



EMPLOYMENT TRIBUNALS

Claimant: Mr David Simpson

Respondent: BUPA Care Services Limited

Heard at: London Central (Via CVP)

On: 9th February 2024

Before: Employment Judge Grubb
(sitting alone)

REPRESENTATION:

Claimant: Mr David Simpson

Respondent: Ms. H. Gardiner (barrister)

Judgment

1. The Respondent has made an unlawful deduction from the Claimant's wages and is ordered to pay to the Claimant the gross sum of £1,974, in respect of the amount unlawfully deducted.

Reasons

1. This is a claim brought under s. 23 of the *Employment Rights Act 1996* for unlawful deduction of wages in the sum of £3,775.50.

Background

2. The Respondent is a provider of care services for older people. The Claimant has worked for the Respondent in various roles since April 2020 including as a home care assistant, a carer, on reception and as a financial administrator.

3. He says in his ET1 that he first raised concerns about discrepancies in pay in February 2022, but that these were not fully resolved. He also made a request for flexible working which was denied. He says he resigned as a result of these issues by giving one month's notice on 17th May 2022 and his final working day was 17th June 2022. He claimed to have been unfairly dismissed.

4. ACAS conciliation took place between 28th August 2022 and 9th October 2022. The Claim was lodged on 10th October 2022. As well as claiming an unlawful deduction of wages, the claimant was also claiming unfair dismissal and refusal to consider a flexible working request.

5. A hearing took place on 13th June 2023 to determine whether the Employment Tribunal had jurisdiction to consider the unfair dismissal and flexible working claims: It was claimed that the Claimant did not have the requisite 2 years' qualifying service for unfair dismissal or even 28 weeks qualifying service to make a flexible working request. The matter was decided by Employment Judge Leonard-Johnson who found that the Claimant did not have the requisite qualifying service and both the unfair dismissal claim and flexible working claim was dismissed.

6. The judge found that the Claimant had been employed on a 22-hour contract between 18th September 2020 and 1st October 2021. Between 5th November 2021 and January 2022, he had a 32-hour contract as a receptionist and went back to do bank work in January 2022.

7. It is not largely disputed that the Claimant worked as a bank worker from 31st January 2022 to 17th February 2022 before being employed as a financial administrator between 18th February and 17th June 2022.

8. Having dismissed the claim for unlawful dismissal and flexible working, the only claim that remains is that of unpaid wages. Following directions from the tribunal, the Claimant particularised this claim in his email of 27th October 2023.

Issues

9. The Claimant's claim can be broken down as follows:

a The Claimant claims £1,353 for the period September 2021 – June 2022 on the basis that he was entitled to be paid overtime rates of 1 1/3 for any time they worked over 40 hours a week but he was not. He says that he worked some 451 hours over 40 hours a week during that time period.

b The Claimant further claims wages of £2,380.50 for time spent "on call" while being responsible for staff rostering between 1st April 2022 and 27th April 2022.

10. The Claimant says that between September 2021 and June 2022 he worked over 40 hours a week some weeks but was paid an hourly rate when he should have been paid time and a third for any hours worked over 40 hours per week. He says that some 451 hours attracted the time and a third hourly rate.

11. In addition, he says that between 1st April 2022 and 27th April 2022 he was responsible for staff rostering which required him to be “on call” out of hours to deal with issues. He is claiming an extra 5 hours pay a day for weekdays due to being on call between 7am to 9 am and 6 to 9 pm. He further claims he was on call at the weekend for 14 hours between 7am and 9pm. He claims a full hourly rate of £11.50.

12. The Respondent says that the claim is out of time. ACAS conciliation took place between 28th August 2022 and 9th October 2022. Consequently, any alleged acts occurring before 28th May 2022 are potentially not in time unless they form part of a series of payments.

13. The Respondent’s substantive defence in short is that the Claimant has no contractual entitlement to the sums he is claiming.

a In terms of the claim for time and a third, the Respondent accepts that there was a policy in place that permanent workers being paid an hourly rate were entitled time and a third for any hours worked in excess of 40 hours per week. However, this did not apply to bank workers or salaried employees, and so largely did not apply to the Claimant. It is however accepted that this policy would have applied to the Claimant when he was working as a care assistant from 9th September 2020 to 1st October 2021, but only if he worked over 40 hours in that role. The Respondent denies that the Claimant worked over 40 hours in that role.

b In terms of the on-call hours claimed between 1st and 27th April 2022 the Respondent also says that given this was a salaried role, overtime needed to be authorised in advance, before it could be claimed and no such authorisation was given.

14. It was confirmed on behalf of the Respondents that the level of compensation sought by the Claimant was not being challenged, merely his entitlement to the same.

15. The issues for the tribunal to determine were consequently agreed at the outset of the hearing to be as follows:

a Time:

- i Did the alleged missed payments for time and a third form part of a series of payments ending on or after 28th May 2022.
- ii Did the alleged missed payments for overtime form part of a series of payments ending on or after 28th May 2022.

- iii If not, was it reasonably practicable for the claim to have been made to the tribunal within the time limit?
- iv If it was not reasonably practicable for the claim to be made to the tribunal within the time limit, was it made within a reasonable period?

b Wages:

- i Was the Claimant entitled to be paid time and a third for any time he worked over 40 hours a week? Specifically:
 - 1 Did the Respondent's overtime policy apply to bank workers or salaried employees?
 - 2 If so, was the 40 hours per week only calculated with reference to hours worked in the roles to which the policy applied?
- ii Was the Claimant entitled to be paid for overtime worked as part of being responsible for the staff rota? Specifically:
 - 1 Was it a requirement that the Claimant obtain permission to work overtime in advance?
 - 2 If so, was that permission given?

Findings of Fact

16. Based on the findings of Employment Judge Leonard-Johnson and what is agreed between the parties the Claimant's roles with the Respondent were as follows:

- a The Claimant joined the Respondents in April 2020 on a bank activity co-ordinator role.
- b On 8th July 2020 the Claimant took a bank role as a receptionist and was paid an hourly rate of £8.72.
- c The Claimant was employed on a 22-hour contract between 18th September 2020 and 1st October 2021 as a care assistant. This was originally denied by the Respondent but found to be the case by EJ Leonard-Johnson. In addition, the Claimant continued doing bank work as a receptionist and care assistant.
- d Between 5th November 2021 and 31st January 2022, the Claimant was employed as a receptionist on a 32-hour contract. This was not disputed. It was further agreed that overtime hours worked in this role would attract the time and a third rate.
- e The Claimant worked as a bank worker from 31st January 2022 to 17th February 2022.
- f The Claimant was employed as a financial administrator between 18th February 2022 and 17th June 2022. This was a salaried role for £23,192 per annum for 40 hours' work a week.

17. When the Claimant took over as financial administrator, he found out that he was no longer employed as a care assistant and that employees working over 40 hours a week were entitled to an enhanced hourly rate of time and a third. This was not materially disputed by the Respondent.

18. The Claimant began raising concerns verbally about his pay and hours worked with his line manager, Yvonne Tsiga (the House Manager) on 25th February 2022 and 1st March 2022 as he was doing extra hours which was impacting on his ability to complete his training for the Finance Administrator role. He then submitted an informal grievance on 7th March 2022 to Charlie Kenny, Regional Director. The Claimant had a discussion with Charlie Kenny on 10th March 2022 and confirmed that he was content for the matter to be resolved informally.

19. Ms Kenny concluded that the previous finance administrator had not submitted an “additional” spreadsheet before leaving in February 2022 and so some of the Claimant’s hours had not yet been paid. Furthermore, the Claimant had not been paid his welcome bonus. Ms Kenny closed the informal grievance on 18th March 2022 as resolved. The Claimant raised ongoing concerns about pay to both Ms Kenny and Ms Tsiga by email on 28th March 2022.

20. On 5th April 2022, the Claimant, Anyck Augustin (Resident Experience manager) and Martha George were sent an email from the Home Manager, Yvonne Tsiga asking them to work together to ensure that the home had sufficient cover on the rota for the upcoming weeks during Elin Tismo’s (Clinical Deputy Manager) absence. Ms Tsiga sent another email to the Claimant, Ms George and Ms Augustin on 8th April 2022 setting out their respective responsibilities. The Claimant was stated as being responsible for allocating HCA’s. I accept the Claimant’s evidence that this email was sent to re-assert responsibilities for rostering as the Claimant was finding himself assisting Ms Tismo and Ms Augustin in finding cover for their rota areas.

21. The Claimant continued to raise issues with pay by way of emails on 7th May 2022. Ms Tsiga responded to this by way of email on 17th May 2022.

22. In light of the response, the Claimant felt that he had no choice but to resign and did so on 18th May 2022. In a meeting with Ms Tsiga and Ms Kenny on 20th May 2022 the Claimant asked to have his pay reviewed. The Claimant was still awaiting an outcome to this on 1st June 2022 when he was informed that his final working day following his resignation would be 17th June 2022. At the time, the Claimant’s pay day was the last Friday of the month.

23. The Claimant submitted a formal grievance on 2nd June 2022. This raised the following issues:

- a That the Respondent had changed his contract of employment without following proper procedure and without his consent, in that his role as an employed, permanent care assistant was terminated.
- b That he was being required to work beyond his job description and was not being properly paid for hours worked. When considering the hours worked he was therefore being paid less than minimum wage. The Claimant raised his responsibilities for staff rostering as part of this issue.
- c That he was unable to submit a flexible working request. In this section he raised that he should have been paid time and a half.
- d That he was subject to negative treatment for raising these concerns.

24. The grievance was considered by Linda Marks (regional director of the Home Counties and London). A grievance hearing took place on 10th June 2022. Ms Marks also intervened Ms Tsiga on 14th June 2022 and again on 16th June 2022. The Claimant was informed of the outcome on 10th August 2022. Ms Marks did not uphold any of the Claimant's grievances and considered that:

- a The Claimant had not been employed as a care assistant on a 22-hour contract between 18th September 2020 and 1st October 2021.
- b The Claimant had been asked to detail the extra hours he had worked by Ms Tsiga on 16th May 2022, but had not done so.
- c His overtime had not been authorised or properly particularised by him despite being asked to do so.

25. The Claimant appealed the outcome of the grievance on 10th August 2022. A grievance appeal hearing was convened on 11th August 2022 and chaired by Nicola Siron (Senior HR Business partner). The Claimant was sent the outcome of the appeal on 26th August 2022.

Conclusions

26. In reaching my conclusions I had benefit of sight of a hearing bundle running to 320 pages, witness statements from the Claimant and Linda Marks who also gave oral evidence. Overall, I found the Claimant to be a credible witness, his evidence was both internally and externally consistent. He did not seek to exaggerate his position and openly admitted points that were potentially damaging to his case.

Time

27. The time limit is 3 months beginning with the date of payment of the wages from which the deduction was made (*s.23(2)(a) Employment Rights Act 1996* ("ERA")) with an extension for early conciliation unless it was not reasonably practicable to present the claim in time and it was presented within such further period as the Tribunal considers reasonable.

28. If the complaint is about a series of deductions or payments, the three-month time limit starts to run from the date of the last deduction or payment in the series: s.23(3) ERA.

29. Guidance on what constitutes a series of deductions has recently been given by the Supreme Court in the case of the Chief Constable of Northern Ireland v Agnew [2023] UKSC 33 in which the court found that:

- a “Series” is an ordinary English word that broadly speaking means a number of things of a kind which follow each other in time.
- b Whether a claim in respect of two or more deductions constitutes a claim in respect of a series is essentially a question of fact.
- c When answering this question, all relevant circumstances need to be taken into account including:
 - i their similarities and differences;
 - ii their frequency size and impact;
 - iii how they came to be made and applied;
 - iv what links them together; and
 - v all other relevant circumstances.
- d It is important to identify the alleged series of deductions and the fault said to underpin it.
- e The series is not necessarily broken by a gap of more than three months or a lawful payment. All will depend on the nature and reason for the deductions.

30. The last deduction complained of by the Claimant is June 2022. Given that it is accepted that payment would have been made on the last Friday of the month. This would have been the 24th June 2022.

31. I find that the Claimant’s claims for time and a third forms part of a series of payments ending on 24th June 2022. I do not consider that the series was broken by the Claimant changing roles on 18th February 2022, 31st January 2022 or 5th November 2021 or his old roles ending. In forming this view, I take into account that the different contracts he was working under potentially affected his entitlement to these rates however the fault allegedly underpinning it is the failure to apply an overtime policy to him as well as providing the Claimant with inadequate information about the policy or the basis of his employment. While a failure to make such payments may have at times been lawful I do not consider that this breaks the series for the purpose of limitation.

32. I find however that the Claimant's claim for unpaid overtime between 1st April 2022 and 27th April 2022 does not form part of the same series of payments as the claim for enhanced hourly rate as the basis of the claim and the faults that underpin it are distinct. The fault in relation to overtime is a failure to approve the overtime worked.

33. I find that the claims for overtime form part of a series ending on 27th May 2022 being the last Friday on which payment would have been made. I find that the series ends on 27th May 2022 for the following reasons:

- a I heard evidence that such time would have to be entered on an "additional" sheet before being processed.
- b There is no evidence to suggest that there was a requirement for claims to be entered onto the spreadsheet immediately, indeed, there was evidence that there was sometimes delay in doing so.
- c I find it unlikely that any such sheet would have been processed between 27th April 2022 (which was the last day on which such overtime is alleged to have been worked) and 29th April 2022 (which was the last Friday in the month).
- d As such, I consider it likely that this last payment would have normally been expected on the last Friday of the following month being the 27th May 2022.

34. This claim therefore needed to have been brought or ACAS conciliation commenced by 27th August 2022. ACAS conciliation however only commenced on 28th August 2022. Consequently, the claim for overpayments was not brought in time.

35. I find however that it was not reasonably practicable for the Claimant to have brought this claim in time. I accept the Claimant's evidence that he thought he needed to wait for the outcome of the grievance appeal before taking further steps. He took these steps promptly by contacting ACAS two days after receiving the outcome of the Appeal. He issued his claim the day after early conciliation ended and I find that he was not aware that his claim for on call overtime was out of time.

36. The Claimant was also grappling with a number of different issues relating to his employment including the claim for time and a third, his bonus payment for starting the administrator role and missed payments as a result of other worked hours not being properly entered into the "additional" sheet. In addition, the Claimant was also dealing with being denied flexible working and concerns that he had been unfairly dismissed. While the Claimant was ultimately found to not have the qualifying periods of continuous employment, that does not change the fact that these were issues that were occupying the Claimant at the material time and that these were arguably more significant in his mind than the claim for time worked "on call". I find that the Claimant did not know that he should have brought the claim for "on call" wages sooner as a distinct claim.

37. In forming this view, I also take into account that fact that the administration and record keeping by the Respondent at the time was not entirely accurate. For example, despite an investigation it was wrongly concluded that the Claimant had not been

employed as a care assistant on a 22-hour contract between 18th September 2020 and 1st October 2021. It has further been accepted that the Claimant had not received his bonus and pay for hours worked as a result of poor record keeping.

38. In addition, the policy relating to entitlement to time and a third was not written down. I further do not have sight of a written policy confirming procedures for claiming overtime as a salaried employee. The Claimant's contract also provides for potential variation of working hours and terms, stating that:

"You are contracted to work 40 hours per week. Your break entitlement will be 150 minutes. Your working hours may vary each week and shall be allocated to you by way of a weekly rota. Due to the nature of a care home we need to provide a 24 hour 7 day a week service to residents and your hours may vary to meet the needs of the business. Your normal working days are Friday to Thursday.

...

We reserve the right to make reasonable changes to any of your terms of employment. You will be notified in writing of any change as soon as possible and in any event within one month of the change."

39. For these reasons I consider that the basis of the Claimant's employment, his contractual entitlement and appropriate procedures were unclear and created confusion as to what the Claimant was entitled to claim and when this had to be claimed by. This is particularly so given that elements of his claim were in time.

40. For all these reasons I do not consider it to have been reasonably practicable for Claimant to have distinguished at that stage the need to make a claim in respect of a discrete element of "on call" work given the other issues he was grappling with. I do not consider it would have been reasonably practicable to issue the claim for overtime for on call work between 1st April 2022 and 27th April 2022 on time.

41. For the reasons given above, I also consider that he issued this claim within a reasonable period. The claim is 1 month and 13 days out of time. However, I find that the Claimant was not properly aware of the time limits and mistakenly believed that he could complete the appeal process before taking further steps. He acted promptly, entering into conciliation two days after receiving the outcome of the Appeal and issuing his claim the day after early conciliation ended.

42. For these reasons I consider that the tribunal has jurisdiction to hear the claim under s. 23(4) ERA.

Backstop

43. Section 23(4A) ERA states that the tribunal cannot consider a complaint for a deduction taking place more than two years before the complaint was presented. As such, any deductions made before 10th October 2020 are not recoverable.

Time and a Third

44. It is understandable that there was considerable confusion over the terms of this policy and who it applied to given that nowhere is this policy written down. Moreover, the approach on overtime varies between Care Homes as was confirmed by Ms Marks.

45. The Claimant says that he was not aware of this policy until he began work as a finance administrator, at which point he realised the policy should apply to him when he worked over 40 hours a week. In his grievance meeting he explained that he spent a day and a half with the previous finance administrator Amit, who explained to him how the policy worked. He was not told that this only applied for hours worked in certain roles. It was explained to him at the time by Amit when he transferred to a reception contract on 5th November 2021 that he would no longer be paid for overtime unless it was authorised.

46. The Respondent relies on the evidence of Ms Marks, as to what the policy on overtime payments was. I note that she has no direct experience of the practice in the Claimant's care home. Her findings in the grievance were *that "only permanent employees in any role, including Care assistant are eligible for this incentive, Bank worker roles are not eligible for this incentive."* This is somewhat different to the case advanced before me in Ms Marks' witness statement and at the hearing which was the policy does not apply to bank or salaried employees.

47. The way the overtime policy is described in the letter detailing the outcome of appeal is also different. At paragraph 3.1 it states that: *"I have explored this further with the finance team to determine the overtime rates in place for the Kensington and can confirm the overtime rate in place for some time, is 1.33 x hourly rate for hours above the full-time contracted hours. This applies to permanent roles in the home, except for nurses who are subject to different rates as per the business case. Shifts assigned to bank workers are not subject to overtime.... The Health Roster Team have confirmed that overtime rates cannot be assigned to bank shifts in Health Roster as the rates are built into the Health Roster system to define the payment type and a file is generated from the system with the hours against the job and payment type for Payroll. For the avoidance of doubt, you would have had to work over 40 hours under a permanent role to attract enhanced rates of pay, irrespective of hours worked under your bank contract."*

48. I have no signed statement from either Nicola Siron (who conducted the appeal) or anyone from the finance team to confirm this and neither were present for this evidence to be tested. Consequently, I give this evidence little weight.

49. It is not disputed that the Claimant was somewhat unique in the hours that he worked. Further it has already been established that the record keeping in the additional

spreadsheet was not always up to date and accurate. For these reasons I do not consider that the data on the additional spreadsheet is conclusive either way.

50. On balance, I prefer the evidence of the Claimant on this matter given that he had direct experience of the policy applying in the home in which he worked. As acknowledged by Yvonne Tsigas in her meeting with Ms Marks on 14th June 2022, the Claimant has a good eye for detail and this came across in his evidence to me. His evidence on this point has also been largely consistent whereas the evidence on behalf of the Respondent was not.

51. For these reasons I find that the Claimant was entitled to time and a third for any hours worked over and above 40 hours a week regardless for the roles he was carrying out while working those hours. As Claimant's figures on this point have not been challenged, I find that the Claimant's was entitled to £1,353, which has not been paid.

On Call Overtime

52. I accept the Respondent's assertion that the Claimant would only be entitled to payment for additional hours worked (and thus the "on call" element) where he had been given permission to work those additional hours. The Claimant showed a clear awareness of the requirement for overtime to be approved in the grievance meeting.

53. I do not however accept that such overtime needed to be authorised in advance as is now being asserted by the Respondent. From the information provided by Yvonne Tsigas in interview, it is clear that such permission was given retrospectively, for example:

a In interview she stated that *"DS would come to me with any additional hours with an explanation of why the team members worked overtime.....In the time DS was in admin I never approached the receptionists to work overtime, it would always be through DS."*

b Another example was given by Ms Tsigas was when the Claimant helped move a bed and she recalls telling him afterwards *"make sure you put that on the Additional payments Spreadsheet."*

c Ms Tsigas also recalls a conversation where the Claimant covered the desk until 18:00 and she recalls saying *"put your hours there."* He said *"I don't authorise my own hours"* and she explained that she would authorise it.

54. For these reasons I find that it was custom and practice for such approval to be given informally and retrospectively.

55. The Claimant in his evidence does not suggest that he was given express authorisation to work overtime or told expressly that he would be paid extra for time spent on the rota system outside of his usual hours.

56. Ms Tsiga in her interview on 28th June 2022 said that she initially believed the rota work could be done in the Claimant's hours as this is what the previous administrator had been able to do and the tasks had been divided between three people. The Claimant was responsible for carer shifts. Ms Tsiga was not present to give evidence or be questioned on this point, but I find that this belief was genuinely held as the reasons for holding that belief seem inherently plausible and are consistent with the evidence I have heard and read.

57. However, in that same interview Ms Tsiga says that there was sickness absence and that she was aware that he was working outside of his contractual hours. This corresponds with the Claimant's evidence and Whatsapp messages that supports that there was a Covid outbreak at the home at the time. I find that it soon became clear to Ms Tsiga that it was necessary for the Claimant to work outside of his contractual hours to ensure shifts were covered due to the Covid outbreak in the home.

58. The Claimant says that Ms Tsiga was aware that he was working significant hours outside of his contracted hours both in the office and because staff would contact him on his personal phone. I have sight of Whatsapp messages passing between the Claimant and Ms Tsiga that make clear that he was working outside of his contractual hours, such messages include one sent at 19:25 on 5th April 2022, message exchange on 6th April 2022 between 18:09 and 19:50 trying to arrange cover, message at 18:24 on 8th April 2022 saying "*I have covered 2 of the nurse shifts. Just 2 left to go.*"

59. Ms Tsiga also indicated her awareness that the Claimant was working outside of his contractual hours when she said in interview on 28th June 2022 that she would often ask the Claimant what he was still doing there and the Claimant would say that someone texted so he was trying to find cover. She recalls saying that she has access to the system and so could do it, but the Claimant said that he could. Similarly, Anyck Augustin would also offer, and the Claimant would say that he would cover it. It would appear that Ms Tsiga and Ms Agustin then left the Claimant to do this work.

60. I further have sight of messages passing between the Claimant and Ms Augustin and Tismo, messages between the Claimant and non-clinical staff and messages between the Claimant and care staff, which also provide a flavour of the work being carried out by the Claimant outside of his contracted hours. The Claimant says that he was relied on as others were not as familiar with the system. This is corroborated to a degree by Ms Tsiga who volunteered in her interview that she was not au fait with the system.

61. Notably, nowhere in the Whatsapp exchange between the Claimant and Ms Tsiga does she make clear to the Claimant that he should not be doing this work out of hours or that he should be getting someone else to do it. Indeed, the clear impression from the exchange between the Claimant and Ms Tsiga is that she wants the Claimant to do this work. While I note that there were comments made to the Claimant that he should have gone home earlier or asking him what he was still doing at work, when read in context

these were more expressions of sympathy rather than a direction or indication that the Claimant was not supposed to be working at that time.

62. On the evidence before me, I find that Ms Tsiga's conduct was such that an objective, impartial observer would conclude that she was authorising the Claimant to carry out this additional work outside of his contractual hours and that express permission would retrospectively be given as it had been on previous occasions.

63. For these reasons I find that the Claimant was entitled to payments for time worked outside of office hours on the staff rota.

64. I do not however find that the Claimant was expected to be "on call" to an extent that he should be paid 5 hours extra a day for weekdays and 14 hours per day on weekends. The proper entitlement is for the Claimant to receive payment for time actually worked.

65. The Claimant has not provided full details of time actually worked or evidence of all Whatsapp messages to evidence the full extent of the work he was doing. I accept that the Claimant did have work to carry out each morning and night and that this was by way of texts calls and Whatsapp messages.

66. Based on the representative Whatsapp messages and Claimant's oral evidence I find it more likely than not that he would have worked:

- a 2 hour extra on weekdays for 19 weekdays totalling 38 hours
- b 4 hours extra on four weekends totalling 16 hours

67. Based on the agreed rate of £11.50 per hour, the Claimant is therefore entitled to an additional £621 for this head of claim.

68. Taken together with the sum of £1,353 outstanding in respect of time and a third, the total amount of gross unpaid wages is £1,974.

Employment Judge Grubb

Date: 12th March 2024

JUDGMENT AND REASONS SENT TO THE PARTIES ON

28 March 2024

FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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