

## **Care of boy with an intellectual disability (11HDC00877, 21 June 2013)**

*District Health Board ~ Disability support service ~ Team leader ~ Disability ~ Assault ~ Abuse ~ Respect ~ Communication ~ Complaints management ~ Safety ~ Rights 1, 4(1), 4(2), 4(4), 6*

In April 2009, a 15-year-old boy with Down Syndrome and Autism was accepted into the care of a community home operated by a disability support service. The boy, who has high needs and is sometimes aggressive, is the only client in the home, and he has two carers with him for 24 hours a day, seven days a week, managed by a team leader.

Within about three months of the boy moving into the home, concerns about the care he was receiving from the team leader were brought to the attention of the boy's parents by some of the carers in the house. In December 2009, two carers met with staff at the DHB and raised concerns about the care the team leader was providing to the boy, in particular, concerns that she was physically and verbally abusing him.

The DHB staff met with the boy's carers and asked them not to swear in the house, to work through issues "honestly and respectfully", and that discussions with staff about other staff, or with family about other staff, were not appropriate and may result in disciplinary action. There is no evidence that the concerns about the team leader's behaviour were formally investigated, and the DHB did not inform the parents of the carers' complaints and actions taken in response.

Throughout 2010, the parents remained concerned about the care the boy was receiving. In August 2010, one of the boy's carers informed the parents of two incidents where he witnessed the team leader physically and verbally abuse the boy. The parents complained to the Police and to the National Health Board. Following the complaint to the National Health Board, the DHB conducted an investigation. The investigation was paper-based. No staff were interviewed, and the parents were not involved in the investigation process. The review concluded that the complaints were not substantiated. A subsequent review conducted between August 2011 and April 2012, which involved staff interviews, found that there was a high probability that the team leader had physically and verbally abused the boy.

It was held that it was more likely than not that the team leader behaved in a professionally and ethically inappropriate and inexcusable manner toward the boy. In particular, there is strong and compelling evidence that she kicked him, pulled his hair, and was regularly verbally abusive toward him. There are also accounts that the team leader was aggressive when administering the boy's medication, and that she administered medication to him over and above what was charted for him and/or at times other than the times for which his medication was charted. The team leader's behaviour towards the boy appears to have been intentional, direct, and repetitive. To act in that way was a serious departure from the expected standard of care and showed a flagrant disregard for the boy's rights. The team leader breached Rights 1, 4(1), 4(2) and 4(4).

The DHB's response to the concerns raised about the care provided to the boy fell well short of the expected standard, and its failures in that regard put the boy's safety at risk. The DHB breached Rights 4(1) and 4(4) for failing to adequately respond to

concerns about the boy's care, and breached Rights 1 and 6 for failing to provide the boy's legal guardians with adequate information.

Adverse comment was made about the Ministry of Health regarding its enquiries into the parents' complaint. While it was not wholly unreasonable for the National Health Board to rely on the response provided to it by the DHB, the parents had raised very serious concerns about the care being provided to the boy and the National Health Board's view on the adequacy of the DHB's response to those concerns was based on very little information.

The team leader and the DHB were referred to the Director of Proceedings for the purpose of deciding whether any proceedings should be taken. The Director decided not to issue a proceeding against the team leader because a criminal prosecution against her had already taken place. The Director took proceedings against NMDHB to the Human Rights Review Tribunal which were resolved by negotiated agreement. NMDHB accepted that it had breached Rights 4(1) and 4(4) of the Code for failing to adequately respond to concerns about the boy's care, and breached Right 6 for failing to supply his parents with adequate information.