

Nebraska Commission for the Blind & Visually Impaired  
Special Meeting  
Friday, June 4, 2021; 10:30 a.m.  
Video Conference (Zoom)

Minutes

Call to Order. Welcome and introductions. Announcement about open meeting act, proof of publication, recordings, other logistics.

Mark Bulger, Chairman of the Board of Commissioners, called the meeting to order at 10:31 a.m. The meeting began with introductions.

Commissioners present: Mark Bulger, Chairperson, Designee of the American Council of the Blind of Nebraska, Omaha; Kimberly Scherbarth, Vice Chairperson, Designee of the National Federation of the Blind of Nebraska, Kearney; Lincoln; Becky Rieken, Dakota City; Robert Newman, Omaha.

Commissioners absent: Brent Heyen, Executive Secretary, Lincoln.

Commission staff present: Carlos Serván, Executive Director; Carol Jenkins, Deputy Director of Services; Kathy Stephens, Administrative Assistant.

Public present: Morgan Christensen, Associate Attorney with Johnson, Flodman, Guenzel & Widger Law Office; Jim Jirak, past commissioner and ACBN member; Elspeth Hunnicutt.

The Notice of the Meeting was published in the Lincoln Journal Star, the State Government Calendar, NCBVI Website, and NFB Newslines®. The Notice was also sent to the NCBVI List Serve, Radio Talking Book, ACBN and NFBN.

Discuss / Approval of Final Order in Tonja Peterson-Wendt vs. Nebraska Commission for the Blind and Visually Impaired case

Executive Director, Carlos Serván, provided a brief summary of the client's case. The client had multiple disabilities in addition to her blindness/low vision. NCBVI approved a self-employment plan for the client in 2016. NCBVI purchased items for the client's business and provided support for self-employment. In self-employment, a client is expected to manage their own business. Usually, it takes about one year for a client to become independent in managing their business. In this case, after four years, the client was still unable to manage her own business. Before NCBVI closed the client's case we advised her to contact the Client Assistance Program (CAP), which she did. After several months of negotiations, CAP said that NCBVI did all that they could and CAP advised NCBVI to close the client's case. NCBVI tried to offer the client other

services and options, but the client wanted to be in self-employment. NCBVI determined that self-employment was not feasible and closed her case. The client then filed an Administrative Appeal. The Attorney General's office appointed Attorney Morgan Christensen to represent NCBVI with regard to the appeal filed by Tonja Peterson-Wendt (a former recipient of NCBVI's self-employment program). Carol Jenkins and Nancy Flearl worked with Ms. Christensen who was appointed to NCBVI.

Morgan Christensen also gave a brief overview of the nature of the Special Commission meeting. Ms. Peterson-Wendt filed an appeal because NCBVI closed her case on the grounds her business goal and plan were no longer feasible and because her disability was too significant to benefit from services. Ms. Peterson-Wendt claimed NCBVI discriminated against her because of her disability and she stated NCBVI did not have clear and convincing evidence to close her case. Her goal was to get her case re-opened with NCBVI and to get attorney's fees.

The contested hearing was held on April 22, 2021. Written closing arguments were due and submitted on May 7, 2021. Last week, the Hearing Officer issued his decision and an appendix to his decision. The Hearing Officer found there was no evidence of discrimination, that NCBVI was correct in closing Ms. Peterson-Wendt's case, and denied her request for attorney's fees. While the Hearing Officer affirmed NCBVI's decision to close the case, the Hearing Officer recommends NCBVI "reimburse" (pay) Ms. Peterson-Wendt the remaining \$2,031.00 in her business plan.

Chairperson Bulger asked if when the Board makes their decision on the Final Order, is this subject closed or are there other avenues that the client could pursue?

Morgan stated that while the Hearing Officer has made a recommendation, the Board's decision is the official decision. The client will have 30 days from when she is served with the final decision to file an appeal in District Court. If she does not file within 30 days, then the case is officially closed. If she files, then the case will go to District Court.

Carol Jenkins stated that NCBVI did work very hard in supporting the client to help her make her business goal and plan work. Carol noted that she feels that the Hearing Officer's recommendation of paying the client the remaining \$2,031 in her business plan is fair.

Commissioner Newman asked for some additional information regarding the background of the case.

Morgan Christensen stated that the client had a traumatic brain injury (TBI), which she received from multiple car accidents. She had multiple concussions, her TBI affected her physically and mentally, she has posttraumatic vision syndrome that affects her ability to walk, balance and read, and several other issues. Essentially, the fact that she had a disability was not in dispute, it was the question as to if she had the ability to be a self-employed photographer. After reviewing the testimony and exhibits it was

determined that she was not able to carry through with her self-employment plan. The issues were discussed in detail at the hearing. If the case is appealed to District Court, the District Court would see the entire record of the hearing.

Carol Jenkins noted that she can share some additional details; however, much of the clients information is confidential. A business plan contains several sections to where it outlines the business, implementation, expected earnings over a period of time, marketing, who the competitors are, how that will be addressed, and how they will run and operate their business. It is up to the client to do the things on their own, or have natural supports in place if they do need help. The executive director has the right to approve portions of a client's business plan for funding. NCBVI is never considered as a sole-source of funding. The client is responsible for seeking out other funding options and/or what they are going to invest in their own business. In 2016, when the business plan was approved, NCBVI had a six-month period wherein we could fund initial stock and inventory and the other items that were agreed upon to be covered and/or provided. NCBVI will either purchase the items for the client, or reimburse them if they pay out of pocket. At the beginning, NCBVI was purchasing items for the client. The client then got frustrated because software and technology changes so rapidly. Therefore, NCBVI moved to reimbursing the client for purchases to ensure that she was getting the items she wanted for her business. In 2016-2017, the client had zero customers with her photography business. The business had possibly one customer in 2018, two in 2019, and one in 2020. Therefore, the client was not meeting her own projected income. The client also was not following through on purchasing the items in her business plan, and when she did purchase something she would often wait two years to provide NCBVI with the receipt. This was not acceptable. The client had self-reported that she was unable to operate a computer or do the accounting and tax work among other things. The client had asked NCBVI to pay for around four staff members for her to help her run her business. NCBVI does not pay for personnel to help a client run their business. Between 2016 and the time her case was closed, the client kept asking for more things because she reported that her disability had gotten worse and there were many things that she could not do. She could only take pictures when her husband was not working. Her husband was also tired on her business. Ultimately, the client failed to follow-through on their business plan and closing her case was the end result.

Carol Jenkins added that NCBVI supported the client more than we probably should have because we do believe in our clients so much. We really wanted her to succeed so we spent almost four years in trying to help her be successful. NCBVI has a strong belief in our consumers and we truly want them to succeed.

Morgan Christensen noted that the commissioners need to vote on whether or not to adopt the recommendations of the Hearing Officer.

Commissioner Scherbarth moved to adopt the recommendations of the Hearing Officer.

Commissioner Newman seconded the motion.

The following Commissioners voted in favor of the motion.

Newman, Bulger, Scherbarth, and Rieken

Commissioner Heyen was absent.

Adjourn

The meeting adjourned at 11:08 a.m.

Respectfully submitted,

Kathy Stephens, Administrative Assistant  
NCBVI

Mark Bulger, Chairperson  
NCBVI Board of Commissioners