

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

<b>STEPHEN L. KIESSLING,</b>	<b>: No. 00-00104</b>
	<b>:</b>
<b>Plaintiff</b>	<b>:</b>
	<b>:</b>
<b>vs.</b>	<b>: CIVIL ACTION - LAW</b>
	<b>:</b>
<b>ARZONA L. BOWERS and</b>	<b>:</b>
<b>COMMUNITY RESOURCES FOR</b>	<b>:</b>
<b>INDEPENDENCE, INC.,</b>	<b>: Motion for Summary Judgment</b>
<b>Defendant</b>	<b>:</b>

**ORDER**

AND NOW, this 16<sup>th</sup> day of October 2002, the Court DENIES Community Resources for Independence, Inc.'s Motion for Summary Judgment. In an effort to aid the parties the Court will try to explain why it rejected CRI's contentions. First, the Court believes CRI had a duty to train, monitor or supervise Mr. Kiessler and Ms. Bowers or at least make sure they were appropriately trained. After reading the Attendant Care Program Requirements and CRI's work statement, the Court concludes that CRI is ultimately responsible for the training of Kiessler and Bowers. For example, the Attendant Care Program Requirements state, in relevant part:

"Contractors are ultimately responsible for . . . ensuring that attendants and consumers are trained."  
(CRI's Exhibit A, Part III, Section M on page 16)

"The Contractor shall offer consumers the option of recruiting, managing, training, hiring and paying attendants. Consumers have the right to choose to perform these tasks to the extent possible. The Contractor shall offer consumers the option of performing all of these tasks, some of these

tasks or none of these tasks. The contractor is ultimately responsible for the completion of these tasks.”  
(CRI’s Exhibit A, Part IV, Section A on page 18)

CRI argued that since the plaintiff chose the Consumer Option, he elected to train his own attendant and relieved CRI of any obligation to train her. This Court cannot agree. The tenor of these sections, as well as other provisions of the Attendant Care Program Requirements and CRI’s work statement, is that CRI is “watchdog” over the consumers and attendants. A consumer can train his or her own attendant, but only if he has the ability to do so. It is CRI’s job to make sure the consumer has this ability. It is also CRI’s job to make sure the attendant has been appropriately trained. This is especially true when health maintenance activities are involved. With respect to such activities, the Attendant Care Program Requirements state:

An attendant may perform health maintenance activities under the following conditions:

1. The consumer has indicated on the Service Plan (SP777) that he/she has been adequately instructed by the appropriate health professionals and is thereby qualified and able to instruct and supervise his/her attendant in health maintenance activities.

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4. The contractor will monitor the attendant’s performance of health maintenance activities during the routine monitoring visits and through consultation and input from the consumer regarding his/her satisfaction with the service.

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8. The contractor and consumer must document in the Service Plan who is responsible for providing health maintenance activities, and that these persons, if attendants, have been trained in the performance of these duties.

9. If at any time there is an indication that the health maintenance

activities are not being carried out adequately by the attendant or not being adequately supervised by the consumer, the contractor has the right and responsibility to intervene and provide appropriate corrective measures.

CRI's Exhibit A, Part IV, Section I on pages 24-25. Additionally, in applying for its contract with the Department of Public Welfare to administer the attendant care program, CRI stated the following in its work statement: (1) each consumer will receive a minimum of twenty hours of training (Plaintiff's Exhibit 8 at p. 9); (2) CRI offers training to all consumers and attendants of both attendant care programs (Id.); (3) the service plan would include documentation of attendant and/or consumer training (Id. at p. 5); and (4) the provider, consumer and attendants who commit to provide health maintenance activities must sign the service plan and all people providing health maintenance activities receive a copy of the service plan (Id. at p.6).

The deposition transcripts of Mr. Kiessling and Ms. Bowers indicate there are factual issues regarding whether these duties were breached. Ms. Bowers testified she did not receive any training from CRI nor did CRI offer her any training. Bowers Deposition at pp. 36, 41, and 63. In fact, she never even met anyone from CRI. Bowers Deposition at p. 37. If training had been offered, Ms. Bowers stated she would have availed herself of the offer. Bowers Deposition at p. 56-57. Ms. Bowers never signed the service plan for Mr. Kiessling and she never received a copy of it as CRI represented to DPW in its work statement that attendants who performed health care activities would. Bowers Deposition at pp. 37, 46. No one inquired whether Ms. Bowers had the ability to perform health

maintenance activities. Bowers Deposition at p. 48. In fact, Ms. Bowers did not have such ability as she had no medical training and Mr. Kiessling never instructed her how to take care of him except to bathe him and do a few exercises for his leg. Bowers Deposition at pp. 67, 73. If she had known the seriousness of the development of sores on Mr. Kiessling's leg, she would have sought help. Bowers Deposition at p. 82.

Mr. Kiessling testified he had an eleventh grade education. Kiessling Deposition at p. 294. He did not have a GED and he had no other formal education or training. Kiessling Deposition at p. 294. He did not have any training on wound care. Bowers Deposition at p. 67. Mr. Kiessling did not receive any training from CRI. Kiessling Deposition at p. 86. He did not train Bowers, because he thought she was trained by CRI. Kiessling Deposition at p. 86. Mr. Kiessling testified he did not recall Ms. McCracken (CRI's service coordinator) ever asking him if he trained his attendant with regards to health maintenance activities.<sup>1</sup> Kiessling Deposition at p. 86. He figured the attendants were trained by CRI, because if they weren't he figured they shouldn't have been sent to him. Kiessling Deposition at p. 86.

There also are factual issues regarding causation and damages. Dr. Michael Greenberg, an expert retained by the plaintiff, stated to a reasonable degree of medical certainty that CRI was responsible for the disastrous medical

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<sup>1</sup> Ms. McCracken testified in her deposition that she asked Mr. Kiessling if he could train his attendant with respect to health maintenance activities and he indicated he could. This also creates a factual dispute that would preclude summary judgment. Furthermore, it appears the Attendant Care Program Requirements and/or CRI's work statement also would require Ms. McCracken to document that Mr. Kiessling had been adequately instructed by appropriate health professionals. There is nothing in the record before this Court to indicate Ms. McCracken ever determined whether any health professional instructed Mr. Kiessling regarding the care of leg sores or ulcers. Instead, it appears Ms. McCracken

outcome of Mr. Kiessling. In his report he states:

CRI breached the standard of care as well as their own work statement in permitting a layman in Mr. Kiessling's condition to assume all responsibility for training and supervising a layman home healthcare attendant such as Arizona Bowers in providing wound care for his bedsores and ulcers. CRI was responsible to provide or ascertain that Ms. Bowers had appropriate training. Had Ms. Bowers received appropriate training, she would have been capable of providing wound care for Mr. Kiessling and would have been capable of recognizing the ulcer on his right lower extremity as well as realize its potential seriousness for further medical evaluation and an appropriate intervention.

The plaintiff's nursing expert, Linda Goodfellow, reaches similar conclusions.

Although the defense experts attribute Mr. Kiessling's problems to his and Ms.

Bowers' failures and not CRI, this battle of the experts presents factual and credibility determinations for the trier of fact.

By The Court,

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Kenneth D. Brown, J.

cc: Robert Elion, Esquire  
I Steven Levy, Esquire  
George Lepley, Esquire  
Work file  
Gary Weber, Esquire (Lycoming Reporter)

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simply asked Mr. Kiessling if he could train his own attendant.