

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

BARBARA L. CRISSMAN,
Complainant

v.

DOCKET No. H-8072

BOROUGH OF VANDERGRIFT,
Respondent

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RECOMMENDATION OF HEARING CHAIRPERSON

FINAL ORDER

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

Barbara Crissman,
COMPLAINANT

V.

Vandergrift Borough City Council,
RESPONDENT

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: H-8072
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STIPULATIONS OF FACT

The following facts are admitted by all parties to the above captioned case and no further proof thereof shall be required:

1. The Complainant herein is Barbara L. Crissman.
2. The Respondents herein are Vandergrift Borough City Council, Vernon Sciullo, President of Council and Stephen Delledonne and Louis Purifacto, Police Chief.
3. On or about February 29, 2000, Complainant timely filed a verified complaint against Respondents, with the Pennsylvania Human Relations Commission (hereinafter Commission).
4. The Complaint was served upon Respondents on March 6, 2000.
5. Respondent answered the Complaint.
6. Following an investigation, a probable cause finding

was approved by the legal division on or about July 14, 2000 and Respondents were notified of the finding.

7. A conciliation meeting was held on August 10, 2000 but failed to resolve the matter. Other attempts at settlement have also failed.
8. The case was approved for Public Hearing by the Executive Director and was placed on the Public Hearing Docket by the Commission at its 11/20/00 meeting.

These Stipulations of Fact, together with the Witness List submitted by each party will become a part of the official record in this case and will be incorporated into the transcript prepared during the course of any subsequent Public Hearing held in this matter.

By Respondents:

Michael T. Terry

RESPONDENTS

11/17/01

Date

By: Pennsylvania Human Relations Commission:

Nancy Gippert

Nancy Gippert, Esquire

1/17/01

Date

FINDINGS OF FACT

1. The Respondent in the instant case is the Borough of Vandergrift (hereinafter "Borough") (S.F 2).
2. The Complainant herein is Barbara L. Crissman (hereinafter "Crissman"). (S.F.)
3. Crissman applied for a handicap parking space in front of her home on September 9, 1999 (N.T.26).
4. This application for a parking space was based on her disability, spinal stenosis. (N.T.26).
5. When Crissman applied, in September of 1999, there was no cost for a handicap parking space. (N.T.26).
6. The Borough's Chief of Police indicated he was unaware of this particular disability. (N.T.28).
7. The Chief of Police in the Borough was the individuals who received and processed applications. (N.T.28).
8. Crissman then told the Chief to contact Dr. Chowdhry, her neurosurgeon. (N.T.28).
9. Approximately a week later, the Borough's Chief of Police told Crissman he had not talked to her doctors. (N.T.28).
10. Crissman subsequently provided the Chief with additional information. (N.T.28).
11. Crissman attended Borough Council meetings in December, 1999 through February of 2000 in an attempt to get her application approved. (N.T.30).

12. The Borough did not address Crissman's application for a handicap parking space. (N.T.30).
13. At the December, 1999 Borough Council meeting, a moratorium was placed approvals for handicap parking spaces. (N.T.29).
14. Crissman has continued to apply and has done so for over two years. (N.T.26).
15. At the July 2, 2001 meeting of Borough Council, a new handicap parking policy was established. (N.T.50-51).
16. Borough records, indicates that they receive two or three requests for handicap parking spaces a month. (N.T.64).
17. Under the new policy developed by the Borough Council, a handicap parking space at a metered space will cost \$150.00. (N.T.56).
18. A Handicap parking space at a non-metered space will cost \$50.00. (N.T.56).
19. A parking permit at a non-metered space not in the Borough's business district is \$24.00. (N.T.58-60).
20. Crissman meets the requirements for a handicap parking space under the Borough's new policy. (S.F9).
21. Furthermore Crissman has requested a space next to the sidewalk by her house. (N.T.24).
22. The Borough wanted to give Crissman a metered space a distance from her walkway. (N.T.77).
23. This space would have cost Crissman \$150.00. (N.T.84).
24. Crissman has problems walking over the grass area to the sidewalk at the parking space the Borough is proposing. (N.T.24).

25. When someone is parked in the space next to the walkway, Crissman must walk 40-50 feet to enter her house. (N.T.32).
26. This is extremely difficult for Crissman, because walking is difficult in the winter and the summer heat makes her ankles swell. (N.T.32-33).
27. Because there is no space in front of the house, Crissman is afraid to go anywhere in the car without her husband. (N.T.32-33).
28. Crissman is embarrassed and humiliated because she has to stop and rest when she leaves her car. (N.T.34).
29. When Crissman drives herself and has to park a distance away, she has to blow her horn so her husband can come and get her. (N.T.47).
30. There is approximately 27 feet from the parking meter in front of the walkway to the walkway. (N.T.48-49).
31. Crissman's car is 15 feet from bumper to bumper. (N.T.49).
32. In the Borough, there are handicap parking spaces on metered streets that do not have meters. (N.T.62).
33. Crissman's street is a street one where a non-handicap parking space at a parking meter is not available to residents for \$24.00. (N.T.61).
34. The Borough's justification is that Grant Street is in the business district. (N.T.61).
35. However, the area where Crissman lives is not part of the business district. (N.T.61; J.E.1, 2,4,).
36. There is sufficient space behind a car parked at the walkway in front of Crissman's house to meet state regulations for distance from a crosswalk to a parking space. (N.T.78).

37. When Crissman is in need of a parking space in front of her house, the space by the walkway in front of her house is taken 75% of the time. (N.t.42).
- 38 Crissman leaves the house on a daily basis and drives herself 50% of the time. (N.T.42).

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission (PHRC") has jurisdiction over the parties and the subject matter of this case.
2. The parties have fully complied with the procedural prerequisites to a public hearing.
3. The provision of a handicap parking space in front of an individual's home is a service under §955(h)(3.2).
4. The Borough is a public accommodation within the meaning of the PHRA.
5. Crissman established a *prima facie* case of discrimination under section 5(h)3.2)by showing:
 - a. that she was a member of a protected class, in that she has a physical impairment which substantially limited a major life activity;
 - b. that the Borough was aware of her disability;
 - c. that Crissman requested a disability parking space near her home;
 - d. that such a space near her home was necessary to afford Crissman an equal opportunity to use and enjoy her home; and
 - e. that the Borough denied her request by initially refusing to consider her request and then charging her a fee.
6. The Borough denied her request by failing to show that if Crissman's request were granted that the Borough would either suffer an undue hardship or that the request was unreasonable.
7. Crissman established a *prima facie* case under section 5(i) by showing:
 - a. that she has a disability;
 - b. that the Borough denied her the benefit of equal services; and

- c. that the denial of equal services had a discriminatory effect.
8. Crissman met her ultimate burden of persuasion that the Borough's action violated section 5(h)(3.2) and 5(i) of the PHRA.
 9. Crissman established that she suffered embarrassment and humiliation due to the Borough's action.
 10. The PHRC may award actual damages, including damages caused by humiliation and embarrassment for violations of section 5(h).
 11. The PHRC may also order the Borough to cease and desist from the discriminatory practice.

OPINION

This case arises on a complaint filed by Barbara Crissman, (hereinafter "Crissman"), against the Borough of Vandergrift, (hereinafter the "Borough"), on or about, February 29, 2000, at Docket No. H-8072. In the instant complaint, Crissman, on or about October 4, 1999, applied for a handicap parking permit with the Borough. Crissman alleges that the denial of a handicap parking permit is in violation of §955(i) of the Pennsylvania Human Relations Act (PHRA) of October 27, 1955, P.L. 744 43 P.S. §951 et seq (hereinafter "Act").

PHRC staff conducted an investigation and found probable cause to credit the allegations of discrimination. The PHRC and the parties then attempted to eliminate the alleged unlawful practices through conference, conciliation and persuasion. The efforts were unsuccessful, and the instant case was approved for public hearing. The public hearing was held on July 17, 2000, in New Kensington, Pennsylvania before Hearing Panel Chairperson Carl E. Denson. Initially, there were three Commissioners assigned to the instant case but the parties agreed to have Commissioner Denson hear this case. Phillip A. Ayers, Esquire served as Panel Advisor.

Charles F. Fox, III, Esquire appeared on behalf of the Borough and the PHRC interest in this matter was overseen by Nancy L. Gippert, Assistant Chief Counsel. Post hearing briefs were simultaneously submitted by the parties.

Section 5(h)(3.2) provides:

It shall be an unlawful practice:

For any person to [r]effuse to make a reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford [a] person with a disability equal opportunity to use and enjoy a housing accommodation.

Section 5(i) states in pertinent part:

It shall be an unlawful discriminatory practice . . . [f]or any person being the owner, lessee, proprietor, manager, superintendent, agent or employee of any public accommodation . . . to [r]effuse, withhold from or deny to any person because of his . . . handicap or disability . . . any of the accommodations, advantages, facilities or privileges of such public accommodation . . .

Section 4(p.1) states in pertinent part:

The word “**handicap or disability**”, with respect to a person, means . . . A physical or mental impairment which substantially limits one or more of such person’s major life activities.

Regulations found at 16 Pa Code §44.4, further define the phrase handicap or disability. Under this section a “physical or mental impairment” is defined as:

A physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin, and endocrine or a mental or psychological disorder, such as mental illness, and specific learning disabilities.

Major life activities are defined as:

[f]unctions such as caring for one’s self, performing manual tasks,

walking, seeing, hearing, speaking,
breathing, learning, and working.

We begin our analysis of Crissman's 5(h)(3.2) claim by Acknowledging that in the case of Allison v. PHRC, 716 A-2d 689 (Pa. Cmwith 1988), appeal denied, 1999 Lexis 541 (Pa. March 3, 1999), the Commonwealth Court approved for use in housing cases the *prima facie* model first set forth in McDonnell-Douglass v. Green, 411 U.s. 792 (1973) and subsequently adopted in Pennsylvania in Allegheny Housing Rehabilitation Corporation v. PHRC, 516 Pa. 124, 532 A2d 315 (1987).

As always, the analytical model is adapted to the particular facts of the instant case. A review of the parties' briefs reveals some similarities in the suggested elements of the requisite *prima facie* showing. Here, in order to establish a *prima facie* case under Section 5(h) (3.2), Crissman must establish:

1. That she is a member of a protected class;
2. That the Borough was aware of Crissman's disability.
3. That Crissman applied for a disability parking space.
An accommodation in front of her house.
4. That a disability parking space in front to her house was necessary to afford Crissman an equal opportunity to use and enjoy her home; and
5. That the Borough denied her request by refusing to consider her request and then charging a fee.

See Cummings v. Dedham Housing Authority, 1999 W. L. 442793 (1991).

If Crissman can meet her burden, then the burden shifts to the Borough to show that the request either imposes an undue financial or administrative burden on the Borough or that Crissman's request is unreasonable.

In the instant case, the Borough has agreed that Crissman meets the requirements for a handicap parking space. By agreeing that Crissman meets those requirements for a handicap parking space. By agreeing that Crissman meets those requirements, the Respondent has in fact conceded that Crissman has an impairment that substantially limits a major life activity, walking. Clearly Crissman is a member of a protected class and the Borough was aware of her disability. Next there is no dispute that Crissman did apply for a disability parking space, on a number of occasions.

There is no question that the Borough essentially denied Crissman's requests. The Borough did this by initially refusing to even consider her request, and then by adding a fee that was not being charged to individuals without a disability. Next the space in front of Crissman's home is certainly necessary for her to use and enjoy her home, and it is a reasonable request. Ms. Crissman, a very credible witness, testified to how difficult it is to enter her house when her car is not parked directly in front of her house. As Commission Counsel notes, since the Borough agrees that Crissman qualifies for a parking space, the issues become, placement of the space, whether it should be metered, and the cost of the space. Accordingly, Crissman has sufficiently established a *prima facie* case under Section §45.5 provide the factors to be considered in determining an undue hardship has been imposed.:

1. The extent, nature and cost of the accommodation required, including the overall size and nature of the housing accommodation or

commercial property. Financial capacity shall be a factor when raised as a part of an undue hardship defense.

2. The extent to which a person with a handicap or disability can reasonably be expected to need and desire to use, enjoy or benefit from the housing accommodation or commercial property which is the subject of the proposed reasonable accommodation.
3. The requirements of other laws or contracts, to the extent they are not preempted by the act.
4. The extent to which the accommodations would pose a demonstrable threat of harm to the health and safety for others.

The Borough argues that the proposed accommodation creates a demonstrable threat of harm and to the health and safety of others. The Respondent, quite simply, has not made this showing. The testimony and photographs produced at public hearing show that a vehicle can be parked safely at the space next to Crissman's home. Evidence addressed at the public hearing indicated that a stop sign is present and vehicles park in that area with no problems. There was no evidence presented that accidents were occurring at a greater frequency when cars were parked next to Crissman's home.

Next, the Borough argues that in light of financial needs, the Borough must charge \$150 for a handicap metered spot and \$50 for a non-metered handicap spot. Since the Borough charges \$24 for a non-handicapped resident to obtain a permit for a metered spot, the Borough's action is clearly unreasonable. Once again, testimony at the public hearing established that there were unmetered handicap parking in areas of the Borough that are

otherwise metered. The Borough has not shown a financial hardship as an impediment to reasonably accommodating Crissman.

Lastly, and most damaging, the Borough's new guidelines creates a cost to persons with disabilities that is greater than the cost to persons without a disability. The evidence at the public hearing showed that parking permits for residents at meters for a non-handicap spot are \$24. The Borough asserts that commercial areas are excluded. However, Crissman's house is not in the commercial area and is located on a residential street. A review of this case would lead to a belief that the Borough is deliberately trying to restrict handicap parking spaces by charging the fee of \$50 and/or \$150.

The Borough's guidelines also violate the Americans With Disabilities Act. PHRC regulations, 16 Pa. Code §44.2, provides that the chapter concerning handicap or disability is to be "construed consistently with other relevant Federal and State laws and regulations except where the construction would operate in derogation of the purposes of the Act and this chapter." Regulations attendant to the Americans with Disabilities Act of 1990 (P.L. 101-336, 42 U.S.C. §12101 et seq.) provide that "a public entity may not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover costs of measures, such as the provision of auxiliary aids . . . that are required to provide that individual or group with the nondiscriminatory treatment required by the Act," 28 C.F.R. §35.130(f) (emphasis added).

Also, in the instant case, Crissman has alleged a violation of Section 5(h)(i). In order to establish a *prima facie* case under Section 5(h)(i), Crissman must establish the following:

1. That she is an individual with a disability;
2. That the Borough denied her the benefit of equal services; and
3. That the denial of equal services had a discriminatory effect.

As already noted, Crissman easily establishes that she is disabled within the meaning of the PHRA. Equally clear is that Crissman applied for a service and was denied a handicapped parking space near her residence. By denying Crissman's request, the Borough failed to provide Crissman with an equally effective opportunity to participate in parking in the Borough's streets. Thus, denying Crissman's request, the Borough discriminated against Crissman on the basis of her disability.

The public accommodation provision of the PHRA applies whenever a denial of a service of a public accommodation has a discriminatory effect. Here, the effect of the denial was to enable persons without a disability to enjoy the benefit of parking more than Crissman. As aforementioned, the only way the Borough can avoid granting this accommodation to Crissman is to demonstrate that the granting of the accommodation would create an undue hardship. In the instant case before the Commission, the Borough has not presented any evidence of undue hardship.

Accordingly, Crissman has proven by a preponderance of evidence that the Borough has violated Sections 5(h)(3.2) and 5(i) of the Pennsylvania Human Relations Act. We now move to the issue of an appropriate remedy.

The PHRC has broad discretion to fashion a remedy where unlawful discrimination has been proven. Murphy, et al. v. Com., Pennsylvania Human Relations Commission, 506 Pa. 549, 486 A.2d 388 (1985). In fashioning a remedy the victim of discrimination is entitled to "make whole relief, which will

restore the victim to his or her pre-injury status.” Murphy. When a violation of Section 5(i) has been established, the main remedy is limited to a cease and desist order. However, in cases alleging a violation of section 5(h), in addition to a cease and desist order, the PHRC may also take whatever affirmative actions may be necessary and award actual damages including damages caused by humiliation and embarrassment as, in the judgment of the Commission, will effectuate the Act. When appropriate a civil penalty may also be imposed.

Humiliation and embarrassment can be inferred from the circumstances as well as established by testimony. Seaton v. Sky Realty Co., Inc., et al., 491 F.2d 634, 636 (7th Cir. 1974). See also HUD v. Blackwell, 2 FHFL ¶25,001 (HUD A.L.J. Dec. 21, 1989), aff’d. 908 F.2d 844 (11th Cir. 1990). The key factor in determining the size of an award for humiliation and embarrassment is a victim’s reaction to discriminatory conduct. HUD v. Benal, FHFL ¶25,095 (HUD ALJ 1995) aff’d 102 F.3d 1203 (11th Cir. 1997).

In housing cases, damages are to be measured on the injuries actually suffered by the victims of discrimination not on the basis of injuries that a reasonable person would suffer. See, HUD v. Kelley, 2 FHFL ¶25,034 (HUD ALJ Aug. 26, 1992).

In the instant case, Crissman, in her words, described the humiliation and embarrassment that she has suffered over this issue. The denial of the parking space for over two years has caused her worry, embarrassment and humiliation. Due to her disability, Crissman must stop and rest outside if she cannot get a parking space close to her house. Crissman testified to staying in the house rather than suffer the embarrassment of having to sit in the car

and blowing her horn so her husband will come out and get her. In dire situations Crissman has to struggle on her own to get into the house.

Based on the Borough's refusal of Crissman's request, we conclude that she suffered humiliation and embarrassment damages. Crissman, through Commission Counsel, has requested \$5,000 for her embarrassment and humiliation. We agree that an award of \$5,000 is not only reasonable but appropriate.

Under Section 9(f)(2)(i) of the PHRA, a civil penalty not exceeding \$10,000 may be imposed on first-time offenders of Section 5(h) of the PHRA. HUD v. Weber, P.H. Fair Housing Fair Lending, §25,041 (HUD ALJ, 1993), lists factors which can be used to consider an appropriate civil penalty. These factors are:

1. The nature of the violation;
2. The degree of culpability;
3. The Respondent's financial resources;
4. The goal of deterrence; and
5. Other matters as justice may require.

In the post-hearing brief filed by the PHRC Housing Division, the suggested civil penalty is \$1,500. This brief correctly observes that the Borough is small and submits that for reason, the appropriate civil penalty should be small. We agree. Accordingly, a civil penalty of \$1,500 should be assessed.

Also, Crissman should be granted a handicap parking space in front of her home. The space should be in a position where her passenger door opens to the walkway to the sidewalk. Furthermore, Crissman should not be

assessed a charge, because when Crissman originally applied, there was no charge associated with a handicap parking space.

Lastly, the PHRC Housing Division's brief requests an Order directing that the Borough's guidelines be amended to provide a charge to individuals with disabilities at a charge no more than the cost to individuals without disabilities who obtain spaces in the Borough.

An appropriate Order follows:

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN A RELATIONS COMMISSION

BARBARA CRISSMAN,
Complainant

v.

DOCKET No. H-8072

BOROUGH OF VANDERGRIFT,
Respondent

FINAL ORDER

AND NOW, this 20th day of MAY, 2002, after a review of the entire record in this matter, the Pennsylvania Human Relations Commission, pursuant to Section 9 of the Pennsylvania Human Relations Act, hereby approves the foregoing Stipulations of Fact, Findings of Fact, Conclusions of Law and Opinion of the Hearing Panel Chairperson. Furthermore, the Commission adopts said Stipulations of Fact, Findings of Fact, Conclusions of Law and Opinion as its own findings in this matter and incorporates the Stipulations of Fact, Findings of Fact, Conclusions of Law and Opinion into the permanent record of this proceeding, to be served on the parties to the complaint and hereby


ORDERS

1. That the Respondent and its agents shall cease and desist from discriminating on the basis of disability with regard to facilitating individuals with handicaps the right to parking spaces.
2. That Respondent and its agents shall comply with the Act and shall take the following affirmative actions which, in the judgment of the Commission, will effectuate the purpose of the Act:
 - a. Offer full, equal, non-discriminatory assistance without regard to disability to all such persons who come to the Respondent seeking assistance regarding housing accommodations or commercial property.
 - b. Immediately issue written instructions reciting paragraph 1 of this order to all employees and agents, as well as directing them to abide by this order and comply with the Act.
 - c. Furnish the Commission with a copy of said instructions within ten (10) days of the effective date of order.
3. That the Respondent shall expeditiously facilitate the assignment of a parking space to Crissman directly in front of her house next to the walkway, at no charge.
4. That within thirty (30) days of the effective date of this Order, the Respondent shall pay to the Crissman the lump sum of \$5,000 for the embarrassment and humiliation suffered by Crissman.
5. That within thirty (30) days Respondent shall forward to the Commonwealth of Pennsylvania a sum of \$1,500, in the nature of a civil penalty.

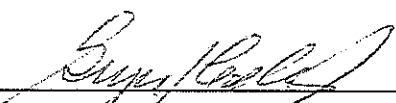
6. That within sixty (60) days Respondent shall develop a handicap parking fee scale that is in accord with, and no more expensive, than those charged for non-handicap parking.

7. That within thirty (30) days of the effective date of this Order, the Respondent shall report to the PHRC on the manner of its compliance with the terms of this Order by letter, addressed to Nancy Gippert, Esquire in the PHRC Central Office in Harrisburg.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By: 
Carl E. Denson, Chairperson

ATTEST:


Gregory J. Celia, Jr. Secretary