



Maine Human Rights Commission

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INVESTIGATOR'S REPORT

MHRC No. H19-0071-A, B, C, & D; HUD No. 01-19-2520-8

May 29, 2019

Gregory Shaw (Lewiston, ME)

v.

Genesis Health Care, Inc. (Kennett Square, PA), Kennebunk Operations, LLC d/b/a RiverRidge Center (Kennebunk, ME), Westbrook Operations, LLC d/b/a Springbrook Center (Westbrook, ME), & Scarborough Operations, LLC d/b/a Pine Point Center (Scarborough, ME)

I. Summary of Case:

Complainant Gregory Shaw, attempted to transfer to/be referred to several of Respondent Genesis Health Care, Inc.'s ("Genesis") southern Maine residential facilities, including RiverRidge Center located at 3 Brazier Lane, Kennebunk, ME (the "Premises").¹ Complainant alleged that Respondents discriminated against him based on his disability when they treated him differently in the terms and conditions of his application/referral process when they denied a reasonable accommodation request. Respondents denied discriminating against Complainant, stating that their facilities were not able to accept Complainant as a resident. The Investigator conducted a preliminary investigation, which included reviewing all of the documents submitted by the parties, holding an Issues and Resolution Conference ("IRC"), and requesting additional information. Based upon all of this information, the Investigator recommends a finding that there are reasonable grounds to believe that Respondents discriminated against Complainant based on his disability.

II. Jurisdictional Data:

- 1) Dates of alleged discrimination: July 1, 2018 through February 12, 2019 and ongoing.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): February 19, 2019.
- 3) Respondents are subject to the Maine Human Rights Act ("MHRA") and the federal Fair Housing Act ("FHA"), as well as state and federal housing regulations.
- 4) Complainant is represented by Mark Joyce, Esq. Respondents are represented by Marrielle Van Rossum, Esq.

III. Development of Facts:

¹ Respondent Genesis Health Care, Inc. owns and operates RiverRidge Center, Springbrook Center, and Pine Point Center. Complainant has applied for admission, transfer, or referral to all three facilities over time and was denied by each.

1) Complainant provided the following in support of his claims:

Complainant has a disability (██████████). Complainant applied for admission/transfer/referral to several of Genesis's facilities in Southern Maine. Complainant was denied. Complainant twice attempted to gain more specific information regarding the reason for his denial to determine if a reasonable accommodation was appropriate. Respondents gave a summary conclusory response. Respondents failed to respond to any additional inquiry or communication related to his request regarding a possible reasonable accommodation.

2) Respondents provided the following in support of their position:

Complainant was a prior resident at one of Genesis's facilities in 2016. While he was a resident, he engaged in behaviors including refusal of care, staff splitting, and videotaping staff, among other things. Complainant was denied admission based on his past behaviors. Genesis responded to Complainant's July 2018 letter indicating that he was denied admission based on his behaviors. Genesis did not receive Complainant's October 2018 letter, nor did it respond to Complainant's January 2019 letter.

3) The Investigator made the following findings of fact based on the documentation submitted by the parties and information learned during the IRC:

- a) Complainant has a physical impairment which is a disability without regard to severity under the MHRA. *See* 5 M.R.S. § 4553-A(1)(B).
- b) In 2016, Complainant was briefly a resident at RiverRidge.
- c) Complainant currently resides in a facility in Lewiston and has attempted to return to Respondents' facilities a number of times over the last few years to be closer to family in Southern Maine.
- d) Respondents have denied each admission/referral request.
- e) Generally, Complainant learned about the denials from his social worker(s) who made the admission/referral request. Respondents communicated the denials by phone.
- f) In June 2018, Complainant sought admission/referral to Pine Point and RiverRidge via facsimile. Those two faxes were successfully transmitted. Complainant alleged that Respondents told his social worker via phone that he was denied.²
- g) On July 17, 2018, Complainant, via counsel, sent letters to both Pine Point and RiverRidge asking for "the reason or reasons for the denial in writing so that he can assess whether or not the reason or reasons may be addressed through a request for a request for a reasonable accommodation under the Fair Housing Act, Maine Human Rights Act, Americans with Disabilities Act or Section 504 of the Rehabilitation Act of 1973".

² Respondents denied receiving the June 2018 admission/referral requests. Genesis provided that their internal records reflected that Complainant last sought admission on March 30, 2017. At that time, Complainant was listed as denied for the State of Maine. At the IRC, Respondents indicated that this meant that Complainant would be refused for any admission/referral request for a Genesis facility in the State of Maine. Respondents' explanation regarding the June admission/referral request was that perhaps they were not sent to the correct machine in the facility, so they did not make it to the Admissions person on staff.

- h) On July 24, 2018, Respondents replied that Complainant “was denied admission to these centers for the following reasons unrelated to disability of any kind: Clinical Denial – Continually noncompliant with plan of care; [and] Unable to meet needs based on prior stay at RiverRidge including noncompliance and refusal of care”.
- i) On October 23, 2018, Complainant, via counsel, wrote stating that “more information from these facilities would be necessary in order to make the assessment as to whether or not the denial could be met with a request for a reasonable accommodation”. Complainant asked for specific and detailed information so that he could make this assessment. Genesis did not respond. Genesis alleged that they did not receive the letter, though Genesis confirmed the letter was mailed to the same individual who sent the July 24, 2018 response at their correct address.
- j) On January 4, 2019, Complainant, via counsel, wrote to Genesis identifying that he did not receive a response to his October letter and that he took the non-response as a denial of his request. Genesis did not respond to the letter. Genesis indicated that the person who received the letter had just left Respondents’ employment a few days earlier. Her replacement, who was Respondents’ representative at the IRC, did not recall discussions with her predecessor about Complainant’s issues as part of the transition and Genesis did not see this as an issue at the time. Respondents postulated that if the letter was more “threatening” it may have caught someone’s attention and would be passed up.
- k) At the IRC when asked about the admission/referral process, Genesis explained that each new admission/referral was treated as a new request and not based on past information. This was in direct opposition to its assertion that Complainant’s one stay at RiverRidge was the reason for his continual denial. Genesis asserted that with each request the records were reviewed to determine if Complainant was able to be a resident. Genesis determined each time that Complainant was unable to return based on his behavior during the one stay in 2016.³
- l) Respondents believed that the information they provided to Complainant was sufficient for him to know that his denial was based on his behavior, which was a “choice not a disability”. Even if they had responded with greater detail, they believed the outcome would be the same and not something that could be addressed by a reasonable accommodation.
- m) Respondents do not keep the records for admissions/referrals that are denied, so they do not have the ability to go back and assess the specific reason for the denials or if anything may have changed in Complainant’s care after he left RiverRidge in 2016.

IV. Analysis:

- 1) The MHRA provides that the Commission or its delegated investigator “shall conduct such preliminary investigation as it determines necessary to determine whether there are reasonable grounds to believe that unlawful discrimination has occurred.” 5 Maine Revised Statutes (“M.R.S.”) § 4612(1)(B). The Commission interprets the “reasonable grounds” standard to mean that there is at least an even chance of Complainant prevailing in a civil action.

³ It is unclear if Respondents took into account Complainant’s changed circumstances, like using a different kind of [REDACTED] than he previously refused care for, when it made their determinations. Respondents’ past decision making, however, is not part of Complainant’s denial of reasonable accommodation claim.

- 2) The MHRA provides, in part, that a person has the right to rent housing without discrimination on the basis of disability. 5 M.R.S. § 4581-A(1)(B); 94-348 Code of Maine Regulations (“C.M.R.”) Ch. 8, § 8.04(a)(1).⁴
- 3) The MHRA makes it unlawful “[f]or any owner, lessee, sublessee, managing agent or other person having the right to sell, rent, lease or manage a housing accommodation or any of their agents to refuse to make reasonable accommodations in rules, policies, practices or services when those accommodations are necessary to give a person with physical or mental disability equal opportunity to use and enjoy the housing.” 5 M.R.S. § 4582-A(2).
- 4) To establish a prima-facie case of failure to accommodate, Complainant must show that:
 - (1) Complainant has a “physical or mental disability” as defined by the Maine Human Rights Act;
 - (2) Respondents knew or reasonably should have known of Complainant’s disability;
 - (3) Complainant requested a particular accommodation;
 - (4) The requested accommodation is necessary to afford Complainant an equal opportunity to use and enjoy the housing;
 - (5) The requested accommodation is reasonable on its face, meaning it is both efficacious and proportional to the costs to implement it; and
 - (6) Respondents refused to make the requested accommodation.

See 5 M.R.S. § 4582-A(2); *Astralis Condominium Ass’n v. Secretary, U.S. Dept. of Housing and Urban Development*, 620 F.3d 62, 67 (1st Cir. 2010) (interpreting similar provision in Fair Housing Amendments Act, but seemingly placing burden on Complainant to show accommodation was reasonable); *Oconomowoc Residential Programs v. City of Milwaukee*, 300 F.3d 775, 783 (7th Cir. 2002) (plaintiff’s burden is only to show reasonableness “on its face”). *Compare Reed v. Lepage Bakeries, Inc.*, 244 F.3d 254, 259 (1st Cir. 2001) (interpreting ADA) (holding that plaintiff need only show requested accommodation was feasible “on the face of things”).

- 5) If Complainant shows this, Respondents can defeat the claim by showing that the proposed accommodation was unreasonable, meaning “it imposes undue financial or administrative burdens or requires a fundamental alteration in the nature of the program.” *Oconomowoc Residential Programs*, 300 F.3d at 784.
- 6) Here, Complainant was able to show that Respondents discriminated against him on the basis of disability by denying Complainant’s reasonable accommodation request, with reasoning as follows:
 - a) Complainant has a disability as defined under the MHRA. Respondents knew that he had a disability based on his previous stay at their facilities and based on the medical records sent as part of his admission/referral requests. Complainant twice requested information to determine if the reason for his denial from Respondents’ facilities could be addressed by a reasonable accommodation request. Respondents responded that Complainant’s behaviors were the reason for his denial, not his disability.
 - b) Respondents believed their response was sufficient. Respondents failed to meaningfully reply to Complainant’s request to equip him with enough information to assess if Respondents’ concerns could be addressed by reasonable accommodation. Respondents’ belief that Complainant’s behavior was a choice and not a disability is slightly disingenuous since one of the reasons cited for noncompliance with

⁴ Complainant’s complaint was filed as housing and public accommodation discrimination case. The analysis used in this report is a fair housing analysis, but the result is the same for Complainant’s public accommodation claim.

care is related to how Complainant was [REDACTED]. Complainant has since changed his method of [REDACTED], so that would no longer be a noncompliance issue. The record does not show that Respondents took the time or detail to assess Complainant's request or engage in the interactive process.


- c) Respondents' reasons for failing to reply to the October 2018 and January 2019 letters do not measure up. Saying that if Complainant's letters were more threatening that they may have been noticed or passed up for further review is not part of the interactive process. On its face, Complainant made a request, Respondents, without engaging in any dialogue made a singular determination that Complainant could do nothing, including requesting an accommodation to address their concerns. This is evidenced by the fact that Complainant was already deemed denied for all of Respondents' Maine facilities.

7) It is found that Complainant was unlawfully denied a reasonable accommodation for his disability.

V. Recommendation:

For the reasons stated above, it is recommended that the Commission issue the following finding:

There are **Reasonable Grounds** to believe that Genesis Health Care, Inc., Kennebunk Operations, LLC d/b/a RiverRidge Center, Westbrook Operations, LLC d/b/a Springbrook Center, and Scarborough Operations, LLC d/b/a Pine Point Center discriminated against Gregory Shaw on the basis of disability in the terms and conditions of his housing and by denying him the full enjoyment of a place of public accommodation by denying him a reasonable accommodation, and the complaint should be conciliated in accordance with 5 M.R.S. § 4612(3).



Alice A. Neal, Chief Investigator