

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

EVA VILLANUEVA,
Complainant

v.

THE BOROUGH OF BRISTOL,
Respondent

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PHRC Case Nos. 200408105 and,
200505172

STIPULATIONS OF FACT

FINDINGS OF FACT

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF PERMANENT HEARING EXAMINER

FINAL ORDER

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION

EVA VILLANUEVA, ON BEHALF OF :
HERSELF AND ALL OTHER :
SIMILARLY SITUATED PERSONS :
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Complainant :
 :
v. : Docket No.200408105
 : 200505172
 :
THE BOROUGH OF BRISTOL, :
 :
 :
Respondent :

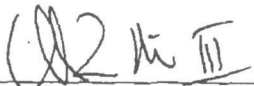
STIPULATIONS OF FACT

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 an adult, female (hereinafter "Complainant").
2. The Respondent herein is The Borough of Bristol (hereinafter "Respondent").
3. The Respondent is a public accommodation within the meaning of the Pennsylvania Human Relations Act (hereinafter "Act").
4. On or about June 10, 2005, the Complainant filed a Complaint against the Respondent with the Pennsylvania

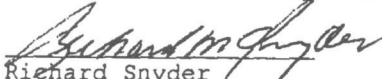
9. Subsequent to the determination of probable cause, Commission staff and the parties attempted to resolve the matter in dispute between the parties by conference, conciliation and persuasion but were unable to do so.

10. In subsequent correspondence, Commission staff notified the Complainant and Respondent that a public hearing had been approved.



Charles Nier, III
Assistant Chief Counsel
(Counsel for the Commission
on behalf of the Complainant)

12/20/06
Date



Richard Snyder
(Counsel for Respondent)

12/20/06
Date



Marc Stolee
(Counsel for Complainant)

12/20/2006
Date

FINDINGS OF FACT *

1. The Complainant, Eva Villanueva, (hereinafter "Villanueva"), is 72 years old and has resided at 429 Lafayette Street, Bristol, Pa. for 48 years. (N.T. 17, 18, 67).
2. The Respondent, The Borough of Bristol, (hereinafter the "Borough"), has a population of approximately 10,000 individuals. (N.T. 88; SF 3).
3. Generally, homes in the Borough are duplex row homes and residents have to park their vehicles mainly on Borough streets. (N.T. 20).
4. In Villanueva's neighborhood very few homes have driveways and street parking is at a premium. (N.T. 97, 106).
5. There are no parking meters on Lafayette Street. (N.T. 98).
6. During weekdays from around 8:00 a.m. to 4:00 p.m., parking is generally available, however, after 4:00 p.m. and on weekends, parking becomes challenging and hard to find. (N.T. 98, 137, 142).
7. Villanueva suffers from a number of medical conditions: Severe receptive airways disease; chronic sinusitis; an element of reactive laryngospasm with possible underlying asthma; arthritis; and disc deterioration in her back. (N.T. 22; S.D. 7, 8, 10).

* To the extent that the Opinion which follows recites facts in addition to those here listed, such facts shall be considered to be additional Findings of Facts. 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
S.D. Deposition of Dr. Peter Serpico
S.F. Stipulations of Fact

8. Villanueva takes a variety of medications for her conditions, none of which are curative. (N.T. 23, 25; S.D. 13-14).
9. The symptoms experienced by Villanueva are permanent and impact her daily life. (S.D. 12, 22).
10. When Villanueva's severe receptive airways disease is active, she becomes breathless even while resting. (S.D. 7, 29, 30).
11. Villanueva's condition is also aggravated by changes of seasons, exposure to certain allergies, upper respiratory infections, acute sinus infections, and emotional stress. (S.D. 8-9).
12. Villanueva's condition limits her ability to walk and when walking, she frequently has to stop to rest. (N.T. 23, 41, 65; S.D. 14, 33, 34).
13. In or around 2002, Villanueva applied for and qualified for a state handicap parking permit. (N.T. 27, 28; C.E. 2).
14. Around the same time, Villanueva applied to the Borough to have a handicap parking sign installed on the street adjacent to her home. (N.T. 47, 91).
15. On Villanueva's 2002 application for a handicapped sign, she listed two registration numbers in response to a question that asked for the registration number of the vehicle you operate. (R.E. 1).
16. At the time, Villanueva listed her vehicle's license number, Pa. DCR-7293, and the license number of her son's vehicle that she periodically drove, Oklahoma 837-2BQ. (R.E. 1).
17. Villanueva's application form also described the nature of her disability as, "Asthma, pains in legs, can't walk far without losing breath". (R.E. 1).

18. Additionally, Villanueva listed the name of her physician, Dr. Roman, his telephone number and indicated that the Borough had her permission to consult with Dr. Roman. (R.E. 1).
19. When Villanueva first applied for a handicap parking sign there were no required fees. (N.T. 21-22).
20. The Borough granted Villanueva's application, however, when the sign was being installed, Villanueva asked the installation crew to stop when she became embarrassed by neighbors cursing her. (N.T. 44, 52, 66, 71).
21. The crew stopped the installation and subsequently, Villanueva realized she needed the sign and had to plead to have the sign installed. (N.T. 44, 72)
22. A handicapped parking sign was then installed near Villanueva's home. (N.T. 72).
23. One of Villanueva's neighbors, Ralph DiGuiseppe, (hereinafter "DiGuiseppe"), was a member of Borough council at the time and in 2004 became the Borough Council President. (N.T. 105, 109, 113).
24. On November 28, 2004, James J. Dillon, (Hereinafter "Dillon"), became the Borough Manager. (N.T. 83, 84).
25. The Borough Manager reports to the Borough Council. (N.T. 83-84).
26. On April 12, 2004, the Borough enacted an ordinance that provided that fees be charged for securing a handicapped parking space permit. (N.T. 85, 105; C.E. 4).
27. In effect the newly enacted provision required a \$100.00 deposit from applicants seeking a handicapped parking sign, and an additional annual maintenance fee of \$25.00. (C.E. 4).

28. The Borough initially collected deposit fees but after only one month reconsidered the viability of the change and decided not to create hardships and eventually returned deposit fees paid by applicants. (N.T. 96, 97, 111, 112, 121, 122).
29. DiGuiseppe testified that the only way the public was made aware of the change was to tell applicants there would be no fee. (N.T. 122).
30. Approximately a year after adopting the ordinance creating fees for handicapped parking signs, the Borough conducted an inventory of existing handicapped parking signs. (N.T. 87, 100).
31. Dillon testified that the inventory was done to see how many signs existed and where they were. (N.T. 100).
32. After the inventory was completed, the Borough Council generally decided whether a sign would stay or be removed. (N.T. 101).
33. Signs were removed from locations where people had died or when a determination was made someone was no longer eligible for a handicapped parking sign. (N.T. 87).
34. On May 13, 2005, Villanueva's sign was removed. (N.T. 30, 87, 107, 193).
35. Dillon testified that Villanueva's sign was removed after it was determined that her original permit had been issued improperly. (N.T. 88).
36. Dillon and DiGuiseppe indicated that Villanueva's original 2002 application listed an Oklahoma license plate and that no doctor's report was found in Villanueva's file. (N.T. 88, 107).
37. Dillon also testified that the Borough Council had received numerous complaints regarding Villanueva's condition. (N.T. 88).

38. DiGusieppe testified that he felt Villanueva did not need a handicapped parking sign. (N.T. 110).
39. Villanueva's 2002 application did list her son's vehicle that had an Oklahoma license registration, but she also listed her vehicle that had a Pennsylvania license plate. (R.E. 1).
40. Villanueva's application also listed the name and telephone number of her doctor and specifically gave the Borough permission to consult her physician; however, her doctor was not contacted. (N.T. 108; R.E. 1).
41. Villanueva was given no advance notice that the parking sign near her home was scheduled to be removed. (N.T. 81).
42. The Borough did not ask Villanueva for additional medical documentation it purportedly required. (N.T. 88, 96, 108).
43. Although a neighbor of Villanueva, DiGusieppe never approached Villanueva to tell her the Borough was considering removing her sign. (N.T. 109).
44. Shortly after the sign was removed from near Villanueva's home, Villanueva went to the Borough offices where she was given a copy of the ordinance, an application form and told she would have to pay the \$100.00 deposit fee and an additional annual fee of \$25.00. (N.T. 30, 31, 32, 34, 78, 89, 90; C.E. 3).
45. Villanueva lives on a fixed income and was unable to pay the fees that she considered to be unfair. (N.T. 78-79).
46. On September 9, 2006, the Borough reinstalled a handicapped parking sign near Villanueva's home. (N.T. 45, 46, 94).
47. Between May 13, 2005 and September 9, 2006, there was no handicapped parking sign near Villanueva's home. (N.T. 29-31, 46).

48. Villanueva testified that during this period she had to park her car away from her home "many times". (N.T. 35).
49. Villanueva offered that she frequently had to park in excess of eight houses away. (N.T. 38, 29, 63, 64).
50. On one occasion Villanueva had to park so far away that her son had to drive her to her home from where she parked. (N.T. 35, 40).
51. After 4:00 p.m. on weekdays and on weekends parking on Lafayette Street was difficult to find. (N.T. 97, 98, 106, 113, 137, 142).
52. Villanueva had to adjust her schedule to minimize the occasions she would not have a parking space near her home. (N.T. 38).
53. Many times Villanueva would not go out fearing that when she returned, she would have to park far away from her home. (N.T. 43).
54. Villanueva's outside interests declined and, at times, she withdrew. (N.T. 42, 43).
55. Villanueva testified that the situation was awful and that she would scream and cry in her home. (N.T. 40)
56. She indicated that she felt the situation was unfair and that she felt less than a whole person. (N.T. 41).
57. Villanueva became depressed and anxious causing her blood pressure to increase and the situation aggravated her already serious medical condition. (N.T. 42).
58. When asked to rate the level of her embarrassment on a scale from 1 to 10, Villanueva rated her embarrassment a "10". (N.T. 44).

CONSLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission (hereinafter "PHRC"), has jurisdiction over Villanueva, the Borough and the subject matter of Villanueva's complaint under the Pennsylvania Human Relations Act (hereinafter "PHRA").
2. The parties and the PHRC have fully complied with the procedural prerequisites to a Public Hearing.
3. Villanueva is an individual within the meaning of Section 4 (a) of the PHRA.
4. The Borough is a public accommodation within the meaning of Section 4(1) and 5(i) of the PHRA.
5. The Complaint filed in this case satisfies the PHRA's Section 9(a) filing requirements.
6. Section 5(h)(3.2) of the PHRA, inter alia, prohibits any person from refusing to make 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.
7. Section 5(i)(1) of the PHRA prohibits any public accommodation from refusing, withholding from or denying to any persons because of his...handicap or disability...any of the accommodations, advantages, facilities or privileges of public accommodation.
8. Villanueva has established by a preponderance of the evidence that the Borough unlawfully discriminated against her because of her disability by failing to provide her a reasonable accommodation in the form of a handicapped parking space in front of her home in violation of Section 5(h)(3.2) of the PHRA.

9. Villanueva has established by a preponderance of the evidence that the Borough unlawfully discriminated against her by refusing, withholding from and denying to her the advantages, facilities or privileges of a public accommodation because of her disability in violation of Section 5(i)(1) of the PHRA.
10. Whenever the PHRC concludes that a Respondent has engaged in an unlawful practice, the PHRC shall issue a cease and desist order and may order such affirmative action as in its judgment will effectuate the purposes of the PHRA.

OPINION

This case arises on an amended complaint filed on or about March 8, 2006, by Eva Villanueva (hereinafter "Villanueva") against the Borough of Bristol (hereinafter "Borough") at PHRC case Nos. 200408105 and 200505172. Villanueva's complaint alleges a denial of an accommodation of a disability when the Borough first removed a handicapped parking sign from the front of her residence and then failed to reinstall it when Villanueva failed to pay certain fees. Villanueva's complaint alleges a violation of Section 5(i)(1) and 5(h)(3-2) of the Pennsylvania Human Relations Act of October 27, 1955, P.L. 744 as amended, 43 P.S. §§ 951 et. seq. (hereinafter, "PHRA").

PHRC staff investigated the allegation and at the investigation's conclusion, informed the Borough that probable cause existed to credit Villanueva's allegation. Thereafter, the PHRC attempted to eliminate the alleged unlawful practices through conference conciliation and persuasion, but such efforts proved unsuccessful. Subsequently, the PHRC notified the parties that it had approved a Public Hearing.

The Public Hearing was held on March 29, 2007, in Bristol, PA, before Permanent Hearing Examiner Carl H. Summerson, PHRC staff attorney Charles L. Nier, III, represented the State's interest in the complaint. Richard M. Snyder, Esquire, appeared on behalf of the Borough and Marc S. Stolee, Esquire represented Villanueva. Following the Public Hearing, the parties were afforded the right to file post-hearing briefs. Both the PHRC Philadelphia regional office's post-hearing brief and the Borough's brief were received on August 2, 2007.

Section 5(i)(1) of the PHRA states in pertinent part:

"It shall be an unlawful discriminatory practice... [f]or any... public accommodation... to... [r]efuse, withhold from, or deny to any person because of... handicap or disability... either directly or indirectly, any of the accommodations, advantages, facilities or privileges of such public accommodation.

Section 5(h)(3-2) of the PHRA states in pertinent part:

" It shall be an unlawful discriminatory practice... [f]or any person to... [r]efuse to make reasonable accommodations 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."

Section 5(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:

[f]unctions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

The present case presents a fundamental clash between the Borough's guidelines and what is required under the PHRA of both a public accommodation, and one who provides services so a person with a disability has an equal opportunity to enjoy a housing accommodation. The clash is presented on the general issue of disability parking, one of the cornerstones of public policy towards people with disabilities.

We begin our analysis of Villanueva's 5(h)(3.2) claim by acknowledging that in the case of Allison v. PHRC, 716 A.2d 689 (Pa. Cmwlth 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 A.2d 315 (1987).

Here, to establish a *prima facie* case, under Section 5(h)(3.2) Villanueva must establish:

1. that she is a member of a protected class;
2. That the Borough was either aware of Villanueva's disability, or could have been reasonably expected to know of it;
3. That Villanueva applied for a disability parking space adjacent to her house;
4. That a disability parking space adjacent to her house was necessary to afford Villanueva an equal opportunity to use and enjoy her home; and
5. That the Borough denied Villanueva a disability parking space.

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

If Villanueva can make this showing, the Borough may prevail if it can demonstrate that providing Villanueva with a disability parking space either imposes an undue financial or administrative burden on the Borough, or that the request is not reasonable.

Here, it is clear that Villanueva has a disability within the meaning of the PHRA. A combination of her severe receptive airways disease, chronic sinusitis, an element of reactive laryngospasm, possible underlying asthma, arthritis, and disc deterioration bring Villanueva squarely within the PHRA's definition of "disability". She has physical impairments which affect her respiratory and her musculoskeletal systems. Such impairments substantially limit the major life activities of walking and breathing. Accordingly, Villanueva successfully established the first element of the requisite *prima facie* case.

On the second point, the Borough argues that the Borough was unaware of Villanueva's disability when on May 13, 2005, it removed the sign from in front of Villanueva's house. The Borough also submits that there is no medical evidence supporting the assertion that Villanueva had a back condition and that the only basis for her reactive airway disease was her complaints.

In this regard, Villanueva testified that at the time in 2002 when she first applied to have a disability parking sign installed adjacent to her home, she submitted a doctor's report. (N.T. 48). Of course, the Borough contends that it found no doctor's report in Villanueva's file when it inventoried all disability parking signs to see how many there were and where they were located. In effect, Borough argues that when Villanueva's file was reviewed, no medical documentation was found and the initial application listed an out-of-state license plate registration. The Borough's purported rationale for removing the sign from in front of Villanueva's home was that the original permit had been issued improperly. (N.T. 88).

Here, Villanueva's original application gave the Borough reason to know of Villanueva's condition. Villanueva's 2002 application generally listed the nature of her

disabilities and include the name and telephone number of Villanueva's doctor. Despite this, the Borough failed to consult either Villanueva directly to seek additional information or consult with her physician.

Respondent's who have even a minimum level of information about the possibility of a qualifying disability have a responsibility to explore whether an accommodation is appropriate, and, if so, what, if any, accommodation can be made. When there is a possibility that someone needs an accommodation, Respondents have the legal obligation to engage in an "informal interactive process" with the person seeking an accommodation. See Canteen Corporation, Division of Compass Group v. PHRC, 814 A.2d 805 (Pa. Cmwith. Ct. 2003).

In the present case, the Borough relied on complaints by neighbors of Villanueva that suggested she had no need for a disabled parking sign. (N.T.88). Indeed much of the evidence presented by the Borough attempted to show that Villanueva was able to get around adequately. Such a suspicion, beyond being irrelevant, is, without further inquiry, certainly insufficient to support a conclusion that an individual does not need an accommodation. The evidence reveals that, in part, the decision to remove the sign was based on skepticism over the existence of a qualifying disability.

Clearly, while Villanueva's initial file could have elaborated upon the detrimental effects caused by the combination of her varied medical conditions, the file was sufficient to put the Borough on notice of her disability and the possibility that an accommodation may be necessary. Instead, the Borough removed the sign based on the perception that Villanueva was sufficiently mobile when, in fact, she was not.

Clearly, Villanueva had an application on file that had originally supported the granting of a parking space adjacent to her home. Also, subsequent to the May 13,

2005 removal of the sign, Villanueva attempted to have the sign reinstalled. However, when she did, she was told she had to pay a \$100.00 deposit fee and an additional \$25.00 annual fee. Disturbingly, Villanueva was told this despite the fact that approximately a year earlier, the Borough had decided that fees would not be collected when a member of the public applied for a disability parking sign. (N.T. 111-112, 122).

On the question of whether a disability parking space was necessary to afford Villanueva an equal opportunity to use and enjoy her home, we find that such a space was necessary. The record establishes that Villanueva's physical symptoms varied directly with the distance she must walk. The record sufficiently established that it was extremely difficult for her to walk long distances and when a space near her home was unavailable, the only available space was often a substantial distance away. The Borough's position is that a disability parking sign was not necessary to afford Villanueva an equal opportunity to use and enjoy her home because Villanueva was able to park near her home whether there was a sign or not. Without access to a space near her home, at times, Villanueva chose to stay home rather than go out and worry about losing her parking space. By doing so, this impacts on Villanueva's ability to lead an independent life, and Villanueva no longer had an equal opportunity to use and enjoy her home. To have an equal opportunity to use and enjoy her home, Villanueva has demonstrated that it is necessary for her to have access to parking near her home:

Without question, the Borough removed Villanueva's sign without first contacting either Villanueva or her doctor and then placed an artificial barrier to her attempt to have the sign re-installed. Accordingly, Villanueva has sufficiently established a *prima facie* case under section 5(h)(3.2). Therefore, we turn to the issue of whether the Borough