

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

CLAIMANT,

vs.

NORTH LOS ANGELES COUNTY REGIONAL CENTER,

Service Agency.

OAH No. 2020080065

DECISION

Matthew Goldsby, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference and telephone on September 8, 2020, in Los Angeles, California.

Jimmy Alamillo, Contract Officer with the North Los Angeles County Regional Center (Service Agency), and Monica Munguia, a Service Agency advocate and co-chair, appeared and represented the Service Agency.

Claimant's mother, acting as claimant's authorized representative, appeared and represented claimant who was present throughout the hearing.¹

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on September 8, 2020.

STATEMENT OF ISSUES

The issue in this matter is whether the Service Agency should be required to fund claimant's enrollment at Exceptional Minds, a nonprofit organization offering individuals with autism educational courses and vocational training in digital animation and visual effects for film and television.

EVIDENCE CONSIDERED

Documents: Service Agency's exhibits 1-20, excluding exhibit 8; Claimant's exhibits A-V, excluding exhibits S and U.

Official Notice: Decision dated November 5, 2015, *In the matter of Claimant v. North Los Angeles County Regional Center*, OAH case number 201504270 (Ex. T); Welfare and Institutions Code, Section 4648 (Ex. 19); and Welfare and Institutions Code, Section 4659 (Ex. 20).

¹ Claimant and his family are not identified by name to protect their privacy.

Testimony: Gabriel Harlan, Consumer Services Coordinator; Erin Broughton-Rodriguez, Resource Developer; and claimant's mother.

FACTUAL FINDINGS

1. Claimant is a 26-year-old male receiving regional center services based on a diagnosis of autism. On September 11, 2018, claimant and his mother attended an Individual Program Plan (IPP) meeting. The IPP team has acknowledged that claimant has "very good artistic skills" and "good computer skills," and that he "enjoys drawing, and has developed skills in the area of graphic design." (Ex. 2.) During the most recent IPP meeting, claimant shared that he "wants to get a job as a graphic designer" and "an [internship] at a local movie studio." (*Id.*)

2. The IPP participants agreed that a desired outcome of regional center services was for claimant to "develop the social and vocational skills necessary to pursue a career that matches his interests." (Ex. 2, p. 7.) The IPP provided that the Service Agency would fund claimant's participation in Tierra Del Sol's Community Integration Training Program and that the service coordinator would monitor progress at least annually.

3. After graduating high school, claimant enrolled at Los Angeles Valley College and, over the course of six years, he has taken courses in cinema, art, health, and math. In 2019, he completed all prerequisites for a certificate in graphic design.

4. At an interdisciplinary team meeting on November 20, 2019, claimant and his IPP team determined that claimant would participate in an internship at Sovereign Talent Group, a talent agency, with support from Tierra Del Sol's NEXUS program, and claimant's participation in its Community Integration Training Program

would terminate. On January 22, 2020, claimant interviewed for the internship at Sovereign Talent Group, but was not selected as one of its interns. (Ex. 4.) The Client Service Manager at the Service Agency offered claimant internships that were available at the Valley Presbyterian Hospital and the Braille Institute, neither of which offered an opportunity to develop the social and vocational skills necessary to pursue a career that matches claimant's interests.

5. Previously, in 2014, claimant and his mother took a tour of Exceptional Minds. Exceptional Minds is a non-profit organization that claims to be "the only autism education organization that provides technical instruction in the digital arts while fully integrating behavioral training into the curriculum." (Ex. D.) Since its formation in 2014, Exceptional Minds has provided "meaningful career opportunities for graduates" and has "worked on more than 85 movies and 44 television shows." (Ex. E.) Claimant presented copious materials about Exceptional Minds, including testimonials from satisfied consumers and articles about its artistic success. (Exs. C-M.)

6. When claimant first learned about Exceptional Minds in 2014, he expressed a desire to enroll in the three-year program, but the Service Agency's case manager informed claimant that funding was not available for the program because the organization was not a vendor. On March 5, 2020, claimant requested funding to pay for tuition at Exceptional Minds and asked his service coordinator to "do your best to get me into that program." (Ex. 5.) To support his request, claimant presented a written statement of his goals (Ex. N), a letter of recommendation from a Councilmember of the City of Los Angeles (Ex. Q), a Certificate of Appreciation for claimant's internship with the Third Council District of the City of Los Angeles (Ex. R), and samples of his artwork as evidence of his talent (Ex. V).

7. According to Exceptional Minds' promotional materials, "All students are subsidized through [its] fundraising efforts and 30% also receive tuition assistance" available through Financial Aid and School Tuition (FAST) and TFC Tuition Financing. (Exs. E and 14.) Exceptional Minds currently publishes the following information about public funding on its website:

Exceptional Minds is primarily a private nonprofit and receives only a small portion of government funding. We are not officially partnered with the Department of Rehabilitation or any California Regional Centers at this time. We are not "vendored" by these entities. Some of our students, through their own efforts, have been granted assistance from these government services, but Exceptional Minds is not affiliated with them in an official capacity. Once a student is enrolled into Exceptional Minds, we can provide additional support for the process.

(Ex. 14.)

8. Before claimant's request for funding, Exceptional Minds and the Service Agency had communicated about the vendorization process. Erin Broughton-Rodriguez, Resources Director with the Service Agency, explained that the vendor application process requires a service provider to submit a program design and other vendor documents, such as proof of liability insurance, a vendor application, an application profile, clearances, and a brochure. (See also, Legal Conclusion 8.) On March 5, 2020, the service coordinator at the Service Agency left a voicemail message at Exceptional Minds to inquire about its intent to become a vendor. (Ex. 12, p. 5.) On May 29, 2020, the Resources Director sent an email to Exceptional Minds inquiring

about its intent to continue with the vendorization process. The Director of Programs at Exceptional Minds responded, "We still intend to pursue vendorship." (Ex. 7.) To date, Exceptional Minds has not provided any documents to initiate the vendor application process.

9. The Service Agency published Service Standards, adopted by its Board of Trustees on May 9, 2018, and approved by the Department of Developmental Services (DDS) on November 16, 2018, to establish the service philosophy, standards, and general policy for the purchase of services for its consumers. Pursuant to the standards, the Service Agency is committed to "pursuing all viable public and private sources of funding on behalf of consumers prior to the utilization of the center's funds" and "to utilize all other resources before expending the center's funds." (Ex. 18, pp. 14-15.)

10. The Service Coordinator suggested to claimant's mother that claimant open a case with Department of Rehabilitation in order to request direct placement or further vocational training supports that are tailored to claimant. (Ex. 12, p. 5.) Exceptional Minds is not vendored with the Department of Rehabilitation (see Factual Finding 7) and Claimant's mother declined to pursue this alternative course of action.

11. The Service Coordinator also suggested to claimant that he pursue an AS-T degree in Film, Television, and Electronic Media offered at Los Angeles Valley College. The Service Agency would be able to fund claimant's enrollment in the program and the degree would enable claimant to transfer to the University of California system where a higher level of educational courses would be available to further claimant's career objectives. Claimant declined to pursue this course of action because the curriculum at Los Angeles Valley College is not the same as that offered at Exceptional Minds.

12. Claimant agreed to apply for admission into a creative arts program at Actors for Autism’s Visual Effects. On July 23, 2020, claimant was denied admission into the program due to “limited space and [a] talented application pool.” (Ex. 10.)

13. No evidence was presented regarding any efforts on behalf of claimant to obtain tuition subsidies or assistance through Exceptional Minds or its third-party financial assistance vendors.

14. By Notice of Proposed Action dated March 17, 2020, the Service Agency denied the request for funding on the grounds that Exceptional Minds is not vendored with the Service Agency or any regional center. (Ex. 5.) Claimant filed a request for a fair hearing dated April 17, 2020. (Ex. 6.)

15. Claimant referred to a decision made in another administrative hearing, in which the administrative law judge ordered the Service Agency to pay for the Exceptional Minds program, notwithstanding the organization’s status as a non-vendor, concluding, “There is no statutory provision prohibiting services under the Lanterman Act from being provided by a non-vendored provider so long as a contract is procured.” (Ex. T, p. 15.) The decision made no finding that a contract was in fact procured between Exceptional Minds and the Service Agency, and did not address the regulations applicable to contracts with regional centers and whether Exceptional Minds would consent to the provisions that must be included in a contract with the Service Agency.

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LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Claimant, as the party seeking government benefits or services, bears the burden of proof. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156.)

2. The standard of proof in this case is the preponderance of the evidence. (Evid. Code, § 115.)

Legislative Objectives

3. The Lanterman Developmental Disabilities Services Act (Lanterman Act) sets forth a regional center's obligations and responsibilities to provide services to individuals with developmental disabilities. (Welf. & Inst. Code, § 4500 et seq.) The purpose of the Lanterman Act is to establish an array of services and supports sufficiently complete to meet the needs and choices of persons with developmental disabilities, regardless of their age or degree of disability, and at each stage of life, and to support their integration into the mainstream of the community. (Welf. & Inst. Code, § 4501.) To comply with the Lanterman Act, a regional center must provide services and supports that "enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age." (*Id.*) Consumers of services and supports, and where appropriate, their parents, should be empowered to make choices in all areas of life. (*Id.*)

4. The legislative intent of the Lanterman Act is to ensure that "the provision of services to consumers and their families be effective in meeting the goals stated in the [IPP], reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources." (Welf. & Inst. Code, § 4646, subd. (a).) Regional

centers must assist persons with developmental disabilities and their families “in securing those services and supports which maximize opportunities and choices for living, working, learning, and recreating in the community.” (Welf. & Inst. Code, § 4640.7, subd. (a).)

5. The Legislature has further declared that regional centers must provide or secure family supports that, in part, respect and support the decision-making authority of the family, are flexible and creative in meeting the unique and individual needs of the families as they evolve over time, and build on family strengths and natural supports. (Welf. & Inst. Code, § 4685, subd. (b).) Moreover, services must be individually tailored to the consumer. (Welf. & Inst. Code, § 4648, subd. (a)(2).)

6. “Notwithstanding preexisting rights to enforce the [Lanterman Act], it is the intent of the Legislature that [DDS] ensure that the regional centers operate in compliance with federal and state law and regulation and provide services and supports to consumers in compliance with the principles and specifics of [the Lanterman Act].” (Welf. & Inst. Code, § 4434, subd. (a).) Regional Center services must be provided in the most cost-effective and beneficial manner. (Welf. & Inst. Code, § 4685, subd. (c)(3).) DDS must “take appropriate and necessary steps to prevent regional centers from utilizing a policy or guideline that violates any provision of [the Lanterman Act] or any regulation adopted thereunder.” (Welf. & Inst. Code, § 4434, subd. (d).)

Statutory and Regulatory Framework

7. A regional center may, “pursuant to vendorization or a contract,” purchase services or supports for a consumer from any individual or agency that the IPP participants determine will best accomplish any part of the consumer’s IPP. (Welf.

& Inst. Code, § 4648, subd. (a)(3).) Generally, a regional center must identify and pursue all possible sources of funding for consumers receiving regional center services. (Welf. & Inst. Code, § 4659, subd. (a).)

8. The Legislature created a statutory scheme regulating direct service providers. (Welf. & Inst. Code, §§ 4648, subd. (a)(3)-(5), 4648.1.) DDS was delegated the authority "to adopt regulations governing the vendorization process to be utilized by . . . regional centers, vendors, and the individual or agency requesting vendorization." (Welf. & Inst. Code, § 4648, subd. (a)(3)(B).)

9. Pursuant to its delegated authority, DDS adopted regulations applicable to the vendorization process, including but not limited to the following regulatory provisions:

A. An applicant who desires to be a vendor with a regional center must submit an application, furnish required information about the services to be provided, and produce documentation to show the applicant's qualifications to provide those services. (Cal. Code Regs., tit. 17, §§ 54310, 54311.) An applicant must certify that the information is true, correct, and complies with the regulations. (Cal. Code Regs., tit. 17, § 54310, subd. (b).)

B. The applicant or vendor must disclose all the information required by applicable federal regulations, and information pertaining to ownership and control of the service-providing entity. (Cal. Code Regs., tit. 17, § 54311, subd. (a).) Certain applicants, including state government employees and those with a conflict of interest with a regional center, are ineligible for vendorization. (Cal. Code Regs., tit. 17, § 54314.)

C. An applicant must disclose whether any agent, director, officer, or managing employee of the applicant has within the previous 10 years: (1) Been convicted of any felony or misdemeanor involving fraud or abuse in any government program, or related to neglect or abuse of an elder or dependent adult or child, or in any connection with the interference with, or obstruction of, any investigation into health care related fraud or abuse; (B) been found liable in any civil proceeding for fraud or abuse involving any government program; or (C) entered into a settlement in lieu of conviction involving fraud or abuse in any government program. (Cal. Code Regs., tit. 17, § 54311, subd. (a)(6).)

D. The vendoring regional center must approve vendorization within 45 days of receipt of all information which specifies that the applicant is in compliance with the criteria set forth at California Code of Regulations, title 17, section 54320, subdivision (a). (Cal. Code Regs., tit. 17, § 54322, subd. (a).)

E. The regional center "shall assign a service code to the vendor based upon the program design and/or the services provided." (Cal. Code Regs., tit. 17, § 54340, subd. (c).) A "vendor" is defined in the regulations as "an applicant which has been given a vendor identification number and has completed the vendorization process." (Cal. Code Regs., tit. 17, § 54302, subd. (a)(74).)

F. A vendor may charge its "usual and customary rate," meaning the rate the vendor regularly charges for its service, where at least 30 percent of the recipients of the given service are not regional center consumers or their families. (Cal. Code Regs., tit. 17, § 57210, subd. (a)(19).) New programs applying for vendorization must provide a written declaration to the regional center that "it is their intent to comply with this [regulation] and be given 12 months to achieve compliance." (*Id.*)

10. The DDS has also adopted a separate set of regulations governing contract provisions that “shall”² be included in all service provider agreements with regional centers. (Cal. Code Regs., tit. 17, §§ 50607-50610.) When a regional center enters into a contract with a service provider, the agreement must include, but not be limited to:

A. Contract provisions stating the parties, the general purpose, the services to be provided, the date of execution, and the applicable statutes and regulations applying to the contract. (Cal. Code Regs., tit. 17, § 50607, subd. (a).)

B. Contract provisions defining terms unique to the contract or contracted service (Cal. Code Regs., tit. 17, § 50607, subd. (d)), requiring a signature by authorized representatives of all contracting parties (Cal. Code Regs., tit. 17, § 50607, subd. (b)) and identifying the term of the contract period (Cal. Code Regs., tit. 17, § 50607, subd. (c)).

C. A contract provision stating that the contract “shall not be construed to excuse compliance with existing statutes or regulations” (Cal. Code Regs., tit. 17, § 50607, subd. (i)), that any amendment or modification to the contract shall comply with the requirements of applicable statutes and regulations (Cal. Code Regs., tit. 17, § 50607, subd. (e)), and that all services shall be rendered in accordance with the law and all applicable federal and state regulations (Cal. Code Regs., tit. 17, § 50607, subd. (h)).

² As used in the DDS regulations, the word “shall” denotes mandatory conduct. (Cal. Code Regs., tit. 17, § 54300.)

D. A contract provision requiring termination of the contract if the service provider fails to comply with the regulations. (Cal. Code Regs., tit. 17, § 50611, subd. (b)(3)(A).)

E. A contract provision requiring the service provider to maintain books, records, documents, and other evidence pertaining to all income, expenses, and services relating to and/or affecting the performance of the contract. (Cal. Code Regs., tit. 17, § 50608, subd. (b).) A service provider must permit the regional center to access its books, records, and facilities (Cal. Code Regs., tit. 17, § 50603), and a regional center/service provider contract must include audit provisions (Cal. Code Regs., tit. 17, § 50610). Regional centers have the right to audit the records of service providers to the extent a regional center deems necessary. (Cal. Code Regs., tit. 17, § 50606.) A service provider must maintain financial records and source documents for a period of five years (Cal. Code Regs., tit. 17, §§ 50604-50605) and maintain service records to support all billings/invoicing as specified in the regulations (Cal. Code Regs., tit. 17, § 50608, subd. (c)).

F. Contract provisions stating that assignment of the contract for consumer services shall not be allowed (Cal. Code Regs., tit. 17, § 50607, subd. (g)), and that subcontracting of services for which the service provider is vendored shall not be permitted, except for contracts for transportation services and community-based day program services (Cal. Code Regs., tit. 17, § 50607, subd (j)).

G. A contract provision stating that the level of service provided shall, at a minimum, be consistent with the service provider's program design, if applicable, and any other program-related documentation relied upon by DDS as a basis for establishing rates of payment. (Cal. Code Regs., tit. 17, § 50608, subd. (a).) The service provider's program design shall be made a part of the contract, and shall include: (1) A

written statement of the facility's purpose and goals; (2) a description of the services provided; (3) a description of program methods; (4) consumer entrance and exit criteria; (5) job descriptions of all positions; (6) staff qualifications for each job description; (7) a staffing plan which indicates the staff-to-consumer ratio for delivery of direct care services for all hours the consumers are under the supervision of the facility; (8) a staff training plan, if any; and (9) hours and location of service. (Cal. Code Regs., tit. 17, § 50608. subd. (a)(1).)

H. A contract provision requiring the service provider to adopt and periodically review a written internal procedure to resolve consumer grievances pursuant to Welfare and Institutions Code section 4705. (Cal. Code Regs., tit. 17, § 50608. subd. (e).)

11. A regional center may contract or issue a voucher for services and supports provided to a consumer at a cost not to exceed the maximum rate of payment for that service established by DDS. (Welf. & Inst. Code, § 4648, subd. (a)(4).) A regional center may offer vouchers to family members or adult consumers to allow them to procure their own diaper or nutritional supplements, day care, nursing, respite, or transportation service. (Cal. Code Regs., tit. 17, § 54355.)

Discussion

12. In this case, claimant's attendance at Exceptional Minds furthers his vocational skills and develops his talent in drawing and computer skills, a stated objective of his IPP. The program's practical professional application and job placement services appear to enable claimant to approximate the pattern of everyday living available to people without disabilities of the same age. Claimant and his family prefer Exceptional Minds to other vocational options proposed by the Service Agency

and the Service Agency agreed that a desired outcome of regional center services was for claimant to develop the social and vocational skills necessary to pursue a career that matches his interests.

13 However, claimant has failed to prove by a preponderance of the evidence that the purchase of service from Exceptional Minds may be made pursuant to vendorization. Although there is some evidence of the organization's intent to become a vendor, there is no dispute that Exceptional Minds is not currently a vendor of any regional center.

14. Moreover, claimant is unable to establish by a preponderance of evidence that the purchase of service from Exceptional Minds may be made pursuant to contract. The evidence fails to show any meeting of the minds between Exceptional Minds and the Service Agency with respect to the numerous contractual obligations that would be required for such a contract to comply with the regulations. The promotional materials of Exceptional Minds indicate that the organization has elected to be privately funded since 2014, and there is no evidence that claimant has made any efforts to access the tuition subsidies or assistance that may be available through Exceptional Minds' private fundraising or its third-party financial aid vendors.

15. The prior fair hearing decisions in OAH case number 201504270 is advisory only, and not persuasive in this hearing because the decision is silent on the application of the statutes and regulations pertaining to mandatory provisions in contracts with regional centers. Mere disparity in treatment is not grounds for relief in administrative proceedings. (*Pegues v. Civil Service Com.* (1998) 67 Cal.App.4th 95.)

16. Moreover, there are no precedential decisions or higher-court opinions controlling the specific facts and circumstances of this case. “[A] decision is authority only for the point actually passed on by the court and directly involved in the case.” (*Gomes v. County of Mendocino* (1995) 37 Cal.App.4th 977, 985.)

17. Courts have recognized that developmentally disabled persons have “the right to be provided at state expense with only such services as are consistent with [the Lanterman Act’s] purposes.” (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 393.) Regional centers have wide discretion in determining how to implement an IPP, and DDS has the authority “to promote uniformity and cost-effectiveness in the operations of the regional centers,” but not to control the manner in which regional centers provide services. (*Id.* at p. 390.) In this case, claimant is entitled to vocational services at state expense, but only to the extent consistent with the purposes of the Lanterman Act, which expressly includes service-provider compliance with the regulatory scheme enacted into law by the Legislature and duly adopted into regulations by DDS. A regional center’s duties under the Lanterman Act to be flexible, creative, and considerate of a consumer’s preferences do not authorize a regional center to act in a manner that would otherwise violate the law or regulations except in limited circumstances.

18. In *Harbor Regional Center v. Office of Administrative Hearings* (2012) 210 Cal.App.4th 293 (*Hannah G*), a regional center was ordered to pay a service provider in a manner that violated the regulations. The court held that exceeding the maximum pay rate established by the regulations may be required by “unique circumstances in order to fulfill the Lanterman Act’s mandate to take all steps possible to keep such children at home with their families.” (*Id.* at p. 299.) However, the facts of the *Hannah G* case are materially different from the facts of this case in the following respects:

A. The service provider in *Hannah G* was a vendor. Although the court resolved a dispute over the application of a regulation governing the pay rate for the vendor's employee, the service provider was subject to all remaining regulatory provisions applicable to vendors. Accordingly, the regional center had statutory or contractual rights to information concerning the qualifications of care providers, to disclosure of any criminal record or judgments against the principals of the organization, to certifications that the information relied upon by the regional center was true and correct, to audit the service provider's use of regional center funds, to access the service provider's facilities to observe the level and quality of service provided to the claimant, and to enforce compliance with the regulations. In this case, the Service Agency would have no mechanism to enforce any of the valid regulatory objectives until Exceptional Minds becomes a vendor or executes a contract containing the provisions required by the regulations.

B. The claimant in the *Hannah G* case was a disabled child with "a rare condition that [required] extraordinary care" and the caregiver was "was indispensable to carry out the program" and without whom the claimant "would be unable to remain at home." (*Hannah G*, at pp. 311–312.) In this case, claimant is an adult who, notwithstanding his diagnosis of autism, has completed high school and earned a certificate in graphic design. The Exceptional Minds program is a preferred vocational program, presumably offering a different education program than that offered by regulated vendors and contract providers of vocational programming in digital arts or film and television. However, the evidence in this case does not establish that claimant suffers from a rare condition requiring extraordinary care, that the Exceptional Minds program is indispensable, or that alternative programming would be insufficient to carry out the Service Agency's mandate under the Lanterman Act "to assist [claimant] in securing those services and supports which maximize opportunities and choices for

living, working, learning, and recreating in the community." (Welf. & Inst. Code, § 4640.7, subd. (a).)

19. The regulations governing the vendorization process and service provider contracts conform to the legislative intent of the Lanterman Act by enabling regional centers to verify that Exceptional Minds will meet the requirements and standards of the regulations. (*Morris v. Williams* (1967) 67 Cal.2d 733.) These regulations are not arbitrary or capricious and have a reasonable and rational basis to assure oversight of state resources. (*Culligan Water Conditioning v. State Bd. of Equalization* (1976) 17 Cal.3d 86.) A policy or guideline to fund the requested services in this case would violate numerous provisions of the Lanterman Act and the regulations adopted thereunder. (Welf. & Inst. Code, § 4434, subd. (d).) These regulations were validly adopted pursuant to a delegation of authority under a special statute and carry the full force of law. (*Canteen Corp. v. State Bd. of Equalization* (1985) 174 Cal.App.3d 952, 960.)

20. Claimant has established that he possesses a passion and talent for digital art and that he would benefit from the three-year program at Exceptional Minds. However, because the Service Agency is bound to render services in accordance with the regulations, its denial of services in this case was proper as a matter of law. (Welf. & Inst. Code, § 4629, subd. (b).)

21. Cause was not shown to authorize funding under Welfare and Institutions Code section 4648, subdivision (a)(3), because the purchase of services at Exceptional Minds cannot be made pursuant to vendorization or contract.

ORDER

Claimant's appeal is denied. The Service Agency is not required to fund claimant's attendance at Exceptional Minds.

DATE:

MATTHEW GOLDSBY

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.