

The Guardian



Tennant Creek boy with cerebral palsy placed in care after NDIA pulls funding

Exclusive: mother of 13-year-old Indigenous boy loses guardianship after agency withdraws housing funding

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Wed 11 Jul 2018 04.19 BST

The National Disability Insurance Agency asked for an Aboriginal child with cerebral palsy to be placed into care because the agency would no longer pay his accommodation costs.

The 13-year-old boy has spastic quadriplegia, a severe form of cerebral palsy, and requires the use of a wheelchair.

He was placed into the care of child protection in early 2017 after the NDIA withdrew funding for an accommodation support package in Tennant Creek on the grounds that 24-hour support, care and housing was not a reasonable and necessary support.

The move caused his mother, who also has complex health problems and was unable to perform some aspects of his care for cultural reasons, to lose guardianship of her son to the state, meaning she could no longer make decisions about his health and care.

She recently secured a shared guardianship arrangement with the help of a support worker, but her son remains in care.

She has challenged the decision to withdraw accommodation support in the administrative appeals tribunal and is awaiting a hearing.

Evidence put before the tribunal includes two letters from senior NDIA managers to Territory Families, the department that includes child protection, requesting that the state take over the care of the child.

In a letter to the chief executive of Territory Families, Ken Davies, in December 2016, the NDIA said the boy required “significant support” and that his mother “has been unable to care for him for some time”.

He had been living in housing provided by a national disability insurance scheme service provider under a short-term accommodation funding plan since January 2016, which provided “significant support for his daily activities and personal care”.

The NDIA said it was “unlikely” accommodation costs would be covered in his new plan, and that it did not believe placing the boy into kinship care would be appropriate.

“To this end, this agency seeks intervention on behalf of [the boy] and his family to ensure he is afforded secure accommodation,” the letter said.

The letter said the agency is “urgently seeking co-operation from Territory Families in order to facilitate future arrangements for [the boy’s] accommodation beyond 8 January 2017”.

A second letter was sent by the NDIA in February 2017, formally advising the department that it would cease funding the boy’s accommodation from 6 March, at which point the boy’s mother would not be able to care for him. NDIS funding for other support services would remain in place.

Shelley Landmark, a lawyer at the NT Legal Aid Commission, said the boy’s mother was not aware the NDIA had approached Territory Families until after her child was taken. The department told the boy’s family his accommodation needs were the only reason he was taken into care.

Landmark said it had been very stressful for the boy’s mother.

“We have ended up with a kid in care who doesn’t need to be there,” she said. “Particularly with everything that’s going on in Tennant Creek at the moment, I could not believe that they would think that putting a child in Tennant Creek in care would be an appropriate solution to the problem.”

Child protection services in the Barkly region, which includes Tennant Creek, have been criticised for failing to intervene in the care of a two-year-old girl who was subsequently raped.

Victoria Carbone, an NDIS appeals officer for the Barkly region for Brain Injury SA, said funding for families in Tennant Creek and surrounding communities had fallen since the three-year trial period ended in mid-2016.

She said the new, reduced care plans were often predicated on the expectation that some aspects of a person’s care could be performed by their family or community, but Carbone said that calculation “does not account for what is culturally appropriate for family to provide, eg, tending to personal hygiene needs”.

Carbone said she had not reviewed other cases where the NDIA had explicitly requested that a child be taken into care. However, she said concern about the possible removal of children and

a general mistrust of institutions and government agencies meant some Aboriginal people in the region were not comfortable speaking openly with NDIA staff.

Landmark said there had been a string of cases in Tennant Creek that had been referred to the tribunal after a reduction in funding.

In March the tribunal found the NDIA had wrongly withdrawn \$23,600 in support to an 11-year-old blind girl with epilepsy who lived in foster care in Tennant Creek.

In June another Tennant Creek mother won a federal court case against the NDIA's decision to reduce the care plan for her 13-year-old son, who suffers from global developmental delay, from \$75,000 to less than \$15,000.

The woman took the case to the federal court after the tribunal found the NDIA had not justified the reduction. However, the tribunal did accept the NDIA's argument that the appeal was invalid because the 12-month care plan being appealed was due to expire.

The federal court overturned that decision, ruling that care plans do not expire.

"A plan may be reviewed from time to time," Judge John Reeves said, "but such a review does not result in a plan ceasing to operate."

Landmark said that decision would have a significant impact on the right of NDIS clients to appeal against aspects of their care plans and potentially provide greater long-term certainty to people with a disability.

The NDIA is considering the federal court's decision, but said it could not comment further on either case.

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