

**MANITOBA HUMAN RIGHTS COMMISSION**

**BETWEEN:**

**Amelia Hampton**

**Complainant,**

**-and-**

**Tyson Sylvester**

**Complainant,**

**-and-**

**Government of Manitoba  
(Manitoba Health; Seniors and Active Living; and Manitoba Families)**

**Respondent,**

**-and-**

**Winnipeg Regional Health Authority,**

**Respondent.**

**REPLY of the COMPLAINANT  
3 July 2018**

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## Preliminary Comments

1. The Complainants (Amelia Hampton and Tyson Sylvester) agree with the contents of the Investigative Reports except where clarifications are provided in this Reply.
2. According to the Investigative Report, the evidence establishes that the Complainants have been discriminated against by the Respondents (Government of Manitoba - Manitoba Health; Seniors and Active Living; and Manitoba Families as well as the Winnipeg Regional Health Authority) contrary to the *Manitoba Human Rights Code* (the “Code”).<sup>1</sup> Consistent with the test in *Moore v British Columbia (Education)* 2012 SCC 61, the Investigative Report found that the Respondents have failed to provide adequate services that meet the needs of the Complainants as well as other adults with significant physical disabilities in Manitoba.
3. The Investigator undertook a wide-ranging investigation which considered the following evidence:
  - a number of interviews, including with the Complainants, witnesses, the Assistant Deputy Minister for Community Service Delivery, the Program Policy Analyst, the Acting Director of Provincial Services, the Acting Director of Employment and Income Assistance, the Acting Director of Adult Disability Programs, the Executive Director of Continuing Care, the Team Manager of Self and Family Managed Care; and
  - a number of documents, including but not limited to policies, case notes, manuals, agreements and care plans.
4. Based on the evidence, the Investigator evaluated programs and services that are available for adults with disabilities in Manitoba and found there was sufficient evidence in support of the complaint. Specifically, the Investigator found that:
  - the evidence establishes that the Complainants are adults with disabilities;
  - there is sufficient evidence to establish that the Complainants and other adults with significant disabilities experience changes in terms of how they can access funded supports and services;
  - there is sufficient evidence to establish the Complainants and other adults with disabilities experience barriers to meaningful participation in daily activities and that the prima facie case of discrimination is established;
  - there is no evidence that adults with significant disabilities who have aged out of CDSP have been considered or that the method of eligibility of testing is adequate;
  - there is evidence that adults with significant disabilities who require a high degree of supports go from family-centred supports to less coordinated and more restricted services, “despite their needs remaining the same.”
5. The Complainants encourage the Commission to accept these findings as well as the Investigator's recommendations to move forward with attempts to resolve the complaints and if the complaints are not settled, to move forward with additional proceedings.

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1 *The Human Rights Code*, SM 1987-88 c 45, CCSM c H175.

### **Factual Clarifications - Amelia Hampton**

6. On page 6, the Investigative Report states “the Complainant's mother was only made aware of funding options or programming when it was mentioned to her by another Respondent program officer.” The Complainant's mother notes that she was only made aware of other funding options or programming by other affected individuals or families, not by Respondent program officers.
7. At page 11, the Investigative Report states that “[w]ith the money left over from the van modification the Complainant had a ceiling track system put in the home.” The ceiling track was not funded with the money left over from the van modification in 1994. It was funded and installed in approximately 1999 with year-end funding from CDSP.
8. At page 13, the Investigative Report states that “the Complainant's therapist put in a request for a full length armrest for her wheelchair so she could rest her food tray and food pods on her chair, but EIA would only cover a partial armrest.” In reality, the Complainant's therapist put in a request and the Complainant was approved for the full length armrest but the partial armrest was not covered.
9. At page 13, it states “the Complainant needs a new chair but her family is worried [...]”. The Complainant does not currently require a new chair. However, she is concerned that when she does require a new chair, the costs of the wheelchair, the specialized parts, the therapists and mechanical engineers required will not be covered.
10. At page 13, it states that “they purchased a new van and paid \$25,000 to make it wheelchair accessible.” The Complainant's family purchased out-of-pocket a used van which was already modified and costs approximately \$35,000. The family van has recently required repairs which have cost \$2,100 to-date. Further repairs are required and these costs have been paid out-of-pocket.
11. On page 14, it states “the Complainant was assessed for a stander so she could be in an upright position.” The Complainant was assessed for and purchased a standing sling (not a stander) which cost approximately \$350. The family paid for this equipment out-of-pocket.
12. In addition to the information provided in the Investigative Report about the equipment, the Complainant notes that Children's Rehabilitation Centre made and provided her with: two Standing Frames (approximately in 1999 and later in 2005), at least two Walkers, three different Commodes, a Corner Seat as well as an Insert Seat (approximately in 1998).

### **Factual Clarifications- Tyson Sylvester**

13. On p. 11 of the Investigative Report, it states that “the only physiotherapy he gets is from the staff and only includes range of motion.” While living at \_\_\_\_\_ Tyson did not receive any physiotherapy. While the physiotherapy stretches were written on papers posted on the wall, the staff did not assist in doing stretches and Tyson was unable to do them on his own. Prior to living at \_\_\_\_\_, Tyson was able to stand on his own.

## **Tyson Sylvester's Change in Circumstance - Systemic Issues Remain**

14. As stated in the Investigative Report, there is an inadequate patchwork of services for adults with physical disabilities in Manitoba. The programs and services offered by the Respondents are siloed. The responses to questions by the Respondent interviewees outlined in the Investigative Reports exemplify the siloed approach to service provision. The services that currently exist are provided either through the Manitoba Home Care Program (the “MHCP”) or at a personal care home.<sup>2</sup>
15. On 5 June 2018, Tyson moved from \_\_\_\_\_ to the \_\_\_\_\_ because he did not feel safe or secure at \_\_\_\_\_. The \_\_\_\_\_ is a personal care home in \_\_\_\_\_.
16. On several occasions, Tyson was dropped during transfers by staff at \_\_\_\_\_ or left injured and waiting on the floor after a fall until his next homecare visit. One of these incidents is mentioned at page 11 of the Investigative Report. The stress of potential future falls or worsening injuries was perpetuating Tyson's feelings of anxiety and depression.
17. Because \_\_\_\_\_ is a personal care home, Tyson now receives 24-hour care. He is also now receiving physiotherapy and occupational therapy services within \_\_\_\_\_. The staff at \_\_\_\_\_ do not take Tyson to appointments nor do they accompany him into the community (other than for scheduled recreational appointments). He is the youngest person in his Unit.
18. While Tyson's residence has changed, the primary individual and systemic issues of the complaint have not been resolved. Tyson continues to be stuck within an institutional setting and the services provided in personal care homes, including the \_\_\_\_\_ are based on the medical model of disability. Services and programming in personal care homes are not intended for Tyson and other young vibrant adults with physical disabilities.
19. Tyson continues to dream about going to school, obtaining gainful employment and living in the community. While his meals are prepared and he feels safe and secure, Tyson is, in some respects, further removed from the community. He continues to be locked out of life due to the gap in services and programs offered by the Respondents.
20. We would note that in its response to the human rights complaints, Manitoba Families acknowledged that the residential services aspect of the CLDS program has led to the de-institutionalization of many people with intellectual disabilities. Persons with physical disabilities should be treated with the same dignity and respect.

### **Additional Comments on Reply**

21. As adults, the Complainants must purchase supplies out-of-pocket. For example, in 2017, the Complainant (Ms. Hampton) paid for the equipment parts of a head switch mount and in 2018,

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<sup>2</sup> Personal care homes are governed by *The Health Services Insurance Act*, RSM 1987 c H35, CCSM c H35 (the “*Health Services Act*”). Subsection 2(1) of the *Health Services Act* defines “personal care” as meaning basic nursing care or personal assistance with or supervision of the activities of daily living.

the Complainant's wheelchair needed repairs and some of the new parts required were paid for out-of-pocket.

22. There are additional costs that were not mentioned in both Investigative Reports, including but not limited to charges by doctors for filing out forms which are required by EIA to determine eligibility for medically required goods.
23. While the specific complaints before the Commission relate to two individuals residing in Winnipeg, the Investigative Report found that the Complainant as well as other adults with significant disabilities in Manitoba have been discriminated against. We would note that the MHCP is delivered to adults with physical disabilities by various Regional Health Authorities ("RHAs") in Manitoba, including but not limited to the Winnipeg RHA (the "WRHA").<sup>3</sup>
24. All of which is respectfully submitted this 3<sup>rd</sup> day of July 2018.

**Public Interest Law Centre**



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Joëlle Pastora Sala  
Lawyer for the Complainants

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<sup>3</sup> The RHAs derive their authority from *The Regional Health Authorities Act*, SM 1996 c 53, CCSM c R34 (the "*RHA Act*"). Under ss 2, 23(1) of the *RHA Act*, RHAs have the responsibility to deliver and administer "health services" within their respective geographic areas.