City of Chicago
COMMISSION ON HUMAN RELATIONS
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IN THE MATTER OF:	
Lola Russell **Complainant,** **v.**	**Case No.:** 16-P-49 **Date of Ruling:** August 9, 2018
Chicago Transit Authority **Respondent.**	

FINAL RULING ON LIABILITY AND RELIEF

I. INTRODUCTION

On October 31, 2016, Complainant Lola Russell ("Complainant") filed a complaint against the Chicago Transit Authority ("CTA" or "Respondent"). Complainant alleged that the CTA and certain CTA employees had discriminated against her due to her disability. Specifically, Complainant alleged that the CTA and one of its employees failed to assist her as she was attempting to get on and off a bus with her walker on October 19, 2016. C.[1] Complainant alleged that the bus driver did not lower the bus steps sufficiently to allow her to disembark safely. C. On December 8, 2016, Complainant filed an Amended Complaint, which limited the allegations to a southbound trip on a CTA bus on October 19, 2016. Complainant alleged that the bus steps were not lowered, that when she complained that she could not get off the bus driver merely smiled, that the ramp was not deployed, and that she nearly fell when she climbed down the stairs of the bus. AC, ¶¶4-6.[2] In the Amended Complaint, Complainant alleged that following the incident, she had called the Ventra number at the CTA and made a complaint. AC, ¶7.

On March 7, 2017, the CTA filed both its response to the Amended Complaint and its Position Statement. In its response to Complainant's specific factual allegation, the CTA stated that it lacked knowledge to admit or deny those allegations. R[3]. In its Position Statement, Respondent once again denied that it failed to assist Complainant and argued that the Complaint should be dismissed for lack of substantial evidence on three bases. RP.[4] The first was that the CTA has "procedures in place" to assist customers with disabilities disembarking from buses, noting specifically that the policies do not require ramps to be deployed for customers with walkers unless the customer specifically requests that the ramp be deployed. The second basis was that Complainant was not denied access to the bus, a public accommodation, because Complainant was able to embark and disembark from the bus, and thus Complainant did not prove that she was denied the full use of the public accommodation; Respondent also noted some factual inconsistencies between Complainant's account and its records. The last basis for

[1] "C" refers to Complainant's initial complaint, filed on October 21, 2016. The initial Complaint's paragraphs are not numbered; rather, there is a description of events attached to the CCHR form. All citations to the initial complaint will refer to C without further identification.
[2] "AC" refers to Complainant's Amended Complaint filed on December 8, 2016.
[3] "R" refers to Respondent's Response.
[4] "RP" refers to Respondent's Position Statement.

dismissal of the Complaint was that "isolated acts of discourteousness" was not evidence of discrimination.

Complainant filed her reply to Respondent's Response and Position Statement on March 10, 2017, noting *inter alia* that her disability was evident due to her use of a walker, that she had asked for assistance, that she had given the CTA representative the proper bus number, and that CTA Bulletin 02-13 required the bus driver to lower the ramp without a specific request when Complainant said she could not get off the bus due to the step being too high. CR.[5]

On June 30, 2017, the Commission entered an Order Finding Substantial Evidence. On October 6, 2017, the Commission issued an Order appointing a hearing officer and commencing the hearing process; the pre-hearing date was scheduled for November 16, 2017.

On October 17, 2017, Complainant filed her first request for documents. On November 3, 2017, Respondent filed its first request for documents and a motion for leave to conduct additional discovery (interrogatories, requests to admit, and Complainant's deposition). On November 15, 2017, the hearing officer denied Respondent's motion, noting that Respondent had not demonstrated the good cause required to be allowed to conduct such extraordinary discovery. CCHR Reg. 240.400. The order noted that "'[g]ood cause' is not a desire to be thoroughly prepared and to exhaust all possible avenues of preparation regardless of how tangential or duplicative those may be," citing *Thomas v. Chicago Dept. of Health, et al.*, CCHR No. 97-E-221 (Mar. 13, 2000).

At the Pre-Hearing Conference on November 16, 2017, a hearing was set for January 30, 2018. The Pre-Hearing Memorandum and any motions by the parties were to be filed by January 16, 2018.

On January 16, 2018, Complainant filed her Pre-Hearing Memorandum. Included with the memorandum was a copy of the Commission's Investigation File. Upon realizing that the Investigation File was included in Complainant's Pre-Hearing Memorandum, the hearing officer immediately removed the Investigation File from the Pre-Hearing Memorandum, placed the file in an envelope and sealed the envelope. The hearing officer did not review or read the Investigation File.

On January 16, 2018, Respondent sent a copy of its Pre-Hearing Memorandum and a Motion in Limine via e-mail to the hearing officer; the certificate of filing stated that it had mailed copies of the document to Complainant and the hearing officer.

On January 23, 2018, the hearing officer issued an Order which noted Complainant had sent the Investigation File with her Pre-Hearing Memorandum, and that the hearing officer had not reviewed it, had sealed it in an envelope, and would return it to Complainant at the administrative hearing.

Respondent's Motion in Limine asked that certain documents not be allowed to be presented by Complainant in her case. These documents were: exhibits and testimony that had not been previously disclosed, CTA rules and operating procedures, and any evidence of psychological testimony without "competent medical testimony."

[5] "CR" refers to Complainant's Reply.

In the Order, dated January 23, 2018, the hearing officer also addressed the Motion in Limine. The Order noted that Complainant had been told at the Pre-Hearing Conference that she must divulge all documents and witnesses in the Pre-Hearing Memorandum. As to the issue of CTA rules and procedures, the Order noted that any rules that addressed what the driver was expected to do would be allowed, but no evidence about disciplinary procedures would be allowed per *Bulgar v. Chicago Transit Authority*, 345 Ill.App.3d 103, 119-120 (1st Dist. 2003) because disclosure of remedial training or disciplinary measures goes against the public policy of encouraging safety measures. Finally, the Order noted that the Commission has long held that testimony about emotional distress is not required to have supportive medical testimony, citing *Manzanares v. Lalo's Restaurant*, CCHR No. 10-P-18 (May 16, 2012) and cases cited therein.

Upon receipt of the Order dated January 23, 2018, via facsimile (a copy had also been sent by regular mail), Complainant filed a motion for an extension. In her Motion, Complainant stated that she had not received Respondent's Pre-Hearing Memorandum and Motion in Limine until January 23, 2018, when she received the documents in the mail. In an Order issued on January 25, 2018, the hearing officer noted she had also received her mailed copies of the documents on January 23, 2018, and informed Complainant if she needed additional time to prepare for the hearing, she should file a written motion for a continuance. On January 25, 2018, Complainant did file such a motion and on January 27, 2018, an Order was issued granting a continuance to February 27, 2018.

On January 30, 2018, Respondent filed a Motion to Strike the allegations contained in Complainant's motion for a continuance and earlier communication with the hearing officer and Respondent. In her Motion for Continuance, Complainant stated she believed Respondent was "playing games" with the mail to delay her receipt of documents; these were the "allegations" Respondent wished stricken. Respondent also moved for sanctions against Complainant for delivering the Investigation File to the hearing officer "multiple times" despite notice the hearing officer was not to receive the file. The sanction Respondent sought for Complainant delivering the Investigation File to the hearing officer was that the complaint be dismissed in its entirety. Finally, Respondent asked to continue the hearing to another date.

On February 5, 2018, the hearing officer issued an Order granting Respondent's Motion for Continuance and denying the Motion to Strike and the Motion for Sanctions. The Order noted that while Complainant's allegations that Respondent was purposely delaying the mailing of documents were likely unsupported, the fact that the documents were in fact delayed in the mail was supported by the hearing officer's own receipt some 9 days after the documents were deposited in the mail. As the allegations of "game-playing" did not go to the heart of the issue of whether the Complainant's motion for continuance would be granted, the motion to strike was denied.

On the issue of the draconian sanction Respondent requested of dismissing the complaint in its entirety, the hearing officer noted that Complainant had sent the Investigation File only once with her Pre-Hearing Memorandum, not multiple times as Respondent alleged in its motion. Noting that sanctions are in the discretion of a hearing officer and are based on what is "sufficient to punish the conduct and deter repetition of it," the hearing officer granted no sanctions, as this appeared to be an accidental mistake by a *pro se* complainant.

The hearing was set for March 9, 2018. The hearing did go forward on that date. Complainant appeared *pro se* and Respondent was represented by counsel.[6]

On May 22, 2018, the hearing officer issued a Recommended Decision on Liability. The parties were notified that objections to this ruling were due 28 days from the mailing of the decision, June 19, 2018. On June 21, 2018, Respondent filed its Objections to the Recommended Ruling. On June 25, 2018, Complainant requested additional time to respond to Respondent's objections. On June 28, 2018, the hearing officer accepted Respondent's objections and granted Complainant's request for an extension of time to respond. Complainant did not subsequently file a response to Respondent's objections.

II. FINDINGS OF FACT

1. Complainant Lola Russell has a disability that affects her mobility. On October 19, 2016, she used a walker to assist with her mobility. C, par. 1, Tr. p. 8.[7]

2. On October 19, 2016, Complainant was a passenger on a CTA bus returning to her home on the South Side of Chicago from a hearing at the Illinois Department of Public Health, 122 South Michigan, Suite 700, Chicago, Illinois. C par. 2, Tr. p. 8, Cp. Exh. A.

3. Complainant was riding on the CTA's Route 3 King Drive Bus. C par. 2. She arrived at her stop at 93rd Street and King Drive at around 1:45 p.m. Rp. Exh. E, p. 16/24.

4. On October 19, 2016, Complainant was using her walker. She had just had her third knee replacement and had a fracture. Tr. p. 8. Her knee did not bend. Tr. p. 9

5. When the CTA bus reached Complainant's stop at 93rd and King Drive, Complainant asked the bus driver to lower the bus so she could get off. The bus driver smiled and said she had lowered it, but Complainant said it was not lowered enough for her to exit safely. Complainant told the bus driver that the bus was still too high for her to get off the bus. The bus driver did not offer any further assistance to Complainant. C par. 4., Tr. pp. 8-9, 21, 23.

6. When the bus driver did not lower the bus further or offer any other assistance, Complainant took her walker in one hand, held the rail with the other, and then put the walker down on the street. Tr. pp. 9-10. The last step on the bus was very high. Tr. p. 10. Complainant testified that it was 24 inches to the ground from the last step. Tr. p. 10. This process took her "maybe" a minute. Tr. p. 23. While the hearing officer determined that 24 inches may be more than the actual distance from the last step to the street surface, the hearing officer took judicial notice that the last step from a CTA bus can be far greater than an average step in a staircase.

7. At some unspecified point in time, Complainant received copies of the CTA policies regarding assisting people with disabilities from the CTA. She believed that the policies were the "best ever" and she thought CTA was looking out for her. The policies say that CTA employees are to ask if a person with a disability needs help. Complainant asked for help, but did not receive it. Tr. p. 12.

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[6] After the hearing was finished, the hearing officer left the room to make copies of documents. When she returned, she noticed Complainant was having some difficulty and was shaking; no symptoms like this were apparent during the hearing. The hearing officer and one of Respondent's counsel went to assist her. An ambulance was called by the Commission, and Complainant was taken to a hospital. Some days later, Complainant sent an e-mail to the hearing officer, Respondent's counsel, and the Commission thanking them for their assistance.

[7] "Tr." refers to the transcript of proceedings at the hearing on March 9, 2018.

8. In her Complaint, Complainant said that the CTA should have automatically deployed the ramp when the passenger uses a walker. C., par. 8. Respondent admitted that CTA policies require CTA drivers to lower buses or deploy ramps "as necessary" and that CTA policies require drivers to lower buses without asking when a customer is using a walker. Rp. R., par. 8. CTA denied that policies require CTA drivers to automatically deploy bus ramps when a passenger is using a walker. Rp. R., par. 8. No bus policy documents were entered into the record by either Complainant or Respondent at the hearing.

9. As soon as she returned home, Complainant called the CTA at the number on the back of her Ventra card and filed a complaint. C par. 7. The phone call from the CTA was returned by a Mr. Forman. Complainant told Mr. Forman what had happened and the number of the bus. Mr. Forman told her that the driver should have lowered the ramp because she had a walker. Mr. Forman said he would pull the tape from the bus and question the driver. C. par. 7.[8] Complainant never explicitly said she asked the bus driver to help her, but she did tell the driver she could not get off the bus with her walker. Tr. pp. 17-18. Respondent admitted that Complainant filed a complaint with the CTA customer service department on October 19, 2016. Rp. R, par. 7.

10. The complaint with the CTA filed by Complainant had a "Created Date" of October 19, 2016, at 3:05 p.m. The method that the complaint was received was noted to be via "phone call." The priority status was listed as "urgent." The complaint was for "CTA Failure/Refusal to Operate Lift (Bus)." The route was listed as 3 King Drive; the direction was south. The bus number was 7936. The description of the incident was as follows:

> Caller stated she is disabled and uses a walker. The operator lowered the lift a little bit for her to get on [sic] the bus. The caller asked the operator to lower the bus a little more and she replied "No." The caller told her she couldn't get off the bus without falling. The operator told her the bus is as low as it can go. The operator had a smile on her face when the caller looked back.

Rp. Exh. B.

11. Every time Complainant thinks about the incident it brings tears to her eyes. Tr. p. 13. This was a nightmare for her. Tr. p. 11. It was painful to exit the bus and she nearly fell. C. par. 5. She was embarrassed, sad and hurt. C. par. 5, Tr. pp. 12-13. Complainant was defending herself by filing the complaint so it would not happen again to her or to anyone else. Tr. p. 12. CTA had the equipment to help her and CTA employees get training, but something went "terribly wrong" that day when she asked for and did not receive help that day. Tr. pp. 11-12. Complainant dreamed of what the driver had done to her every night. Tr. p. 63.

12. Complainant was face-to-face with the bus driver when she saw the driver smiling at her. Tr. 23-24. Complainant could not correctly identify the driver when Respondent presented her with a photo array of driver's pictures at the hearing; she did not correctly point to the CTA driver. Tr. p. 23. Complainant strongly believed that the driver had Jheri curls.[9] Tr. pp. 62-63.

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[8] No tape from the bus was submitted by Complainant or Respondent at the hearing. Complainant testified that she was told by the CTA that the tapes made on buses were routinely erased after two days. Tr. pp. 14-15.

[9] The Jheri curl is a permed hairstyle that was popular among African Americans during the 1980s. Jheri curls. (n.d.) Retrieved May 22, 2018, from https://en.wikipedia.or/wiki/Jheri_curl.

The driver, later identified at the hearing as Patricia A. Dorsey, Badge Number 40905, testified that she had never had Jheri curls. Tr. p. 59.

13. At about the same time as Complainant testified that she was travelling on the Route 3 bus, someone was using Complainant's Ventra pass for people with disabilities on another CTA bus at another location. Tr. pp. 41-42, Rp. Exh. D. No one other than the person listed on the card for people with disabilities is authorized to use the card. Tr. p. 41. Complainant stated she was not using that card on October 19, 2016; she does not know who was using that card on that day. Tr. p. 60. She had not tried to cancel the card and she had the card in her possession on the date of the hearing. Complainant said that she had not given the card to anyone else. Tr. pp. 18-19. For reasons explained more fully later in this opinion, the hearing officer found that Complainant established that she was on the Route 3 CTA bus at the time in question and the CTA has not established that Complainant was using the Ventra pass for people with disabilities at that time on another route.

14. At the hearing, Complainant admitted she sometimes had difficulties with her memory due to a recent concussion; the concussion happened after October 19, 2016. Tr. pp. 21-22. In order to establish she had been on the bus, Complainant had given Respondent the Ventra card she was using on October 19, 2016, so that Respondent could make a print-out of the exact times Complainant boarded and disembarked; this was not her CTA card designated for people with disabilities. Tr. p. 20-21. Complainant did not have a concussion on October 19, 2016, nor when she filed the complaint with the CTA on that date. Tr. p. 20.

15. Respondent presented evidence about the operation of the Route 3 Michigan Avenue bus on October 19, 2016. Tr. pp. 43-49, Rp. Exh. E. A document was introduced which detailed every interval between stop and the length of every stop on October 19, 2016. Tr. pp. 47-49, Exh. E. On October 19, 2016, the Route 3 Michigan bus arrived at Complainant's destination, 93rd and King Drive, at about 13:45 p.m., or 1:45 p.m. Tr. p. 49, Rp. Exh. E, p. 16/24. The stop was listed as a "serviced stop." Rp. Exh. E, p. 16/24. The stop, from "door open to door closed," lasted for 29 seconds. Tr. p. 51.

16. Ms. Dorsey testified that she was the CTA bus driver on the Route 3 bus on October 19, 2016. Ms. Dorsey testified that when a customer with a walker or cane seeks to board her bus, she puts the bus directly on the curb and then lowers (kneels) the bus to the curb so the passenger can step from the curb. She then waits for the customer to board and seat themselves before she starts the bus. She testified that she uses the same procedure in reverse when someone with a cane or walker is going to exit the bus. She always follows these steps when a passenger has a cane or walker. Tr. pp. 55-56.

17. On October 19, 2016, Ms. Dorsey thought she worked a double shift. She started around 5:00-6:00 a.m. and ended her day around 5:30 to 6:00 p.m. Ms. Dorsey testified that there were no incidents with a customer with a cane or walker on her bus that day. If there had been, she would have contacted her control through a text message and submitted a report. Ms. Dorsey submitted no reports on October 19, 2016. She did not refuse to deploy a ramp on October 19, 2016, nor did she laugh or ridicule a customer on that day. Tr. pp. 56-59. Ms. Dorsey did not testify that she remembered that Complainant was on her bus on October 19, 2016.

III. CONCLUSIONS OF LAW

1. 1. Section 2-160-070 of the Chicago Human Rights Ordinance states that:

> No person that owns, leases, rents, operates or manages or in any manner controls a public accommodation shall withhold, deny, curtail, limit or discriminate concerning the full use of such public accommodation by any individual because of the individual's...disability....

Section 2-160-020(c) of the Chicago Human Rights Ordinance defines "disability" in part as "a determinable physical or mental characteristic which may result from disease, injury, congenital condition of birth or functional disorder ...."

Complainant has a disability and is protected against discrimination based on that disability because she has mobility impairments and uses a walker.

2. Section 2-160-070 of the Chicago Human Rights Ordinance prohibits discrimination in a public accommodation operating in the City of Chicago. "Public accommodation" includes any agency located in the City of Chicago that provides services to the general public including public bodies or agencies. Section 2-160-020(j).

Respondent is a covered public accommodation because it offers transportation services to the general public in the City of Chicago.

3. Section 2-160-070 provides that a public accommodation must not "deny, curtail, limit or discriminate concerning the full use of such public accommodation." "Full use" is defined by CCHR Reg. 520.110 to mean:

> ... all parts of the premises open to the public shall be available to persons who are members of a Protected Class [including persons with disabilities] at all times and under the same conditions as the premises are available to all other persons and that the services offered to persons who are members of a Protected Class shall be offered under the same terms and conditions as are applied to all other persons.

Further, CCHR Regulation 520.105 provides:

> No person who owns, leases, rents, operates, or in any manner controls a public accommodation shall fail to fully accommodate a person with a disability unless such person can prove that the facilities or services cannot be made fully accessible without undue hardship. In such a case, the owner, lessor, renter, operator, manager or other person in control must reasonably accommodate persons with disabilities unless such person in control can prove that he or she cannot reasonably accommodate the person with a disability without undue hardship.

"Reasonable Accommodation" is defined as "... accommodations (physical changes or changes in rules, policies, practices or procedures) which provide persons with a disability access to the same services, in the same manner as are provided to persons without a disability." CCHR Reg. 520.110. " 'Undue hardship' will be proven if the financial costs or administrative changes that are demonstrably attributable to the accommodation of the needs of persons with disabilities

would be prohibitively expensive or would unduly affect the nature of the public accommodation." CCHR Reg. 520.130.

Respondent curtailed the full use of its services and offered those services in a discriminatory manner to Complainant because of Complainant's disability in that Respondent failed to provide a requested reasonable accommodation to Complainant which curtailed the use of the premises to Complainant in contrast with other customers without disabilities.

4. Section 2-120-510 of the Chicago Commission on Human Rights Enabling Ordinance provides that the Commission may receive and investigate complaints of alleged violations of the Chicago Human Rights Ordinance if such complaints are filed within 180 days of the alleged violation. Complainant filed her complaint within 180 days of the alleged violations. The Commission has jurisdiction over this complaint because Complainant filed her complaint within 180 days of the alleged violations.

IV. DISCUSSION

In order to prove a *prima facie* case of discrimination based on disability, a complainant must prove that: 1) she is a person with a disability within the meaning of the Chicago Human Rights Ordinance ("CHRO"), 2) she is a qualified individual who has established all of the non-discriminatory requirements for service, and 3) she did not have full use of the public accommodation as other patrons without disabilities. *Cotten v. La Luce Restaurant*, CCHR No. 08-P-34 (Apr. 21, 2010); *Maat v. String-A-Strand*, CCHR No. 05-P-05 (Feb. 20, 2008).

Complainant's case

Complainant has established the elements of a *prima facie* case in this case. She proved she is a person with physical or mental impairments. She proved she is a qualified individual; qualification to use the CTA is minimal and requires the desire to utilize and pay for the services offered to the public for a fee. *Cotten v. La Luce Restaurant*, CCHR No. 08-P-34 (Apr. 21, 2010). Complainant proved that she did not have access to the public accommodation, because when she told the bus driver that the stairs were too high for her to get off the bus, the bus driver offered no further assistance although a ramp was available.

The fact that Complainant was able to get off the bus with difficulty and at a risk to her health and safety does not preclude Complainant from establishing her *prima facie* case. As the Commission noted in *Cotten v. La Luce Restaurant*, "an individual may be deprived of the full use of a facility where he or she cannot *readily* enter the front entrance in a wheelchair because of the existence of a barrier." *Id.*, italics added. When Complainant's exit from the bus was done with difficulty and at risk to her safety, Respondent did not provide Complainant the "full use" of its services, as required by §2-160-070 of the Chicago Human Rights Ordinance and the Commission's Regulations, because it offered her egress from the bus "under different terms than are applied to others." *See Hanson v. Association of Volleyball Professionals*, CCHR No. 97-PA-62 (Oct. 21, 1998) (carrying an individual who used a wheelchair to a beach volleyball location does not provide full use). *See also Marshall v. Feed Restaurant*, CCHR No. 15-P-26 (July 14, 2016) (offering to carry complainant in his wheelchair over a step does not provide full use); *Hamilton and Hamilton v. Café Descartes Acquisitions LLC dba Café Descartes*, CCHR No. 13-P-05/06 (June 18, 2014) (allowing patrons to buy coffee, but insisting they leave after the purchase due to complainant's use of a service animal does not provide full use). Requiring Complainant to utilize the CTA services at risk to herself when an accommodation is readily

available does not provide the "benefits of a free and open society" that is to be fostered by the CHRO. §2-160-010, Chicago. Muni. Code.

Respondent's case

Once Complainant established the elements of a *prima facie* case, Respondent must prove by a preponderance of the evidence that it provided the reasonable accommodation or that it was not aware a reasonable accommodation was requested or that there is no accommodation that could reasonably provide the independent access required by Complainant and the CHRO, or that providing the accommodation would impose an undue hardship on Respondent. In this case, Respondent did not do any of the above.

Throughout the hearing in this matter and in its Objections to the Recommended Ruling, Respondent has argued that Complainant never explicitly asked that the ramp be deployed and that without that specific request it was not aware a ramp deployment was needed. CTA argued that in the CTA complaint filed by Complainant shortly after the event Complainant did not state that she explicitly asked for a ramp. Complainant did not testify she requested the ramp be deployed, but she did say the stairs were still too high for her to get off the bus after the bus knelt.

The Commission has noted that it is the duty of the person with a disability to request an accommodation "unless the need for one is apparent." *Schell v. United Center*, CCHR No. 98-PA-30 (Mar. 20, 2002). In this case, when Complainant told the bus driver she could not "get off the bus without falling" per her CTA complaint, she did both request a reasonable accommodation and her need for further accommodations was "apparent." As the 11th Circuit has recognized in an ADA (Americans with Disabilities Act) decision, no "magic words" are required to request a reasonable accommodation. Rather, the important fact is the respondent: "must have enough information to know of both the disability and desire for an accommodation, or circumstances must at least be sufficient to cause a reasonable [defendant] to make appropriate inquiries about the possible need for an accommodation." *United States v. Hialeah Hous. Auth.*, 418 F. App'x 872, 876 (11th Cir. 2011) (internal quotation marks and citation omitted) (Plaintiff had requested a reasonable accommodation without using specific words where he told landlord that he had a disability due to hip and back problems; he had difficulty going up and down stairs; and he did not want an apartment that lacked a first-floor bathroom).

Similarly, Complainant, while not specifically asking for the ramp to be deployed, told the bus driver she could not get off the bus because it was too high. This information is sufficient to alert the bus driver that further accommodations may be needed and to require the bus driver to investigate what accommodations would assure Complainant of a safe exit from the bus. No "magic words" were required. However, the bus driver made no further inquiry, but rather watched as Complainant slowly and at risk to her safety exited the bus.

Respondent also argued that Complainant was able to enter and exit the bus and that therefore she was not denied full use and enjoyment of CTA services. In its objections, Respondent contends that the mere fact that Complainant had difficulty exiting the bus did not prevent her access to the services provided by CTA nor did it make the accommodation provided insufficient. As discussed above, providing access under any circumstances – and particularly when those circumstances put a complainant's health and safety at risk – does not provide equality of access as required under the Ordinance.

Respondent argued that Complainant's Ventra card for people with disabilities was being used elsewhere in the CTA system at the same time as the events on October 19, 2016, as detailed in the Complaint. Complainant proved she was on her bus journey starting at 120 N. Michigan and ending at 93rd and Michigan on October 19, 2016, by her credible testimony. This testimony was supported by Complainant's Exhibit A, a court document which showed Complainant was scheduled to be at a Department of Public Health hearing at 10:00 a.m., that day at the Michigan Avenue location of the start of her journey home on October 19, 2016. The testimony was further supported by CTA's own document, a printout of the use of a CTA Ventra card used by Complainant on October 19, 2016, that confirmed the details of Complainant's journey on that date. Complainant had given the Ventra card to the CTA during discovery. Finally, CTA Exhibit B showed that Complainant called to file a complaint with the CTA about the event on the 3 Michigan Avenue bus route shortly after the event occurred, which again confirmed the details of her testimony.

Respondent argued that someone was using Complainant's Ventra card for people with disabilities at the time of the event. The use of Complainant's Ventra card by an unknown person that same time and day is not sufficient evidence by Respondent to overcome Complainant's substantial evidence that she was on another bus and was not given a reasonable accommodation. Whether someone else used Complainant's Ventra card for people with disabilities incorrectly is not relevant to this case.

Finally, Respondent argued that Complainant could not identify the driver of the bus that day, either in a photo array or by hairstyle. Eyewitness evidence has been found troubling at best and resulted in many criminal cases being overturned in recent years. *People v. Lerma*, 47 NE 3d 985, 400 Ill.Dec. 20 (2016) and cases cited therein. *See also Perry v. New Hampshire*, 132 S. Ct. 716, 728 (2012) ("We do not doubt either the importance or the fallibility of eyewitness identifications.") Courts have said the trier of fact is to determine reliability of eyewitness testimony. *See Perry*, at 728-729. The Illinois Supreme Court in *Lerma* allowed the introduction of expert witness testimony on the unreliability of eyewitness testimony, noting that "eyewitness identifications are not always as reliable as they appear ..." *Lerma,* at 993.

With the abundance of evidence proving Complainant was on the CTA bus on the date and time in question, the hearing officer found that the inability to identify a driver by face or hairstyle over 18 months later, especially when the incident was stressful to Complainant, does not call Complainant's credibility about her being on the bus at that time and date into question.

The Board of Commissioners agrees with the hearing officer's conclusion that Complainant established that she did not have full use of Respondent's services when she attempted to exit one of its busses. Respondent failed to establish that it provided Complainant a reasonable accommodation or that doing so would pose an undue hardship. Accordingly, the evidence establishes that Respondent violated the Chicago Human Rights Ordinance.

V. REMEDIES

Under the Chicago Municipal Code, Section 2-120-510(I), the Commission may award a prevailing Complainant the following forms of relief:

> [A]n order ... to pay actual damages, as reasonably determined by the Commission, for injury or loss suffered by the complainant ... to admit the complainant to a public accommodation; to extend to the complainant the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations of the respondent; to pay to

the complainant all or a portion of the costs, including reasonable attorney fees, expert witness fees, witness fees and duplicating costs, incurred in pursuing the complaint before the commission ...; to take such action as may be necessary to make the individual complainant whole, including but not limited to, awards of interest on the complainant's actual damages ... from the date of the civil rights violation. These remedies shall be cumulative, and in addition to any fines imposed for violations of provisions of Chapter 2-160 and Chapter 5-8.

a. Actual Damages

In her Pre-Hearing Memorandum, Complainant asked for damages for emotional distress in the amount of $10,000. Complainant also sought damages for out-of-pocket expenses in the amount of $700 for "gas, copies, postage[s]," but did not introduce any testimony or documents justifying $700 in out-of-pocket damages.

No out-of-pocket damages will be awarded. Complainant has the burden of proving the basis for any such damages and she did not do so. *See Manzanares v. Lalo's Restaurant*, CCHR No. 10-P-18 (May 16, 2012).

The Commission has consistently held that damages for emotional harm can be awarded as part of an award of actual damages. *Jones v. Shaheed*, CCHR No. 00-H-82 (Mar. 17, 2004); *Nash/Demby v. Sallas & Sallas Realty*, CCHR No. 92-H-128 (May 17, 1995). "Emotional distress damages are awarded in order to fully compensate a complainant for the emotional distress, humiliation, shame, embarrassment and mental anguish resulting from a respondent's unlawful conduct." *Winter v. Chicago Park District, et al.*, CCHR Case No. 97-PA-55, at 16 (Oct. 18, 2000).

The amount of the award for emotional distress depends "on several factors, including but not limited to, the vulnerability of the complainant, the egregiousness of the discrimination, the severity of the mental distress and whether it was accompanied by physical manifestations and/or medical or psychiatric treatment, and the duration of the discriminatory conduct and the effect of the distress. *Steward v. Campbell's Cleaning, et al.*, CCHR No. 96-E-170, at 13 (June 18, 1997). A complainant's testimony standing alone may be sufficient to establish that he or she suffered compensable emotional distress damages. *Hanson v. Association of Volleyball Professionals*, *supra*. Respondents must take complainants as they are, even if they have pre-existing conditions which make the complainant more vulnerable, but Respondents are only liable for the increased level of distress for failure to accommodate. See *Winter v. Chicago Park District*, *supra*; *Hussian v. Decker*, CCHR No. 93-H-13 (Nov. 15, 1995).

Emotional distress damages awarded by the Commission have varied, from amounts such as $50,000, the amount ordered in *Winter*, to far smaller amounts. In *Winter*, the complainant was awarded substantial damages for emotional distress because she was forced to toilet herself in view of other people due to the inaccessibility of the respondent's facilities and, as a result, suffered on-going mental health consequences. In *Maat v. El Novillo Steak House*, CCHR No. 05-P-31 (Aug. 16, 2006), the Commission awarded $1,000 in emotional distress damages to a complainant with a disability who was not able to access a restaurant although the complainant offered "sparse evidence" of inconvenience. In *Manzanares v. Lalo's Restaurant*, CCHR No. 10-P-18 (May 16, 2012), the Commission awarded a complainant $3,500 for one incident of unequal access discrimination where the complainant was humiliated on the night of the incident and continued to feel the effects when recounting the discriminatory incident at her hearing. In *Hamilton and Hamilton v. Café Descartes*, CCHR No. 13-P-05 (June 18, 2005), a daughter and

mother were awarded $5,500 and $3,000 respectively for emotional distress when they were ejected from a restaurant because the daughter, a very vulnerable individual, used a support animal; the daughter testified to continuing distress from the incident.

The Commission has awarded $1,000 or less in most cases in which the discrimination was a single incident and there was little testimony of distress or ongoing problems resulting from the incident. *See Cotten v. Arnold's Restaurant*, CCHR No. 08-P-24 (Aug. 18, 2010) (complainant awarded $500 where location's restroom was inaccessible but complainant was not subjected to rude behavior and his testimony about emotional distress was minimal); and *Cotten v. Top Notch Beefburger, Inc.*, CCHR No. 09-P-31 (Feb. 16, 2011) (complainant awarded $500 where restroom was inaccessible and complainant feared soiling himself).

The hearing officer determined that Complainant's testimony places her above the cases in which minimal damages were awarded. Complainant testified that every time she thinks about the incident it brings tears to her eyes and that the incident was a nightmare for her. She testified it was painful for her to exit the bus and she nearly fell. She testified that she was embarrassed, sad and hurt. In bringing the action, Complainant testified that she was defending herself so it would not happen again to her or to anyone else.

Given Complainant's testimony, the hearing officer found that Complainant is entitled to damages for emotional distress. Complainant was and remains unusually vulnerable due to the consequences of her illnesses, recent surgeries and use of a walker at the time of the incident, which made exiting from a CTA bus very difficult for her and a threat to her safety. Once on the bus, Complainant had no option but to exit the bus as best she could, despite her protests that she could not exit or exit safely, due to the failure of the driver to respond for Complainant's requests for additional assistance. Complainant testified that she was filing the complaint with the Commission in part to assure that this failure to accommodate a person with a disability does not happen again to herself or others, indicating she remained worried about future incidents. Therefore, the hearing officer recommend awarding $10,000, the amount of damages Complainant requested.

In its Objections to the Recommended Ruling, Respondent argues that the record and prior Commission precedent do not support a finding for an award of $10,000 in emotional distress damages. Complainant did not provide any evidence to show that she suffered from any particular illness. Additionally, there was no testimony or medical evidence presented regarding Complainant's surgeries, the severity of Complainant's injuries, or whether Complainant would require additional surgeries in the future. Thus, the conclusion that Complainant was unusually vulnerable at the time of the incident for the purposes of justifying a higher emotional distress damages award was improper. Further, the evidence in the record does not support a finding that the alleged conduct was egregious.

Although Complainant did not present any expert testimony or medical evidence at the hearing that would have aided in determining whether she suffered emotional distress, Complainant's own testimony is sufficient to establish an emotional injury. *Craig v. New Crystal Restaurant*, CCHR No. 92-PA-40 (Oct. 18, 1995). An aggrieved person need not proffer medical evidence to support a claim of mental or emotional impairment. *Sellers v. Outland, supra.* Medical documentation or testimony may add weight to a claim of emotional distress but is not required to sustain a damages award.

The Commission agrees with the hearing officer's determination that emotional distress damages are warranted but believes that an award of $10,000 is too high given the evidence

presented. The Commission finds that the level of emotional distress established in this case is similar to that of the *Hamilton and Hamilton v. Café Descartes* case cited above and finds that an award of $5,500 is more appropriate.

b. Punitive Damages

Punitive damages may also be awarded against a respondent to punish the wrongdoer and deter that party and others from committing similar acts in the future, *Nash/Demby v. Sallas & Sallas Realty, supra*, or where a respondent's actions were willful, wanton, or taken in reckless disregard of the complainant's rights. Complainant has asked for $15,000 in punitive damages.

The Commission has found the Chicago Transit Authority, a municipal corporation, however, is immune from punitive damages and thus punitive damages may not be awarded in this matter. *Roe v. Chicago Transit Authority et al.*, CCHR No. 05-E-115 (Oct. 20, 2010). The Commission in *Roe* noted:

> In *Winter*[10], the Commission held that based on public policy and common law principles, 'in absence of a statute specifically authorizing such recovery, municipal corporations are not liable for punitive damages.' *Winter, supra* at 41; citing *George*[11], *supra* at 60. Further, because 'the Chicago Human Rights Ordinance does not specifically authorize a remedy of punitive damages against municipal corporations,' the Commission declined to award punitive damages against the Chicago Park District and the Lincoln Park Conservatory. *Id.* at 42. The Commission continues to follow this precedent in declining to impose punitive damages against CTA.

As such, no punitive damages may be awarded to Complainant in this matter. The Commission notes, however, that if punitive damages were available in this case, it would have considered such an award against Respondent.

c. Injunctive Relief

Complainant did not ask that Respondent be required undertake any injunctive relief in this matter. However, the hearing officer recommended requiring further driver training be undertaken by the CTA to assure that what went "horribly wrong" does not happen again. In particular, the hearing officer recommend that the CTA send an alert all drivers that a specific request for the deployment of a ramp is not required if a passenger cannot utilize the kneeling bus function or it appears to do so would put the passenger at risk. The Commission agrees and adopts the recommendation.

d. Fine

Section 2-160-120 of the Chicago Human Rights Ordinance provides that any person who violates any provision of the ordinance as determined by the Commission shall be fined not less than $100 and not more than $1,000 for each offense. Every day that a violation shall continue constitutes a separate and distinct offense. Larger fines have been assessed for failing to participate in the Commission process (*Cotten v. Ochoa Sporting Goods*, CCHR No. 14-P-15 (Dec. 17, 2014)), or when respondents have harassed complainants or made derogatory comments (*Burford v. Complete Roofing and Tuck Pointing et al.*, CCHR No. 09-P-109 (Oct.

[10] *Winter v. Chicago Park District*, CCHR No. 97-PA-55 (Oct. 18, 2000).
[11] *George v. Chicago Transit Authority*, 58 Ill. App. 3d 692 (1st Dist. 1978).

19, 2011)). The CTA participated in the proceedings and, while there is evidence that the CTA driver did not assist Complainant as she was required to do, there is no evidence that the driver harassed Complainant or made derogatory comments.

The hearing officer recommended that a fine of $100 be assessed in this case against Respondent. The Commission agrees with the recommendation and so imposes a fine of $100.

e. Interest

Section 2-120-510(l), Chicago Municipal Code, allows an additional award of interest on damages ordered to remedy violations of the CHRO. Pursuant to Reg. 240.700, the Commission routinely awards pre- and post-judgment interest at the prime rate, adjusted quarterly from the date of violation, and compounded annually from the date of the violation. The hearing officer recommended and award of interest on all damages, starting from October 19, 2016, the date of the discriminatory act. The Commission agrees and adopts the recommendation.

f. Attorney Fees

Section 2-120-510(l) allows the Commission to order a respondent to pay all or part of the prevailing complainant's reasonable attorney fees and associated costs; fees are routinely granted to prevailing complainants. *Jones v. Lagniappe – A Creole Cajun Joynt LLC and Mary Madison*, CCHR No. 10-E-40 (Dec. 19, 2012). Complainant appeared *pro se*, and while she ably represented herself, she is not entitled to attorney fees.

VII. CONCLUSION

The Commission finds Respondent Chicago Transit Authority liable for disability discrimination in violation of the Chicago Human Rights Ordinance and orders the following relief:

1. Payment to the City of Chicago of a fine of $100;
2. Payment to Complainant of emotional distress damages in the amount of $5,500;
3. Payment of interest on the foregoing damages from the date of violation on October 19, 2016;
4. Compliance with the order for injunctive relief as described above.

CHICAGO COMMISSION ON HUMAN RELATIONS

By: Mona Noriega, Chair and Commissioner
Entered: August 9, 2018