



RELATOR'S BRIEF

CASE NUMBER: A10-2014

AMY LEWIS  


WEST SIDE COMMUNITY HEALTH SERVICES, INC  
LA CLINICA  
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Respondent-Employer

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2/11/11

I understand that I am to write an informal brief for this appeal. I see that on January 18, an itemized list of the documents that have been referred to in the hearings was sent to you. I therefore will attempt to be brief in recapping the most salient points.

There are six points I would like to address and ask the court to review.

1. Statute 268.085, sub.7 (a) is one of the statutes which has been cited for the denial of benefits. However, Statute 268.085, sub. 7 (f) states "This subdivision applies to employment with an educational service agency if the applicant performed the services at an educational institution(s). "Educational services agency" means a government agency or entity established and operated exclusively for the purpose of providing services to one or more educational institutions. This subdivision also applies to employment with Minnesota or a political subdivision, or a nonprofit organization, if the services are provided to or on behalf of an educational institution (s)."

Please refer to pages 23-26 of the transcript of the initial hearing for my explanation that West Side Community Health Services (WSCHS) is neither an educational services agency as defined so precisely by this statute, nor a nonprofit organization that provides services to or on behalf of an educational institution.

WSCHS provide comprehensive health services to the community for people of all ages at a variety of sites, with the Como High School site being one of the many sites. WSCHS operates La Clinica, East Side Services, clinics in the housing projects, and Health Care for the Homeless. All sites are community clinics open to the public. WSCHS services have never been limited to students in the St. Paul school district. I have provided short term counseling services to teens with whom I had worked at Como HS, had graduated and were no longer enrolled in the district. (On page 35 of the transcript, Mr. Fournier states an agreement between WSCHS and St. Paul Schools doesn't allow for this, yet I don't see this specified anywhere within any agreement.)

In addition, as I attempted to clarify in my testimony, WSCHS does not provide services to the School district nor are we there on their behalf. St. Paul public schools can function just fine without our program. Unlike bus transportation, cafeteria workers, janitorial services without which a school cannot operate, the service we provide is not integral to the mission and success of the district. We aim to provide health services to a population of adolescents who otherwise may not have access to this care. We were not asked by the district to provide these services and the school district does not reimburse WSCHS for any of our services (unlike the reimbursement they provide to transportation companies, cafeteria workers, janitorial staff) My paycheck is from WSCHS, NOT the St. Paul district.

Please note that this model of providing health care to adolescents ( school based health clinics) has been so successful through out the country, that Section 4101 of the federal health care reform act has authorized 50 million dollars per year for School Based Clinics through 2013. This is not a commitment undertaken to support schools in their mission to provide education, but undertaken as a means of making health care services available to adolescents where they can be found.

2. Statue 268.085, subdivision 8, has also been cited for the denial of benefits.
  - (1) the employment was provided under a contract between the employer and...school.

Discussed at length in the hearings was the issue of the validity of the contract between WSCHS and St. Paul Schools. (pages 12 -14, 76-78) The initial contract submitted to the Department of Unemployment by my employer WSCHS was never signed nor dated, in addition to having expired June 2006. Although I worked from Sept. 2009 through June 2010, a subsequent contract was not in place and not signed until July 28, 2010. The services I performed were during a period in which there was no contract. The new contract was not considered retroactive until it was signed in July. In my estimation there was absolutely no contract in effect between WSCHS and Saint Paul Schools during the 2009/2010 school year.

In addition, my understanding of the history of this subdivision is that it was originally established in regard to transportation and food service workers, services that the school used to provide directly and then began to contract out. I am not sure why this statute is being applied to the services of a community health clinic, which the school has never offered, or needs in order to operate. It appears to me that the intent of this statute was for a very different relationship and service than what we provide as employees of WSCHS. It also seems to me that the term "school contractor" implies a relationship in which the school district is paying someone else to provide a service that is needed by the school. I don't believe that if Girl Scouts or Boy Scouts hold their meetings in school space, they are considered to be 'school contractors.'

3. S. 268.085, subd.8 (2). states the contract was for services that the....school could have had performed by its employees.

Also discussed at length in the hearings was the specific focus of my job as a clinical social worker providing ongoing mental health counseling, including diagnosis, treatment planning, treatment. I stated that the school social work role and my role as a social worker clinician share only the name of social worker and each provide a very different service. I also have submitted a copy of the Como High School Social Work job description, which clearly shows that their role DOES NOT include mental health counseling. I want to mention again that the majority of the funding for their position comes from special education funds and they are therefore required to provide primarily to that population of students. The students I work with in the clinic are those students who are not able to get services under an Individual Education Plan from the school

social worker. In addition, most of the students I see come into our clinic because they know we are separate from the school and we keep their information confidential and it won't be shared with teachers, principals, and other school personnel. A teen knows that they can talk with me of their concerns about their substance abuse, their sexuality, their despair over mom or dad's alcoholism without my revealing these concerns to anyone else. The services we provide under the Minor Consent Law, originally passed in 1972 allowing teens to receive reproductive health services and certain mental health services without their parent's consent, are those that school personnel DO NOT perform. School nurses and social workers do not provide pregnancy testing and counseling, birth control and birth control counseling, STD (sexually transmitted diseases) treatment/counseling. Ann Hoxie, director of school nursing for the district, has clearly stated that school staff cannot perform the tasks the clinic provides. School social workers and counselors actually refer teens to us because they know they are unable to provide the ongoing long term 45 minutes sessions that we offer. School social workers never have been ascribed the role of mental health therapist; neither their training nor the myriad demands of their role would ever allow them to take on this function.

On page 40 of the transcript, Dr. Fournier clearly stated that WSCHS provides services that St. Paul Public Schools are NOT ABLE to or not equipped to provide. He then immediately contradicts himself in his following statement. On page 67 he states that WSCHS functions as a "portal of entry for health care for the kids that are going and attending St. Paul Public Schools to assure that their attendance and supporting of their families." This is inaccurate and completely unsupported in his testimony. While we do operate to provide health and mental health care to adolescents, our role has NEVER been to ensure the attendance of our clients or to support their families. Bonnie Ellison is the Como HS Social Worker who deals with truancy issues. I may address issues that impact school attendance with a student, but the attendance itself is never the primary issue. Dr. Fournier also states St. Paul Schools have chosen not to provide our services because they have an agreement with us. I have discussed this issue with Mr. Dan Mesick, principle of Como High School, and his comment was that the district would clearly be unable to provide the services that we do. Schools never have and never will provide comprehensive health care and to say it's a matter of choice is absurd.

4. With all due respect, I believe there were some factually inaccurate statements in Judge Eng's findings. In the 10-18-10 Notice of Decision, Judge Eng states that "It may be likely that WSCHS provides services in a more efficient and more effective manner than the School District could have." **THERE IS NOT A SHRED OF EVIDENCE** in the testimony to support this conclusion. The transcript shows that WSCHS provides a totally different service, not a more efficient or effective one. St. Paul schools do not provide comprehensive medical services, which Dr. Fournier, CEO of the agency, clearly stated that we provide. The schools mandate is to

educate their students, not to make health care accessible to them, which is the mission of our agency. School nurses and social workers do not provide the services of our clinics nurse practitioners, physician assistants, clinical social workers.

In addition, Judge Eng states that Dr. Fournier "was appearing to provide a more complete explanation of the relationship between WSCHS and the St. Paul Public Schools and the position of a social worker through the employer." In reviewing the written and oral testimony, I do not see any such explanation of this anywhere. Once again, this is a completely unsupported conclusion. WHERE IS THE EVIDENCE THAT SHOWS THAT Dr. Fournier explained what I do as a clinic social worker? WHERE IS THE EVIDENCE TO SHOW THAT SCHOOL SOCIAL WORKERS CAN PROVIDE THE SERVICES THAT I DO AND THEY SIMPLY CHOOSE NOT TO? It appears to me that a copy of the School SW position, which was submitted for the appeal hearing, clearly demonstrates otherwise. Dr. Fournier's incomplete knowledge of what any of the social workers do is especially evident to me with Dr. Fournier's lack of knowledge of the TIPS program and their referrals to us as mental health therapists.

The Finding of fact on 8-27-10 states that the district and WSCHS had an executed contract for services.(referring to the 2006 expired agreement) This contract was never an executed one, as both signatures and dates are absent.

5. In the three separate findings that deny me unemployment benefits, reference is made to the fact that I will be resuming my employment in the fall. For the past three years, I received unemployment as a 'Seasonal Employee.' I clearly am not paid any wages over the summer. In addition, please refer to a copy of the e-mail dated 6-11-09 from Maritza de Jesus, WSCHS HR director at the time, to Linda Dick-Olson, my co-worker, not guaranteeing her job if she filed for unemployment benefits. WSCHS is not pleased with our decision to apply for unemployment benefits, IN SPITE OF THE FACT THEY ARE NOT ABLE TO OFFER US ANY HOURS TO WORK OVER THE SUMMER. Please note that Como High School did offer a session of summer school and there is absolutely no reason why our clinic could not have been open during this period of time.

6. This identical issue has been brought to the attention of unemployment judges by co-workers, with different judges ruling in opposing ways for different workers. The one other social worker who was denied unemployment benefits by WSCHS had a hearing before Judge Huber on 11-1-10 and the denial of benefits was overturned on 11-5-10. (Issue # 25571295-2, Mary c. Heckt). There is no difference between the details of her case and the details of mine. In addition, one of our Medical Assistant's denial's was overturned by Judge Steffen on 8-2-10, while another Medical Assistant's denial was supported. Last summer 2009 all denials of unemployment claims were overturned.

I understand that each judge can rule in whatever way he finds necessary, yet it seems to me there has been tremendous inconsistency in this case. I have been encouraged by an administrative supervisor in the Department of Unemployment to take

this to this level of the Court of Appeals, so that a more thorough review of the issue at stake can be taken.

I would like to ask the Court of Appeals to reverse the decision that has been made. My eligibility for unemployment benefits during the 2010 nine week summer break should not be determined by Statute 268.085, subdivision 7 (a) nor Statute 268.085, subdivision 8 (2). As argued by the above made points, neither WSCHS nor my employment there meet the criteria for these statutes. I truly do not understand how Dr. Fournier, in good faith, can argue that a contract was in place at the time and that the clinic's services are no different than what school staff can provide. There is absolutely no evidence to support either of these conclusions and I am also truly confused as to how Judge Eng can support these claims.

I appreciate your taking the time to review this matter .

Thank you, Amy Lewis