



# Maine Human Rights Commission

# 51 State House Station, Augusta, ME 04333-0051

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## INVESTIGATOR'S REPORT

PA12-0004

November 15, 2013

[REDACTED]

v.

[REDACTED] (Augusta)

### I. Complaint:

Complainant [REDACTED] alleges that Respondent [REDACTED] discriminated against her on the basis of disability by failing to make a reasonable modification in a policy or practice necessary to ensure her full and equal access to a place of public accommodation.

### II. Respondent's Answer:

Respondent denies discrimination and alleges that Complainant was not denied full and equal access to the place of public accommodation, and that her requested modification was unreasonable in that it would impose an undue financial burden.

### III. Jurisdictional Data:

- 1) Date of alleged discrimination: September 22, 2011.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): January 4, 2012.
- 3) Respondent operates a place of public accommodation and is subject to the Maine Human Rights Act ("MHRA").
- 4) Complainant is represented by [REDACTED]. Respondent is represented by [REDACTED].
- 5) Investigative methods used: A thorough review of the materials submitted by the parties. This preliminary investigation is believed to be sufficient to enable the Commissioners to make a finding of "reasonable grounds" or "no reasonable grounds" in this case.

### IV. Development of Facts:

- 1) The relevant parties, issues, facts and documents in this case are as follows:
  - a) Complainant is deaf. She participated in a six-week public seminar offered by Respondent.

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- b) Respondent operates a non-profit agency offering outreach support services to the elderly community.
  - c) The workshop Complainant participated in was called "Living Well for Better Health" and ran from September 22, 2011 to October 27, 2011.
  - d) Complainant requested an American Sign Language ("ASL") interpreter as a reasonable modification in order to participate in the workshop. Respondent denied the request and alleged that the cost of an interpreter would constitute an undue financial burden.
  - e) Exhibit A is a financial summary of Respondent's operations in 2011.
- 2) Complainant provided the following:
- a) Respondent denied her the reasonable modification of an ASL interpreter necessary for effective communication for her participation in the medical workshop "Living Well for Better Health." Without an ASL interpreter, she was unable to effectively communicate during the workshop, and was therefore denied full and equal access to the benefits of the program and place of public accommodation.
  - b) Respondent first offered the workshop in May of 2011 and provided Complainant with an interpreter. The workshop was cancelled after three sessions due to low participation, and offered again in September of 2011. Complainant was denied an interpreter in September of 2011 because Respondent had not budgeted for interpreters.
  - c) It was not an undue burden for Respondent to provide an interpreter at the cost of \$1,350 (Respondent estimated \$2,000 - \$2,700, but could cut this number in half if it contracted an interpreter directly rather than through an agency). Respondent has an annual income of approximately 6.5 million dollars. When considering the overall financial resources of Respondent, the cost of an ASL interpreter cannot be considered an undue burden.
  - d) The alternative accommodations Respondent provided to Complainant did not ensure effective communication. She stayed home the second session because she knew there would not be an interpreter provided. The speech recognition software was not effective (this is acknowledged by Respondent), and lip reading is at best 30% effective, less so in a group setting with strangers.
- 3) Respondent provided the following:
- a) Complainant was not granted the modification she requested because it was not reasonable in that it imposed an undue financial burden on Respondent. The agency is a non-profit that was in financial hardship at the time of the request. Financial documents show that in September of 2011 the agency was operating at a \$60,000 deficit (see Exhibit A). It could not afford to cover the estimated \$2,000 to \$2,700 (or even \$1,350, the estimated cost quoted by Complainant) cost of an ASL interpreter for Complainant during the six-week workshop.
  - b) Respondent attempted to comply with Complainant's request, and contacted other organizations in an attempt to get additional funding to obtain an interpreter for Complainant. Respondent had been able to hire interpreters for the May session of the workshop because it received assistance from another organization; this time, though, Respondent could not get additional funding. The cost of

the workshop was funded by a grant which did not cover interpreters. Respondent was able to put on the workshop only with the aid of the grant. It could not afford to hire an interpreter for Complainant without grant money, as the agency was already operating at a deficit.

- c) Complainant was not excluded from or denied full access to the workshop. Respondent provided Complainant with several effective means of communication throughout the workshop. Complainant was offered the use of speech recognition software and received individual attention from the facilitators, including additional documents and outlines of the material being covered in class. The speakers during the workshop also repositioned themselves to be directly in front of Complainant while speaking so that she could read lips. This was done after it became apparent that the speech recognition software only was effective when one person was speaking at a time, and not in a group setting.
- d) Complainant successfully participated in and completed the workshop. In her written evaluation after the course, Complainant acknowledged that the workshop facilitators were helpful, effective, and made her feel welcome as part of the group.

#### **V. Analysis:**

- 1) The MHRA requires the Commission to “determine whether there are reasonable grounds to believe that unlawful discrimination has occurred.” 5 M.R.S. § 4612(1)(B). The Commission interprets this standard to mean that there is at least an even chance of Complainant prevailing in a civil action.
- 2) The Maine Human Rights Act defines unlawful public accommodations discrimination to include, “[a] failure to take steps that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services...” 5 M.R.S.A. § 4592(1)(C).
- 3) The term “auxiliary aids and services” includes qualified interpreters. Me. Hum. Rights Comm’n Reg. § 7.17(B)(1).
- 4) The Commission’s Accessibility Regulations require that a public accommodation “shall furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with physical or mental disabilities.” Me. Hum. Rights Comm’n Reg. § 7.17(C).
- 5) The Maine Human Rights Act, 5 M.R.S.A. §4592(1), also defines unlawful public accommodations discrimination to include, “failure to make reasonable modifications in policies, practices or procedures, when modifications are necessary to afford the goods, services, facilities, privileges, advantages or accommodations to individuals with disabilities, unless, in the case of a private entity, the private entity can demonstrate that making the modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages or accommodations.” 5 M.R.S.A. § 4592(1)(B).
- 6) To establish a denial of reasonable modification by a public accommodation, Complainant must show that:
  - (1) She comes within the protections of the MHRA as a person with a disability;
  - (2) Respondent operates a public accommodation under the MHRA;


- (3) Respondent has in effect a policy, practice, or procedure that, directly or indirectly because of Complainant's disability, results in Complainant's inability to access Respondent's goods, services, facilities, privileges, advantages or accommodations;
- (4) Complainant requested a reasonable modification in that policy, practice, or procedure which, if granted, would have afforded her access to the desired goods, services, facilities, privileges, advantages or accommodations;
- (5) The requested modification—or a modification like it—was necessary to afford that access; and
- (6) The Respondent nonetheless refused to modify the policy, practice, or procedure.  
*See* 5 M.R.S.A. § 4592(1) & (1)(B); *Dudley v. Hannaford Bros. Co.*, 333 F.3d 299, 307 (1<sup>st</sup> Cir. 2003).
- 7) In proving that a modification is "reasonable," Complainant must show that, at least on the face of things, it is feasible for the public accommodation under the circumstances. *See Reed v. Lepage Bakeries, Inc.*, 244 F.3d 254, 259 (1st Cir. 2001) (employment case).
- 8) Upon such a showing, Respondent must make the modification unless it proves that doing so would alter the fundamental nature of its goods, services, facilities, privileges, advantages or accommodations; would impose an undue financial burden; or that the requested modification poses a direct threat to the health or safety of others. *See* 5 M.R.S.A. § 4592(1) & (1)(B); *Maine Human Rights Com'n v. City of South Portland*, 508 A.2d 948, 955 (Me. 1986); *Dudley v. Hannaford Bros. Co.*, 333 F.3d at 308; *Halpern v. Wake Forest University Health Sciences*, 669 F.3d 454, 464 (4<sup>th</sup> Cir. 2012).
- 9) Generally, Respondent is only required to provide a reasonable accommodation if Complainant requests one. *See Reed v. Lepage Bakeries, Inc.*, 244 F.3d at 261.
- 10) Here, Complainant establishes a denial of a reasonable modification by showing that she has a disability, that she requested an interpreter as a modification for her participation in a program offered by a place of public accommodation, that the modification was reasonable in that it appeared feasible for Respondent given Respondent's size, that the interpreter was necessary for full enjoyment and access to the program, and that the modification was denied. Although Respondent alleges that an interpreter was not necessary to enjoy the full benefits of the workshop, this is not being credited considering it was undisputed that certain accommodations provided were not effective (such as the speech recognition software) and Respondent could not refute the low effectiveness of lip reading alleged by Complainant in comparison with an ASL interpreter.
- 11) Respondent, however, was able to prove that granting the modification of an interpreter was unreasonable in that it presented an undue financial burden on the agency. While Complainant alleged Respondent had an income of \$6.5 million dollars and could have easily provided an interpreter at the cost of \$1,350, a financial statement (attached as Exhibit A) shows that in September of 2011, Respondent was operating at a deficit of approximately \$60,000. Complainant could not refute this, or the fact that the program she was participating in was fully funded by grants. Without extra grant funding to cover the cost, it is not unreasonable to deny a requested modification that would cost Respondent \$1,350 or more.
- 12) Respondent's position is buttressed by the fact that it was able to provide interpreters for the May program only by working with an outside agency for additional funding. It again sought funding from outside agencies when Complainant signed up for the September workshop, but could not get extra funding from these sources. This supports Respondent's position that its funds for this workshop were limited to the grant funds it received.

**VI. Recommendation:**

For the reasons stated above, it is recommended that the Maine Human Rights Commission issue the following findings:

- 1) There are **No Reasonable Grounds** to believe that [REDACTED] discriminated against [REDACTED] on the basis of disability by denying her a reasonable modification.
- 2) The Complaint should be dismissed in accordance with 5 M.R.S. § 4612(2).

  
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Barbara Archer Hirsch, Counsel

  
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Angela Vizón, Investigator

