

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2011CP1360
)	EEOC NO.: N/A
DICKEY GAINES,)	ALS NO.: 11-0799
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners David Chang¹, Robert A. Cantone, and Brad Cole², presiding, upon Dickey Gaines's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")³ of Charge No. 2011CP1360; and the Commission having reviewed *de novo* the Respondent's investigation file, including the Investigation Report and the Petitioner's Request, and the Respondent's response to the Petitioner's Request; and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following findings of fact and reasons:

A. PROCEDURAL HISTORY

1. On July 12, 2010, the Petitioner filed an unperfected charge of discrimination with the Respondent, which was perfected on November 17, 2010. The Petitioner alleged Provident Hospital of Cook County ("Hospital") denied him the full and equal enjoyment of the its facilities due to his race, Black, in violation of Section 5-102(A) of the Illinois Human Rights Act ("Act").
2. The Petitioner a patient of the Hospital alleged that that on or about January 14, 2010, he was denied the full and equal enjoyment of the Hospital's facilities due to his race, when he had to sit in the Hospital's emergency room in excess of eleven hours waiting for treatment of pain and swelling in his left arm. The Petitioner alleged that the Hospital is a place of public accommodation. The Petitioner further alleged that the Hospital did not treat similarly situated non-Black patients in this manner.
3. On September 9, 2011, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence.

¹ This Order is in accordance with a vote cast by Commissioner Chang prior to the expiration of his term.

² This Order is in accordance with a vote cast by Commissioner Cole prior to the expiration of his term.

³ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

4. On November 29, 2011, the Petitioner filed a timely Request. On December 28, 2011, the Respondent filed its Response to the Petitioner's Request.

B. FACTUAL HISTORY, ALLEGATIONS, & ARGUMENTS

1. The Petitioner was a patient of the Hospital.
2. On January 14, 2010, the Petitioner went to the Hospital's Emergency Room that day between 9:00 am, and 9:15 a.m., due to pain and swelling in his right arm.
3. The Hospital treats between 40,000 and 45,000 patients per year in its Emergency Room, which ranks it in the top five in Chicago. Of the Emergency Room patients treated by the Hospital, 95% are black. The Hospital's Emergency Room Department is governed by Hospital's Triage Policy.
4. The purpose of the Triage policy is to ensure that there is a system for reassessment of patients that cannot be seen immediately in Hospital's Emergency Department. The Triage Policy states that patients will be treated according to the severity of the patient's condition.
5. There are five levels of categories of triage: Emergent, or Level 1 patients who have an imminent life or limb threatening condition; Semi-emergent or Level 2 patients who have a serious medical condition; Urgent or Level 3 patients who have a moderate type of medical condition which will remain stable for 2-3 hours or more before reassessment or interventions are needed; Level 4 patients with minor medical conditions which require treatment within twenty four hours; and non-urgent refers to Level 5 patients with minor medical conditions which require minimal treatment.
6. The Triage Policy further states that a nurse/physician will reassess waiting patients every four hours for level 3 patients; every six hours for level 4 patients; and, every six hours for level 5 patients. Patients who arrive by ambulance are taken directly to the treatment area and immediately evaluated by an emergency Room doctor. The length of a patient's wait is determined by the number of staff and the number of beds available.
7. On January 14, 2010, there were between eight and ten ambulance runs and that 102 patients came thru Hospital's emergency Room.
8. On January 14, 2010, the Petitioner went to Hospital's emergency room between 9:00 am, and 9:15 a.m., due to pain and swelling in his right arm. A nurse assessed the Petitioner about 15 minutes after his arrival, and gave him medication for his pain. At about 1 :00 p.m., a physician assessed the Petitioner, and determined the Petitioner had a right elbow infection, and gave him Ibuprofen. At approximately 9:00 p.m., the Petitioner was called in the back, and directed to sit on a bed until a doctor became available to look at him. Approximately 45 minutes later, he was examined by a Black, female doctor. The Petitioner stated that the doctor told him that

his arm did look bad, but she asked him to be patient, because she had other patients ahead of him.

9. Frustrated by the length of time that it was taking to get medical treatment, the Petitioner left the emergency room and went home.
10. On January 5, 2010, the Petitioner had visited the Hospital's emergency room for pneumonia, a serious condition, and was seen within two hours.
11. There was no evidence presented that a non-Black patient were treated more favorably by the Hospital.
12. In his request, the Petitioner argues that the Respondent's investigator did not make the Hospital produce emergency room records for the timeframe of January 2000 through January 2010. The Petitioner contends that he needs these records to prove his charge of discrimination.
13. In its response, the Respondent asks the Commission to sustain its dismissal of the Petitioner's charge because the evidence is insufficient to establish even a *prima facie* case of public accommodation discrimination.

C. DISCUSSION & DETERMINATION

The Commission concludes that the Respondent properly dismissed the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258, *2 (March 7, 1995).

The Commission finds the evidence insufficient to establish even a *prima facie* case of public accommodation discrimination. Generally to establish a *prima facie* case of discrimination concerning a public accommodation the Petitioner must show that: 1) the Petitioner is within a protected category; 2) he or she was denied full enjoyment of the respondent's facilities; and 3) that others not within his or her protected class were given full enjoyment of those facilities. See In the Matter of Velma J. Henderson and Steak N Shake, Inc., IHRC, Charge No. 1996CP2939, 1999 WL 33252627, *9 (March 24, 1994).

In the Petitioner's case, the second and third elements of the *prima facie* case were not established. There was no evidence that the Petitioner was denied the full and equal enjoyment of Respondent's facilities. Rather, the evidence revealed that the Hospital treated the Petitioner for his illness. There was also no evidence that a non-Black patient was treated more favorably by the

Hospital. The evidence showed that the Petitioner was not treated any differently than other patients in the emergency room.

D. CONCLUSION

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that the Respondent's dismissal of the Charge was not in accordance with the Act. The Petitioners' Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Provident Hospital of Cook County as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

STATE OF ILLINOIS)
)
HUMAN RIGHTS COMMISSION)

Entered this 7th day of December 2018.

Commissioner David Chang

Commissioner Robert A Cantone

Commissioner Brad Cole