

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

**BRADLEY SEYMOUR, ON BEHALF OF HIS MINOR CHILDREN, KYLE AND KENT
SEYMOUR, Complainant**

v.

**PENN TOWNSHIP, YORK COUNTY, AND JEFFREY R. GARVICK, TOWNSHIP
MANAGER, Respondents:**

**PHRC CASE NO. 199804130
DOCKET NO. H-7709**

FINDINGS OF FACT

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF HEARING COMMISSIONER

FINAL ORDER

FINDINGS OF FACT *

1. The Complainant in the instant case is Bradley Gorman Seymour on behalf of his two minor children (hereinafter "Complainant"). (N.T. 22)
2. Respondent, Penn Township (hereinafter "Township") is a political subdivision of the Commonwealth of Pennsylvania.
3. Respondent Jeffrey R. Garvick was the Township Manager in 1998. (N.T. 35)
4. The Township provides sewer service to the Complainant's home. (N.T. 32)
5. The Complainant and his children resided, at all times relevant to this complaint, at 27 Earl Street, Hanover, PA with his five sons and his mother. (N.T. 22)
6. The Complainant and his sons are African American. (N.T. 23)
7. The Complainant's sons are Sydney, age 17; B.J., age 16; Kent and Kyle, ages 14; and Trey, age 10. (N.T. 23)
8. Kent and Kyle Seymour are twins. (N.T. 23)
9. The instant case was filed on behalf of the twins, Kent and Kyle. (N.T. 23)
10. Both of the twin sons suffer from multiple disabilities. (N.T. 24)
11. Kyle Seymour suffers from cerebral palsy, brain damage and has had a tracheotomy. (N.T. 24)

* To the extent that the Opinion that follows recites facts in addition to those here listed, such facts shall be considered to be additional Findings of Fact. The following abbreviations will be utilized throughout these Findings of Fact for reference purposes:

N.T. Notes of Testimony
C.E. Complainant's Exhibit
R.E. Respondent's Exhibit

12. Kyle also suffers from short gut syndrome in that he is missing a large percentage of his intestine. (N.T. 24)
13. As a result of this syndrome, Kyle must be fed by a machine. (N.T. 24)
14. Kent also suffers from short gut syndrome in that he is missing 80 percent of his large intestine, his small intestine and his colon. (N.T. 24)
15. The care of Kent and Kyle Seymour requires the use of water for sterilization. (N.T. 30)
16. On May 1, 1998, the Complainant submitted two certificates of medical necessity to the Respondent for Kent and Kyle Seymour. (N.T. 37-38, C.E. 1)
17. The certificates of medical necessity were signed by Douglas J. Masucci, M.D. (C.E. 1)
18. Kyle Seymour's certificate of medical necessity indicated that he has a seizure disorder and asthma. (C.E. 1)
19. Kent Seymour's certificate of medical necessity indicated that he has short bowel syndrome. (C.E. 1)
20. The certificates of medical necessity did not contain any further descriptions of the extent of either Kent or Kyle's conditions. (C.E. 1)
21. The certificates of medical necessity do not contain a beginning date or an ending date. (N.T. 66, C.E. 1)
22. The Complainant testified that he did not provide any other documents to the Respondent regarding his children's medical needs. (N.T. 74-75)

23. Certifications for medical necessity are valid for thirty (30) days. (N.T. 148)
24. Respondent Penn Township was responsible for providing sewer service to the Complainant at all times relevant to this action. (N.T. 32)
25. On June 13, 1997, the Township sent the Complainant a notice of violation indicating that if payment for a delinquent bill was not made by July 11, 1997, service would be disconnected on July 16, 1997. (N.T. 77, R.E. 1)
26. The Complainant's service was not disconnected because he paid the delinquent bill on July 11, 1997 (R.E. 1)
27. On September 12, 1997, the Township again sent the Complainant a notice of violation indicating that if a payment for a delinquent bill was not made by October 10, 1997, service would be disconnected on October 15, 1997. (N.T. 77, R.E. 2)
28. The Complainant's service was not disconnected because he paid the delinquent bill on October 14, 1997. (N.T. 78,79, R.E. 2)
29. On March 6, 1998, the Township sent the Complainant yet another notice of violation indicating that if payment for a delinquent bill were not made by April 9, 1998, service would be disconnected on April 14, 1998. (R.E. 3, N.T. 79)
30. The Complainant's service was not disconnected because he paid the delinquent bill on April 9, 1998. (R.E. 3)
31. On June 12, 1998, the Township again sent the Complainant a notice of violation indicating that if payment for a delinquent bill was not made by July 10, 1998, service would be disconnected on July 15, 1998. (R.E. 3, N.T. 80)
32. The Complainant did not contact Respondent Penn Township in the time period between June 12, 1998 and July 15, 1998 to attempt to make payment arrangements. (N.T. 81)
33. The Complainant did not contact the Red Cross for assistance during the time period between June 12th and July 15. (N.T. 81)
34. On July 15, 1998, the Complainant contacted the Red Cross only after the water was disconnected. (N.T. 81)
35. The Complainant's water service was disconnected from 10:00 a.m. until 3:00 p.m. (N.T. 81-82)
36. Neither of the Complainant's two disabled sons suffered any medical problems as a result of the disconnection. (N.T. 82)
37. At some point, between 10:00 a.m. and 3:00 p.m., the Complainant left the house to purchase bottled water. (N.T. 82)
38. The Complainant, on July 15, 1998, did not make any alternative arrangements to relocate his sons as a result of the water being disconnected. (N.T. 82)
39. The Complainant did not either take his children to or contact any medical facility on July 15, 1998. (N.T. 83)
40. The Complainant testified that he attempted to contact his state representative during this time period. (N.T. 104)
41. The water service at the Complainant's house was restored at 3:00 p.m. (N.T. 82)

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission (hereinafter “PHRC”) has jurisdiction over the parties and the subject matter of the instant case.
2. The parties have complied with the procedural prerequisites of a public hearing.
3. The Complainant and his sons are persons within the meaning of the Pennsylvania Human Relations Act (hereinafter “PHRA”).
4. Respondent Penn Township is a political subdivision located in York County in the Commonwealth of Pennsylvania.
5. In order to establish a *prima facie* case, the Complainant must show:
 - a. His minor children are members of a protected class.
 - b. The Respondent was aware of their disabilities.
 - c. The Respondent denied his request for an accommodation.
 - d. The Respondent treated others not in their protected class differently.
6. The Complainant failed to establish a *prima facie* case.
7. Assuming *arguendo* that the Complainant had established a *prima facie* case, the Respondent articulated legitimate, non-discriminatory reasons for its actions.
8. The Complainant did not show that the proffered reasons were pretextual.

OPINION

On or about August 21, 1998, Bradley Seymour, on behalf of his minor children, Kyle and Kent Seymour, filed a verified complaint with the Pennsylvania Human Relations Commission against Penn Township Sewer Department, Penn Township Board of Commissioners, Penn Township Municipal Center Manager Jeffrey R. Garvick, and the Borough of Hanover Water Department. The Complainant alleged that the Respondents failed to make a reasonable accommodation and disconnected his water service because of his race, Black, and the disabilities of his minor sons, Kyle and Kent Seymour. The Complainant further alleged that the Respondents’ actions violated Section 5(h)(3.2) of the Pennsylvania Human Relations Act of October 27, 1955, P.L. 744, as amended, 43 P.S. Section 955(a).

PHRC staff conducted an investigation and found probable cause to credit the allegations raised in the complaint. PHRC staff and the parties attempted to eliminate the alleged unlawful practice through conference, conciliation and persuasion. These efforts proved unsuccessful in resolving the matter, and the case was approved for public hearing. Both parties filed post-hearing briefs in this matter.

The public hearing was held on October 15, 2003 before PHRC Commissioner Raquel Ortero de Yiengst, with Phillip A. Ayers, Permanent Hearing Examiner, serving as Panel Advisor. This matter was originally scheduled before a three Commissioner but the parties agreed to waive to one Commissioner. Walter A. Tilley, III, appeared on behalf of the Respondents. William R. Fewell, PHRC Assistant Chief Counsel, represented the state’s interest in the complaint.

At the outset of the public hearing, the parties stipulated that Penn Township Sewer Department, the Penn Township Board of Commissioners and the Penn Township Municipal Center should be

removed as Respondents, and that the corrected caption would name as Respondents Penn Township, York County and Jeffrey R. Garvick, Township Manager. (N.T. 10-12)

Section 5(h)(3.2) of the PHRA states, “It shall be an unlawful discriminatory practice... for any person to refuse to make reasonable accommodation in rules, policies, practices or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a housing accommodation.”

The standard of proof model in cases of this nature was established in the landmark case of McDonnell-Douglas v. Green, 411 U.S. 792, 93 S.Ct. 181 (1973), The McDonnell-Douglas framework was adopted by Pennsylvania in General Electric Corp. v. Pennsylvania Human Relations Commission, 469 Pa. 292, 365 A.2d 649 (1976). Quite succinctly, the Complainant has the initial burden of establishing a *prima facie* case of discrimination. Once the Complainant establishes a *prima facie* case, the burden of production then shifts to the Respondent to produce evidence of a legitimate non-discriminatory reason for its action. See Allegheny Housing Rehabilitation Corp. v. PHRC, 516 Pa. 124, 532 A.2d 315 (1987). When the Respondent meets its burden of production, the Complainant then must show that the proffered reasons are pretextual or unworthy of credence. Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981)

In the instant case, the Complainant could establish a *prima facie* case by showing:

1. His children are members of protected classes, race and disability.
2. The Respondents knew of their disabilities.
3. The Respondents denied his request for an accommodation.
- 4) The Respondents treated others not in these protected classes differently.

Upon review of the record in the instant case, the Complainant has not set forth a *prima facie* case. The Complainant, on behalf of his minor children, is certainly within the protected classes of race and disability. The Respondents were aware two of the Complainant’s children have disabilities. However, the Complainant has not shown that there was a request for accommodation or that others not in the protected classes were treated differently.

However, assuming *arguendo* that the Complainant had set forth a *prima facie* case, the Respondents have articulated legitimate, non-discriminatory reasons for its actions in shutting off the water. The Respondents articulated that the cut-off occurred because the Complainant failed to pay a delinquent sewer bill.

The record reflects that the Complainant was sent a notice of violation on June 12, 1998. (R.E. 4). This notice informed the Complainant that his bill was delinquent and if he did not pay it by July 10, 1998, service would be disconnected on July 15, 1998. Unfortunately, the Complainant did not respond to the notice and for approximately five hours his service was disconnected on July 15, 1998 (N.T. 50). The record further reflects that the Complainant had received three prior notices of violations. The Complainant’s service was not disconnected in those instances because the Complainant responded by paying the delinquent bill. For some unexplained reason, the Complainant failed to respond to the fourth instance of delinquency.

The Complainant did not present any evidence to indicate that the service was cut off because of the race or the disabilities of his children. The only person that the Complainant tried to assert was treated differently was Mr. Gibson, a white neighbor. However, the Complainant admitted at the public hearing that he did not know if his neighbor had paid his bill or not, or whether his service was cut off. Significantly, this individual was not called as a witness to show that an individual not in the protected class was treated differently. (N.T. 84-87)

The Complainant was not able to contradict the testimony of Respondent Jeffrey Garvick, Township Manager. Mr. Garvick testified the he simply followed the procedures based on the ordinances that provided for the collection of fees for services and imposition of penalties for delinquent payments. Mr. Garvick testified that he followed these procedures without regard to the Complainant's race or the disabilities of his children.

There is a great deal of testimony in the record regarding the medical certificates supplied by the Complainant. These certificates were last filed with the Respondent on May 1, 1998, and the certificates were only in effect for 30 days. At the end of the 30-day period, the certificates had to be renewed. Even though the Complainant testified in great detail at the public hearing regarding his son's disabilities, the medical certificates clearly do not reflect such detail. The Complainant admitted that the medical certificates do not contain specific detail about either son's disabilities. The Complainant also admitted that he did not provide Respondent Penn Township with any other documentation aside from the medical certificates. (N.T. 74)

The matter before the Commission is an extremely unfortunate situation. The Respondent Penn Township followed procedures in that the Complainant was given more than 24 hours notice of the disconnection and the previously filed medical certificates had expired. The crucial fact in this case is that the Complainant, between June 12, 1998 and July 15, 1998, did not contact the Township to make payment arrangements. He admitted that he did not contact any outside agencies such as the Red Cross (N.T. 81). The Complainant certainly has a duty to pay his bills or to make arrangements to do so. The result of the Complainant's failure to do so was that the water service was cut off for a period of five hours. While the possibility of a very bad scenario loomed, the Complainant has not established that the Respondent's actions were a result of race or disability discrimination.

An appropriate Order follows:

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RECOMMENDATION OF HEARING COMMISSIONER

Upon consideration of the entire record in the above captioned case, this Hearing Commissioner finds that the Complainant has failed to prove discrimination in violation of the Pennsylvania Human Relations Act. It is, therefore, the Hearing Commissioner's Recommendation that the attached Findings of Fact, Conclusions of Law, and Opinion be approved and adopted by the full Pennsylvania Human Relations Commission. If so approved and adopted, this Hearing Commissioner recommends issuance of the attached Final Order.

Raquel Otero de Yiengst, Hearing Commissioner

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FINAL ORDER

AND NOW, this 23rd day of November, 2004, 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 Findings of Fact, Conclusions of Law, and Opinion as its own findings in this matter, and incorporates same into the permanent record of this proceeding, to be served on the parties to the complaint, and hereby

ORDERS

that the complaint in this matter be dismissed.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

BY: Stephen A Glassman, Chairperson

ATTEST: Daniel D. Yun, Assistant Secretary