

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

Claimant,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH No. 2014090012

DECISION

This matter was heard by Irina Tentser, Administrative Law Judge, Office of Administrative Hearings, State of California, on April 23, 2015, in Culver City.

S.K. (Claimant), who was not present, was represented by his mother, M.K., and his father, I.K., with the assistance of S.K.'s sister, Mi. K.¹

Lisa Basiri, Fair Hearing Coordinator, represented Westside Regional Center (WRC or Service Agency).

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on April 23, 2015.

ISSUE

Did the Service Agency properly refuse to provide a \$220 monthly rental assistance subsidy for Claimant's rent?

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¹ Initials and family titles are used to protect the privacy of Claimant and his family.

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EVIDENCE RELIED UPON

Documentary: Service Agency's exhibits 1-12; Claimant's exhibits A-I.

Testimony: M. K., Claimant's mother; I. K., Claimant's father; and Mi. K., Claimant's sister.

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. Claimant is a 36-year-old man who is eligible to receive services from the Service Agency pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act), California Welfare and Institutions Code, section 4500 et seq,² based on a diagnosis of Autistic Disorder, Profound Intellectual Disability, and Seizure Disorder.

2. Claimant's parents have been granted a limited conservatorship over Claimant that allows them to fix residency for Claimant. Claimant's parents requested that the WRC subsidize Claimant's monthly rent after Claimant was instructed by the WRC to relocate from his two-bedroom residence due to the sudden loss of his staff member roommate. He lost the roommate after his former Supported Living Services (SLS) provider, Blazing New Trails, resigned on January 25, 2014 with 30 days of notice. Claimant's representatives exercised their power to fix residency by moving Claimant into a one-bedroom apartment in April 2014, which he cannot afford independently without financial assistance based on his income. Claimant's representatives, who are co-signers on the lease with Claimant and executed the lease on Claimant's behalf, are

² All statutory references are to the Welfare and Institutions Code, unless otherwise noted.

financially unable to continue to subsidize Claimant's rent on his one-bedroom residence.

3. On August 11, 2014, a Notice of Proposed Action (NOPA) was issued by the WRC denying Claimant's representatives' request to subsidize his rent in the amount of \$220 per month. In the NOPA, the basis cited for the denial of the rent subsidy was that "[P]er Welfare & Institutions Code 4689(h), Rent, mortgage, and lease payments of a supported living home and household expenses shall be the responsibility of the consumer and any roommate who resides with the consumer." (Exhibit 2, pg. 5.)

4. On August 21, 2014, Claimant's representatives filed a Fair Hearing Request (FHR) on his behalf. In the FHR, Claimant requested that WRC and/or WRC's vendor subsidize \$220 of the total monthly rent of \$695 for Claimant's one-bedroom apartment from May 2014³ until such time as WRC and/or WRC's vendor assists him in finding a low income apartment or a roommate.

5. Claimant's family and the WRC spent the ensuing months since filing the FHR attempting to resolve the issue of the rent subsidy, to no avail. In addition, the April 23, 2015 hearing was continued over the course of several months to resolve the issue of whether Claimant's parents had the right to serve as his representatives in the instant hearing and to contract on behalf of Claimant, under the terms of their limited conservatorship. On April 15, 2015, Administrative Law Judge, Janis S. Rovner, issued an Authorized Representation Order (Order), finding that Claimant's parents have the right

³ At hearing, the time period for which Claimant's representatives are seeking a rent subsidy was incorrectly identified as beginning on August 2014, instead of May 2014. However, a more thorough review of the letter referenced and attached to the FHR shows that the time period from which a subsidy was requested is from May 2014.

to represent Claimant in the instant proceeding and fix residency for the Claimant, but do not have the right to contract on behalf of Claimant. (Exhibit 1, pg. 4.)

BACKGROUND INFORMATION

6. Claimant was admitted to Camarillo Developmental Center on July 9, 1993 and transferred to Fairview Developmental Center on December 10, 1996. Claimant was then moved to a supported living arrangement in Palmdale, California, and was officially discharged from Fairview Developmental Center on July 12, 2005. (Exhibit 8, pg. 2.)

7. From 2005 through February 2014, Claimant lived independently with an adult care provider who was employed by his former SLS provider, Blazing New Trails. Initially, Blazing New Trails rented a house for Claimant with three bedrooms in East Palmdale. The co-signers on the home's lease were Claimant, his roommate, and Blazing New Trails.

8. In 2007, Blazing New Trails moved Claimant to a two-bedroom apartment with the same staff member roommate as in the prior home residence. Claimant was responsible for one-half of the rent, which was \$475.50, and half of the utility bills, with the other half of the living expenses paid by his staff member roommate.

9. In January 2014, Blazing New Trails resigned as the SLS provider for Claimant based on ongoing irreconcilable differences with Claimant's representatives. As a result of Blazing New Trails' resignation, Claimant's staff roommate abruptly moved out in or about February 2014.

10. My Life Foundation, a WRC vendor, was appointed by WRC as Claimant's new SLS provider in February 2014. By its internal policies, My Life Foundation, does not allow its adult care giver staff members or outside individuals to be roommates with clients. Accordingly, Claimant's roommate selection was limited by My Life Foundation policy solely to other clients for whom they provide SLS services. My Life Foundation identified one potential client roommate to share Claimant's two-bedroom apartment in

or about March 2014. The client and potential roommate declined to move into the two-bedroom apartment after touring the apartment and meeting with Claimant. No other potential roommate(s) have been identified to date by My Life Foundation.

11. My Life Foundation's representative, Eric, expressed skepticism at the viability of a roommate situation for Claimant to both Claimant's sister and the WRC. In a March 13, 2014 e-mail to Claimant's sister, he wrote, "[I] am very wary of a roommate that does not receive services. I can think of a thousand scenarios where that can go sideways. Finding someone who is reliable and able to deal with [Claimant's] disability could be very difficult." (Exhibit B, pg. 2.) On or about February 25, 2015, in an exchange of e-mail discussing Claimant's living situation between Eric of My Life Foundation and WRC's former Service Coordinator, Kenneth Sears, Eric wrote, "I am still of the opinion that a roommate situation would not go well but I am willing to try." (Exhibit 4, pg. 5.)

12. In February 2014, WRC notified Claimant's representatives that if Claimant did not find an affordable apartment by March 31, 2014, WRC would seek a group home placement for Claimant. In his April 1, 2014, e-mail to Claimant's sister, former WRC Adult Service Coordinator, Gavin Linderman, wrote, in part:

The Regional Center is willing to continue to provide supported living services that allow [Claimant] to live in the least restrictive environment possible, but the Regional Center does not fund living expenses for clients. It is the payee and conservator's duty to oversee the conservatee's living arrangement through their power of contract and ability to fix residence.

As conservator's [sic] you not only added yourselves as co-signers to [Claimant's] lease with Ridgeview Apartments on

2/27/14, but you have also entered into a contract on behalf of [Claimant].⁴ You are solely responsible for his rent being paid in full and you will also be the responsible party who must answer to the management company if [Claimant] is evicted or sued by the management company for back rent.

I will remind you that it is not the My Life Foundation's *responsibility* to identify an apartment for [Claimant]; the responsibility falls squarely on the conservators. [Emphasis in original] (Exhibit B, pg. 10.)

13. No evidence was presented at hearing that a group home setting is a less expensive living situation alternative to Claimant's existing one-bedroom residence.

14. Claimant's representatives and sister disagreed with WRC's position that it was the parents' contractual responsibility as limited conservators to locate, identify, and act as guarantors for Claimant's living situation. Claimant's representatives had not previously been asked to be co-signers or to contract on Claimant's behalf on Claimant's past lease(s) and to act as guarantors for Claimant's rent by WRC during the 2007 to 2014 time period that Claimant resided independently and was a client of Blazing New Trails. However, they acquiesced to WRC's instructions to locate to a less expensive apartment because they believed that the alternative, a group home placement, was contrary to the guidelines of Claimant's Individual Program Plan (IPP) and would be detrimental to his welfare and safety. (Exhibit C, pg. 7.)

⁴ It is noted that Claimant's representatives can co-sign a lease with Claimant, but it appears that it is outside the powers of their limited conservatorship to contract on Claimant's behalf.

15. Claimant's representatives exercised their right to fix residency by renting an apartment whose rent, coupled with Claimant's other living expenses, exceeded his monthly income. As a result, since May 2014 to the present, Claimant has lived alone in the one-bedroom apartment in East Palmdale. The rent for the apartment is \$695.⁵ Claimant's living expenses include an average of \$66 in utilities, \$280 in food costs, \$30 for hygiene, \$50 for clothing/shoes, \$30 in laundry costs, and \$21 in Special Olympics fees. In sum, his total monthly living expenses average \$1,172. Claimant's income consists of \$877.40 in federal social security income (SSI)⁶ and \$61.20 in SSP restoration aid by WRC. (Exhibit G.) The deficit between his monthly income and living expenses is paid by Claimant's parents and sister.

CLAIMANT'S INDIVIDUAL PROGRAM PLAN AND SERVICES

16. Beginning in February 2014, Claimant receives 24/7 supported living services from three My Life Foundation staff members. During the nighttime shift, a My Life Foundation staff member sleeps in the living room while Claimant sleeps in the bedroom of his one-bedroom apartment. His sister is Claimant's IHSS provider Fridays through Sundays.

17. Claimant's parents and sister are financially unable and unwilling to be responsible on an ongoing basis for Claimant's living expenses and have been requesting assistance from WRC and the SLS, My Life Foundation, since February 2014

⁵ Claimant's lease is scheduled to end effective May 30, 2015. At that time, his rent will increase up to \$100 per month depending on whether Claimant enters into a month-to-month or annual lease contract with the landlord.

⁶ Claimant's mother has been the payee for Claimant's SSI since March 2019. (Exhibit E.)

to identify less expensive viable living situations for Claimant, including, but not limited to, a roommate, Section 8 housing, and/or a less expensive apartment. Claimant's parents and sister did not present evidence that they made efforts, aside from locating the one-bedroom apartment where Claimant currently resides, to identify less expensive potential living situations for Claimant. While Claimant's representatives and sister prefer that Claimant have the privacy that a one-bedroom apartment affords, they have not established that a one-bedroom apartment is necessary to meet Claimant's needs per his IPP.

18. Claimant's abrupt change in SLS provider and resulting loss of roommate as well his relocation to his one-bedroom apartment resulted in increased agitation and led to property destruction, aggression, and self-injurious behavior by Claimant. (Exhibit 6, pg. 5.) After moving into his one-bedroom apartment, Claimant exhibited self-injurious behavior, including head banging, for an extended period of time. (Exhibit 4, pg. 4.) With regards to Claimant's self-injurious behavior, his IPP dated February 20, 2014 states, "[T]he primary trigger to increased behaviors is a change in [Claimant's] routine." (Exhibit 8, pg. 5.) His 2015 IPP also identified environmental change as a trigger for Claimant's outbursts, stating, "If something in his environment is taken out of place [Claimant] compulsively arranges and rearranges the objects until either stopped or after some period of time is satisfied. My Life Foundation has performed multiple repairs to the apartment to fix holes that have been either punched through the wall or caused by head-banging. (Exhibit 6, pg. 5.)

19. Claimant's 2014 and 2015 IPPs do not specify whether living with a roommate is an acceptable living option to the WRC and to his SLS provider. In discussing Claimant's living arrangement, the 2014 IPP, states:

Regional Center and the My Life Foundation do not support the practice of a live-in staff. [Claimant] will need to move

into an affordable studio or one bedroom apartment or his conservators/co-signers will need to contribute to his cost of living. The My Life Foundation has offered to assist the conservators with identifying affordable apartments by recommending apartment complexes lived at by other My Life Foundation client's with the same level of SSI. The decision of where and when to move will ultimately be the conservators who also act as [Claimant's] payee and rental co-signers. (Exhibit 8, pg. 5.)

20. Claimant's 2014 and 2015 IPPs identify the least restrictive environment possible and independent living as a desired outcome for Claimant. (Exhibit 8, pg. 15; Exhibit 6 at pg. 11.) As set forth in his 2015 IPP, finding a new apartment with the support of My Life Foundation is a goal for Claimant. (Exhibit 6, pg. 14.)

21. There seems to be some miscommunication between Claimant's representatives and the WRC regarding whether Claimant's representatives are willing to entertain a roommate for Claimant as a living option alternative. The 2015 IPP states that "... [Claimant's] conservators ultimately decided to have [Claimant] move into a one bedroom living situation because they felt [Claimant] would not be able to live with a roommate." (Exhibit 6, pg. 5.) However, in a March 13, 2014 e-mail communication predating the 2015 IPP, Claimant's sister wrote as follows:

Erik:

Let's try a little longer to find a roommate. Perhaps putting an ad at the AV college or Craigslist would be helpful. I can put the ad on Craigslist if you would do the AV college.

We can look for a new apartment simultaneously but I am sure you agree that it would be most cost efficient and easier on [Claimant], if [Claimant] can share the current rent with someone. Let me know what you think. (Exhibit B, pg. 3.)

22. At hearing, Claimant's representatives and sister testified that they are willing to have a roommate for Claimant. No testimony from WRC was provided on the issue. The parties may need to clarify whether a roommate is an acceptable solution to Claimant's living situation.

EFFORTS TO FIND OTHER HOUSING

23. Recognizing Claimant's representatives ongoing need for assistance in finding a less expensive living arrangement, the need to alleviate the financial burden on the family for Claimant's living expenses, and the inability of My Life Foundation vendor to assist the conservators in reaching Claimant's IPP's desired outcome of finding a more affordable living situation, WRC contracted with the vendor Brilliant Corners in or about February 2015 to locate housing for Claimant. (Exhibit 11.)

24. As of the date of the hearing, Brilliant Corners presented one alternative living option to Claimant's representatives, on April 17, 2015. The proposed property was a studio available for rent at \$580 per month. The studio property will be receiving 811 Project Rental Assistance (PRA) funding so that tenants will pay 30% of their income in rent, with the remainder subsidized. (Exhibit 11, pg. 2.) Claimant's representatives rejected the studio as untenable because of its size, which they described as a "10 by 10 foot" efficiency with a kitchenette, rather than a studio, at hearing. In addition, Claimant's representatives were concerned that the studio, could not accommodate Claimant and his 24/7 caregivers due to its size and would compromise Claimant's privacy as a grown man. Instead, Claimant's representatives requested that Brilliant

Corners assist them in locating other affordable or fair market 1-bedroom units. (Exhibit 11, pg. 2.)

25. The current status of Brilliant Corners' efforts to work with Claimant's representatives and limited conservators to locate less expensive living options for Claimant include, but are not limited to, subsidized housing (such as HUD 811, Supportive Housing projects, Section 8 Housing Choice Vouchers (HCV), tax credit buildings, and units set aside in apartment complexes for persons with special housing needs. (Exhibit 11, pgs. 2 - 4.)

26. WRC is concerned that based on the difficulty to access affordable housing and Claimant's representatives power to fix Claimant's residency, it is facing a request from Claimant's representatives to indefinitely subsidize Claimant's rent. Claimant's representatives, however, assert that they are not looking for an ongoing rent subsidy to Claimant's one-bedroom apartment and are amenable to any viable less-expensive living situation, including a roommate for Claimant, as long as it meets Claimant's specific care and welfare needs.

LEGAL CONCLUSIONS

1. Jurisdiction was established to proceed in this matter, pursuant to section 4710 *et seq.*, based on Factual Findings 1 through 5.

2. The party asserting a claim generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, Claimant bears the burden of proving, by a preponderance of the evidence, that WRC's decision not to provide a \$220 monthly subsidy to Claimant's rent from May 2014 is wrong. (Evid. Code, § 115.)

3. Under section 4646, subdivision (d), and section 4512, subdivision (b), services under the Lanterman Act are to be provided in conformity with the IPP. Consumer choice is to play a part in the construction of the IPP. (See §§ 4512, subd. (b);

see also, § 4646, subd. (g).) However, consumer choice is not dispositive. It was not the intent of the Act to extend to a consumer or his parents the sole discretion or an unlimited unilateral authority over programming or service choices. Rather it is the intent to assure that consumer and family choices and preferences constitutes one of factors to be taken into consideration and made a part of the consumer's IPP. In this case, the fact that Claimant's parents have exercised their right to fix residency to a particular living situation for Claimant is an insufficient basis upon which to compel the Service Agency to subsidize that choice.

4. Section 4512, subdivision (b), of the Lanterman Act provides, in pertinent part:

"Services and supports for person with developmental disabilities" means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of . . . the consumer's family, and shall include consideration of . . . the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Services and supports listed in the individual

program plan may include, but are not limited to, diagnosis, evaluation, treatment, personal care . . . special living arrangements

5. (a) Section 4689 applies to the issue of supported living services, and was relied upon by the WRC in denying Claimant's representative's rent subsidy request. The first part of the statute states:

Consistent with state and federal law, the Legislature places a high priority on providing opportunities for adults with developmental disabilities, regardless of the degree of disability, to live in homes that they own or lease with support available as often and for as long as it is needed, when that is the preferred objective in the individual program plan. In order to provide opportunities for adults to live in their own homes, the following procedures shall be adopted:

- (a) The department and regional centers shall ensure that supported living arrangements adhere to the following principles:
 - (1) Consumers shall be supported in living arrangements which are typical of those in which persons without disabilities reside.
 - (2) The services or supports that a consumer receives shall change as his or her needs change without the consumer having to move elsewhere.
 - (3) The consumer's preference shall guide decisions concerning where and with whom he or she lives.
 - (4) Consumers shall have control over the environment within their own home.

- (5) The purpose of furnishing services and supports to a consumer shall be to assist that individual to exercise choice in his or her life while building critical and durable relationships with other individuals.
- (6) The services or supports shall be flexible and tailored to a consumer's needs and preferences.
- (7) Services and supports are most effective when furnished where a person lives and within the context of his or her day-to-day activities.
- (8) Consumers shall not be excluded from supported living arrangements based solely on the nature and severity of their disabilities.
- (b) Regional centers may contract with agencies or individuals to assist consumers in securing their own homes and to provide consumers with the supports needed to live in their own homes.
- (c) The range of supported living services and supports available include, but are not limited to, assessment of consumer needs; assistance in finding, modifying and maintaining a home; facilitating circles of support to encourage the development of unpaid and natural supports in the community; advocacy and self-advocacy facilitation; development of employment goals; social, behavioral, and daily living skills training and support; development and provision of 24-hour emergency response systems; securing and maintaining adaptive equipment and supplies; recruiting, training, and hiring individuals to provide personal care and other assistance, including in-home supportive services workers, paid neighbors, and paid roommates; providing respite and emergency relief for personal care attendants; and facilitating community participation. Assessment of consumer needs may begin before 18 years of age to enable the consumer to move to his or her own home when he or she reaches 18 years of age.

(d) Based on the foregoing provision, it is evident that maintaining Claimant in his own home and of his limited conservators' choosing should be the priority of the WRC in this instance. WRC has attempted to meet that priority by identifying a reasonable studio alternative that was rejected by Claimant's parents because they believe that it is not the best option available for Claimant due to its size and lack of privacy. While the parents' desire to have Claimant live in the best possible environment is understandable, requiring WRC to subsidize rent in this instance because of Claimant's parents' choice to fix residency in a one-bedroom apartment that is beyond Claimant's means would require a level of support by a regional center that is more than that required by the Lanterman Act.

6. Regional centers are responsible for developing and implementing IPPs, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647, and 4648.) The Lanterman Act requires that all purchases of services be secured for, and calculated to meet the needs of, the consumer. Consumer preferences can not relieve the regional center from its obligation under the Lanterman Act to administer the Act and expend public funds in a program-effective and cost-effective manner. Administering the Act as intended by the Legislature includes properly assessing, identifying and providing for specifically identifiable services, in a manner which allows measurement of the effectiveness of those services against agreed-upon goals and objectives. Accordingly, section 4689, subdivisions (h) and (i), place limits on a consumer's preferences by, among other things, prohibiting the payment of rent by a regional center, unless an exception can be found. The relevant subdivisions state:

- (h) Rent, mortgage, and lease payments of a supported living home and household expenses shall be the responsibility of the consumer and any roommate who resides with the consumer.
- (i) A regional center shall not make rent, mortgage, or lease payments on a supported living home, or pay for household expenses of consumers receiving supported living services, except under the following circumstances:
 - (1) If all of the following conditions are met, a regional center may make rent, mortgage, or lease payments as follows:
 - (A) The regional center executive director verifies in writing that making the rent, mortgage, or lease payments or paying for household expenses is required to meet the specific care needs unique to the individual consumer as set forth in an addendum to the consumer's individual program plan, and is required when a consumer's demonstrated medical, behavioral, or psychiatric condition presents a health and safety risk to himself or herself, or another.
 - (B) During the time period that a regional center is making rent, mortgage, or lease payments, or paying for household expenses, the supported living services vendor shall assist the consumer in accessing all sources of generic and natural supports consistent with the needs of the consumer.
 - (C) The regional center shall not make rent, mortgage, or lease payments on a supported living home or pay for household expenses for more than six months, unless the regional center finds that it is necessary to meet the individual consumer's particular needs pursuant to the consumer's individual program plan. The regional center shall review a finding of necessity on a quarterly basis and the regional center executive director shall annually verify in an addendum to the consumer's individual program plan that the requirements set forth in subparagraph (A) continue to be met.

7. The California Code of Regulations (CCR), title 17, section 58611, subdivision (b), further limits a regional center's ability to make rent payments, stating:

(b) The regional center shall not pay any costs incurred by a consumer receiving SLS in securing, occupying, or maintaining a home rented, leased, or owned by the consumer except when the executive director of the regional center has determined that:

(1) Payment of the cost would result in savings to the State with respect to the cost of meeting the consumer's overall services and supports needs;

(2) The costs can not be paid by other means, including available natural or generic supports; and

(3) The costs are limited to:

(A) Rental or utility security deposits;

(B) Rental or lease payments;

(C) Household utility costs;

(D) Moving fees; and

(E) Non-adaptive and/or non-assistive household furnishings, appliances, and home maintenance or repair costs.

8. Section 4689, subdivision (h), and CCR, title 17, section 58611, subdivision (b), prohibit Service Agency from paying for a consumer's rent, absent an exception. Claimant has failed to establish that an exception is warranted because he has not demonstrated that a subsidy is required by a demonstrated medical, behavioral, or psychiatric condition that presents a health or safety risk to himself or another, or that payment of the subsidy would result in a savings to the State, or that the costs cannot be paid by other means. In this case, Claimant's representatives used their power to fix residency to rent a one-bedroom apartment for Claimant instead of choosing a potentially less expensive option, such as a studio apartment. A less expensive studio

apartment has not been shown to be outside the requirements of his IPP to provide an independent living environment to Claimant as an adult consumer. Requiring the WRC to subsidize a rent deficit based on Claimant's representative's choice for Claimant, rather than the needs identified in his 2015 IPP, is unreasonable and not required by the Lanterman Act.

9. Based on the foregoing, Claimant is found to be outside the exception set out in subdivision (i) of section 4689, and outside the confines of CCR section 58611, subdivision (b), and the Service Agency cannot subsidize his rent payments by a monthly amount of \$220.

10. By reason of Factual Findings 1 through 26 and Legal Conclusions 1 through 9, cause is not established for WRC to provide Claimant with a rent subsidy of \$220 per month from May 2014 and ongoing.

ORDER

Claimant's appeal is denied.

DATED: May 6, 2015

_____/s/____

IRINA TENTSER

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.