, 8 November 2011)**

Community service worker ~ Disability service provider ~ Residential care ~ Physical and intellectual impairment ~ Respect ~ Rights 1, 4(2), 4(3)

A police constable complained about the services provided by a community service worker (CSW) to a physically and intellectually impaired man. The man is unable to communicate verbally, and is a long-term resident in a residential home run by a disability support service.

The Police responded to a report that a disabled man, strapped into a wheelchair, had been left unattended in a van which was owned by the disability support service. The van had been parked in the driveway of the home of the CSW for just over 45 minutes when the Police attended.

The CSW was not authorised to use the van to go home, or to leave a service user unattended. She advised the Police that she had been home only a short time and had gone home to attend to an urgent matter of personal hygiene. The CSW was employed to support people with impairment to live in the community. She had completed an induction programme and participated in ongoing training in the service's policies and procedures, and knew that she was not authorised to take the van home. She also knew that she was not to leave any of the service users alone in the van.

The disability support service conducted an investigation into the matter, and terminated the CSW's employment. The house leader was performance counselled for failing to adequately supervise the CSW. The disability support service amended its policy regarding the use of the organisation's vehicles to ensure greater accountability, and reinforced its policies regarding education for its staff relating to service user safety and respect.

The CSW was held to have breached Rights 1, 4(2) and 4(3) of the Code for failing to treat the disabled man with respect, failing to comply with the disability support service's policies and Health and Disability Services Standards, and by failing to provide services in a manner consistent with the disabled man's needs. The breach of the Code was found to be a severe departure from an acceptable standard of services. The CSW was referred to the Director of Proceedings, who decided to issue a proceeding in the Human Rights Review Tribunal. That proceeding is pending.

The disability support service provided an induction programme which included guidelines for new staff on the health, safety and security of the service users it supports. It was found that the disability support service took reasonable steps to prevent the CSW's actions and was not vicariously liable for her breaches of the Code.

It was held that the house leader should have reported her suspicions about the CSW's behaviour to her manager, but that this omission was not sufficient to warrant a breach of the Code.

The Director of Proceedings decided to issue a proceeding in the Human Rights Review Tribunal. The disability services provider agreed to pay the man \$5,000

compensation for humiliation, loss of dignity and injury to feelings, and forms part of orders made by the Human Rights Review Tribunal.

The Tribunal also made a declaration that the provider breached the rights of the man she was caring for by failing to provide services with reasonable care and skill, failing to provide services in a manner which complied with legal, professional and ethical standards, and failing to provide services in a manner consistent with his needs.

Full details of the decision are available at:

<http://www.nzlii.org/nz/cases/NZHRRT/2012/>