



Office of the Washington State Auditor
Pat McCarthy

Whistleblower Investigation Report
Department of Social and Health
Services

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July 31, 2017

Bill Moss, Acting Secretary
Department of Social and Health Services

Report on Whistleblower Investigation

Attached is the official report on Whistleblower Case No. WB 17-015 at the Department of Social and Health Services.

The State Auditor's Office received an assertion of improper governmental activity at the Department. This assertion was submitted to us under the provisions of Chapter 42.40 of the Revised Code of Washington, the Whistleblower Act. We have investigated the assertion independently and objectively through interviews and by reviewing relevant documents. This report contains the result of our investigation.

If you are a member of the media and have questions about this report, please contact Assistant Director for Communications Kathleen Cooper at (360) 902-0470. Otherwise, please contact Whistleblower Manager Jim Brownell at (360) 725-5352.

Sincerely,

Pat McCarthy
State Auditor
Olympia, WA

cc: Governor Jay Inslee
Andrew Colvin, Public Disclosure/Ethics Administrator
Kate Reynolds, Executive Director, Executive Ethics Board
Cheri Elliott, Lead Investigator

WHISTLEBLOWER INVESTIGATION REPORT

Assertions and Results

Our Office received a complaint asserting three Department of Social and Health (Department) employees (Subjects 1, 2, and 3) violated a client's (Client 1) rights when he was moved from his State Operated Living Alternatives (SOLA) home without his consent. In addition, it was asserted that Subject 1 approved the move to benefit another client (Client 2) and Subject 2 violated Client 1's rights when she restricted his ability to go shopping.

We found reasonable cause to believe Subject 2 committed improper governmental actions.

We found no reasonable cause to believe Subjects 1 and 3 committed improper governmental actions.

Background

The Department's Developmental Disabilities Administration (Administration) provides various residential options for individuals based on their needs. The SOLA program offers supported living services provided by state employees. There are 41 SOLA homes and 131 Sola clients statewide.

In this instance, the two clients resided in separate homes, each sharing their homes with roommates. Client 1 had shared his home with the same two roommates for nearly eight years. Client 2 had been in a juvenile home until he aged out and was placed in an adult home about two years ago.

In 2015, when Client 2 had to be moved to an adult home, SOLA management attempted to move Client 1 to another home. Because Client 1 had made it clear he did not want to move, SOLA caregivers ultimately blocked the move by taking the issue to the regional administrator. Client 1 does not have a guardian and is able to make decisions about his life. At the time of the attempted move, the guardians for the roommates also voiced their concerns regarding moving Client 1 out and Client 2 in. One guardian said she had been told the guardians would be notified if a move were considered in the future.

About the Investigation

When we received the complaint, the Department was in the process of conducting its own internal investigations. One was directly related to the SOLA program, and the other related to the actions of Subjects 1, 2 and 3 as they related to the moves of Clients 1 and 2. At the conclusion of the investigations, the Department forwarded the results to our Office. After

reviewing the investigative records, our Office conducted further interviews with witnesses and the subjects.

Based on the internal investigations and additional interviews, we found that Client 2 had to be removed from his residence or risk being removed from SOLA. During a meeting, various house managers, along with Subjects 2 and 3, discussed options available to Client 2 and the movements of other clients to facilitate Client 2's move. The decision was made to move Client 2 into the home where Client 1 was residing and move Client 1 to another home. According to the subjects and witnesses, these moves are not made lightly and best efforts are made to ensure the move is beneficial to all parties. Before making the moves, managers meet to discuss which clients might thrive in which homes. They consider the clients' needs and personalities to match potential roommates.

According to Subject 2 and witnesses, before the move was undertaken SOLA employees were tasked with asking Client 1 if he wanted to move. Subject 2 reported to Subject 1, the ultimate decision maker, that Client 1 had responded affirmatively on six occasions when asked if he wanted to move and never responded negatively. Subject 2 also communicated this same information to Subject 3 and the house managers.

During interviews, Subject 1 said she relied on the information she received from Subject 2 when making the decision to move Client 1 from his home; Subject 3 said he relied on the information he received during the meetings with Subject 2 and the house managers. He said none of the managers said Client 1 had indicated he did not want to move.

On the day of the move, a caregiver was instructed to take Client 1 out for the day while SOLA employees packed and moved his belongings to the new home. According to the caregiver, at the conclusion of the outing, when he headed in the direction of the new home, Client 1 became very upset and signed "no" and "home." Nevertheless, the caregiver's instructions were to take Client 1 to his new home.

A review of the internal investigations and additional interviews revealed that not only had Client 1 responded negatively at times when asked if he wanted to move, but some of the staff members who Subject 2 said received affirmative responses had not asked Client 1 if he wanted to move in 2016.

During an interview with Subject 3, he said that had he known Client 1 had responded negatively he would never have agreed to the move.

During an interview with Subject 1, she said she had counted on the information she received from Subject 2. She said that had she known about the negative responses, they would have had to come up with another plan.

When asked about the discrepancies between what she said transpired and what witnesses said transpired, Subject 2 said she did not know why the others were not telling the truth. She said she had not documented any of the responses because she did not want everyone to know about the move as she did not want any interference this time. She said for this same reason she did not inform the guardians of Client 1's roommates or his case manager. She said the plan was to inform all of these people after the move took place. This was also the reasoning behind not allowing Client 1 to view the prospective home before moving.

Client 1 was not given any notice of the move; he was not allowed to pack and unpack his own belongings; he was not given the opportunity to make an informed decision about the move. Client 1 did not have anyone to advocate for him.

Client 1, as do all Administration clients, has the legal right to make decisions about his life and to have an advocate. He has the legal right to receive written notice when the Administration is making decisions regarding his life.

Subjects 1 and 3 were in positions that required them to rely on the information they received from Subject 2. Because of this, Subject 3 agreed to the move and Subject 1 approved the move based on inaccurate information. For this reason we found no reasonable cause to believe Subjects 1 and 3 violated Client 1's rights. However, we found reasonable cause to believe Subject 2 violated Client 1's rights.

Restricting movements

Before moving Client 1 to another home, Subject 2 sent an email to SOLA staff titled "Making better use of time." The email contained, among other information, a directive to staff that Client 1's shopping was now to be limited to "1 store and 1 store only" and for "no more than 45 minutes."

According to witnesses, shopping was an activity that was a part of Client 1's life. He had a collection he was always adding to and shopped on specific days and at a specific time, which he looked forward to. He always went to two particular stores each time he went out.

Subject 2 said she limited the client's shopping because he was monopolizing a shared vehicle, which would impact the other clients' ability to get to appointments. Client 1's home shared a vehicle with another SOLA home.

According to state law, the client has a right to make decisions about his life. According to Department policy, clients can decide what they would like to do, where they would like to go and when they would like to do these things. Subject 1 said that SOLA has a process that must be followed to restrict a client's movements; Subject 2 did not follow this process.

We found reasonable cause to believe Subject 2 violated Client 1's rights.

Special privilege

It was asserted that Subject 1 extended a special privilege to Client 2's guardian when she moved Client 1 from his home to place Client 2 in that home.

Although the possible moves had previously been discussed with Client 2's guardian, she also was not informed before the actual move.

Subject 1 said that the move was done to keep Client 2 in the program and that they did not have many choices.

We found no reasonable cause to believe an improper governmental action occurred.

Department's Plan of Resolution

Thank you for the opportunity to review and respond to the State Auditor's Office (SAO) draft report on Whistleblower Case No. 17-015. The Department of Social and Health Services takes the assertions seriously and appreciates the assistance of the SAO in developing important facts in its investigation.

The Developmental Disabilities Administration (DDA) has taken the following actions to address the findings and issues identified in your report:

- *The State Operated Living Alternatives program (SOLA) has developed a Standard Operating Procedure (SOP) to ensure participants meet future housemates prior to a move. Included in the SOP is contact with a participant's personal advocate (if the person does not have a guardian), as well as staff documentation requirements.*
- *The SOLA program has developed a SOP for Participants Rights and a Grievance procedure. Participants will select a personal advocate, when guardianship is not in place, to assist in decision-making, when typically a legal guardian is contacted/notified. All SOLA staff have been trained on these Standard Operating Procedures and retraining will occur annually. Newly hired staff will be trained when hired.*
- *Subject 2 has been directed to be transparent in processes to include documenting decisions and actions appropriately, and to be inclusive in decision making. Additionally, Subject 2 will be required to attend Motivational Interviewing training. The training will help to realign Subject 2's actions with DDA values, and help Subject 2 align SOLA staff actions and expectations on system issues in SOLA.*

State Auditor's Office Concluding Remarks

We thank Department officials and personnel for their assistance and cooperation during the investigation. We will follow-up with the Department within one year to assess whether the corrective actions described above were implemented.

WHISTLEBLOWER INVESTIGATION CRITERIA

We came to our determination in this investigation by evaluating the facts against the criteria below:

Assertion 1:

RCW 71A.10.015 Declaration of policy.

The legislature recognizes the capacity of all persons, including those with developmental disabilities, to be personally and socially productive. The legislature further recognizes the state's obligation to provide aid to persons with developmental disabilities through a uniform, coordinated system of services to enable them to achieve a greater measure of independence and fulfillment and to enjoy all rights and privileges under the Constitution and laws of the United States and the state of Washington.

WAC 388-823-1095 What are my rights as a DDA client?

As a DDA client, you have the following rights:

- (1) The right to be free from any kind of abuse or punishment (verbal, mental, physical, and/or sexual); or being sent to a place by yourself, if you do not choose to be alone;
- (2) The right to appeal any decision by DDA that denies, reduces, or terminates your eligibility, your services or your choice of provider;
- (3) The right to receive only those services you agree to;
- (15) The right to receive help from an advocate;
- (18) The right to make choices about your life;

Assertion 2:

WAC 388-825-100 How will I be notified of decisions made by DDA?

- (1) Whenever possible, DDA will notify you or your legal representative by phone or in person of the decision; and
- (3) If you are age eighteen or older, written notifications will be mailed to you and:
 - (a) Your legal representative; or

(b) A person identified by you to receive notices if you do not have a legal representative. Unless the person identified by you is a relative of yours, he or she cannot be an employee of DDA, a contractor with DDA or an employee of a contractor with DDA.

WAC 388-825-104 What information will the notice include?

The notice from DDA will include:

- (1) The decision;
- (2) The reason and authority for the decision;
- (3) The effective date of the action;
- (4) Appeal rights to the decision; and
- (5) The name and phone number of a department person you can contact for further information.

Assertion 3:

RCW 42.52.070 Special Privileges.

Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.