



STATE OF NEW JERSEY  
OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION ON CIVIL RIGHTS  
DCR DOCKET NO. ED15HB-53390  
REFERRAL NO. 17E 2007 00678

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TONI CARABALLO )  
and )  
C. CARLOS BELLIDO, ESQ., )  
ACTING DIRECTOR, )  
NEW JERSEY DIVISION ON CIVIL RIGHTS, )  
  
Complainants, )  
  
v. )  
  
GLENDORA FAMILY MEDICAL PRACTICE, )  
  
Respondent. )  
\_\_\_\_\_ )

**FINDING OF PROBABLE CAUSE**

Consistent with a Verified Complaint filed on August 22, 2007, the above-named respondent has been charged with unlawful discrimination within the meaning of the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1, et seq.) and specifically within the meaning of N.J.S.A. 10:5-4, and 10:5-12(a) because of disability.

C. Carlos Bellido is the Acting Director of the Division on Civil Rights and, in the public interest, has intervened as a complainant in this matter pursuant to N.J.A.C. 13:4-2.2 (e).

**SUMMARY OF COMPLAINT**

Complainant alleged that she was discriminated against based on her disability when she was denied reasonable accommodation and subsequently discharged from her medical assistant position. Complainant is diagnosed with Wolff-Parkinson-White syndrome. Complainant alleged that due to her disability, and a disability related stroke, she took approved medical leave from June 8, 2007, to June 25, 2007. Complainant further alleged that on July 13, 2007, she presented Respondent with a doctor's note, requesting a reasonable accommodation of light duty, and/or a reduced work schedule, for six weeks. Complainant alleged that Respondent discharged her on July 14, 2007, asserting that she could not be accommodated. Moreover, Complainant alleged that Respondent could have reasonably accommodated her without incurring an undue hardship on its business.

## SUMMARY OF RESPONSE

Respondent denied discriminating against Complainant for any unlawful reason, including disability. Respondent asserted that upon Complainant returning from medical leave on June 25, 2007, she could not perform the essential duties of her medical assistant position. Respondent also asserted that Complainant admitted same to its Nurse Practitioner, Danielle Sasso on June 13, 2007. In addition, Respondent asserted that accommodating Complainant could have jeopardized patient safety, and would have imposed an undue hardship on its small medical practice.

Moreover, Respondent asserted that after her discharge, Complainant applied for and received disability benefits from the State of New Jersey. Respondent asserted that due to this fact Complainant cannot claim that she was capable of performing her job duties at the time she was discharged.

## BACKGROUND

Respondent is a medical practice located in Glendora, Camden County, New Jersey. It has been established since 1998.

Complainant was hired by Respondent as a medical assistant on June 24, 2005. Complainant remained in this capacity until her discharge on July 14, 2007.

C. Carlos Bellido is the Acting Director of the Division on Civil Rights and, in the public interest, has intervened as a complainant in this matter pursuant to N.J.A.C. 13:4-2.2(e).

## SUMMARY OF INVESTIGATION

The investigation produced sufficient evidence to support a reasonable suspicion that Complainant was subjected to unlawful discrimination because of her disability. Specifically, the investigation disclosed that Respondent failed to enter into an interactive process and consider the possibility of reasonably accommodating Complainant, prior to discharging her. In addition, the investigation disclosed sufficient evidence to support a reasonable suspicion that Respondent could have reasonably accommodated Complainant without undue hardship.

The investigation revealed that Complainant was diagnosed with Wolff-Parkinson-White syndrome at age 15. It was disclosed that Wolff-Parkinson-White syndrome is an arrhythmia<sup>1</sup> problem caused by an abnormal pathway in the heart. On June 8, 2007, Complainant underwent an ablation surgical procedure to treat the arrhythmia. After her surgery, Complainant suffered a stroke on June 12, 2007.

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<sup>1</sup> Altered or irregular heartbeat.

Complainant's duties as a medical assistant included answering phones, scheduling appointments, assisting physician or nurse practitioner with patient examinations and treatments, and filing both charts and prescriptions. At the time Respondent made the decision to discharge Complainant, it employed eight individuals, including three full time medical assistants and one part time medical assistant who worked evenings.

The investigation disclosed that upon returning to work on June 25, 2007 after her stroke, Complainant noticed that she was making some grammatical and numerical errors with her work assignments when she became stressed or fatigued. During a Fact Finding Conference held on December 20, 2007, Complainant explained that she had a follow-up visit on July 12, 2007, with Dr. Susan Basemen, a neurologist who treated her after she suffered her stroke. On that date, Dr. Basemen gave Complainant a note stating that she was recovering from a stroke, and that her symptoms were exacerbated by stress and fatigue. Dr. Basemen's note stated that Complainant should be given light duty, and/or reduced work hours for the following six weeks.

It was revealed that Complainant met with Respondent's Nurse Practitioner, Danielle Sasso on July 13, 2007. Specifically, Ms. Sasso stated at Fact Finding that Complainant presented a doctor's note to her, indicating that she should be placed on light duty and/or a reduced work schedule for six weeks. Sasso said that upon receiving the doctor's note, she advised Complainant that she was not aware of any light duty at the practice, and Respondent would have incurred a financial loss if it provided her with reduced hours. Sasso also stated at Fact Finding that Complainant's medical restrictions precluded her from performing the essential functions of her medical assistant position. Sasso further explained that Complainant was advised of her termination, and the reason was due to Respondent's inability to accommodate her.

Respondent's statements at Fact Finding disclosed that it failed to engage in an interactive process with Complainant to determine whether Respondent could provide reasonable accommodations for Complainant's disability. Specifically, Ms. Sasso was asked did she ask Complainant to obtain a more specific note, or additional information from her doctor. Sasso's response was that she felt that it was not her place to speak with Complainant's doctor, because of HIPPA laws. Sasso also stated that she did not need further clarification because she had already concluded that, based on the nature of Complainant's position and her restrictions, Respondent could not provide reasonable accommodations that would enable Complainant to perform her job.

At the Division's Fact Finding Conference, Complainant provided more details about the work restrictions/job accommodations prescribed by Dr. Basemen. Complainant explained that Dr. Basemen advised her that, during the recovery period from her stroke, she would experience confusions involving numbers and letters during stressful situations, and that a temporary reduced work schedule would minimize the stress. She explained that a reduced work schedule meant working from one hour to 30 minutes less a day. With regards to Sasso's claim that she could not communicate with Complainant's physicians because of HIPPA, Complainant stated that she was willing to sign a release giving Respondent permission to communicate with her medical providers. Consequently, the investigation revealed that, because Respondent failed to engage in an interactive

process with Complainant, it failed to get the type of information needed, either from Complainant or her medical providers, to properly assess the feasibility of accommodating her disability before making the decision to discharge her.

During the investigation, Complainant provided additional medical information from her medical providers. In a February 21, 2008 letter, Dr. Baseman explained that in the period immediately following her stroke, Complainant experienced post-stroke fatigue and some cognitive problems with writing and involving number recognition and recall, but she fully anticipated that with therapy and the passage of time, she would recover and be able to return to full duty within 6 to 12 weeks. Dr. Baseman noted that, because Complainant's cognitive issues became more pronounced at the end of a busy day or when she was tired, she recommended that Complainant ask her employer for light duty or a reduction in her work hours. Dr. Baseman added that at the time Complainant was discharged, she did not have the cognitive ability or stamina to find new employment, but she made significant progress and was cleared to return to work on November 5, 2007.

An evaluation and discharge summary from Complainant's speech therapist reported marked improvement, and noted that Complainant began taking classes at Camden County Community College in September 2007, and maintained a 90 average.

Respondent asserted that placing Complainant on light duty and or a reduced work schedule would have created an undue hardship. Specifically, the physician practicing at Respondent's facility, Dr. Benjamin Blank, stated that at the time Complainant presented her doctor's note, Respondent only employed eight employees and three full time medical assistants, including Complainant. Dr. Blank stated that Respondent sees 30 to 40 patients per day, and there were constant phone calls and referrals that needed to be done, in addition to medication refills. Blank stated that accommodating Complainant would have created an undue hardship, from a patient care standpoint.

It was revealed that after Respondent made the decision to discharge Complainant, only two full time medical assistants remained employed. Respondent was asked at Fact Finding if they considered the option of providing Complainant a leave of absence in lieu of termination, during the six-week time period prescribed by the doctor's note. Dr. Blank stated that he could not have promised or guaranteed that Complainant's job would be available at the end of that six-week period. In addition, Nurse Practitioner Sasso said that a leave of absence at the time of July 14, 2007 was not an option because the practice was already shortstaffed.

However, the investigation revealed that Respondent did not replace Complainant for approximately five weeks. Specifically, Respondent's records indicate that Complainant's replacement was hired on August 20, 2007. During Fact Finding, Dr. Blank stated that he did not anticipate that it would take five weeks to hire another medical assistant, but he noted that he decided to hire an office manager first, and then have the office manager hire a replacement for Complainant.

In the intervening five weeks, Respondent employed the remaining two full time medical assistants, and had other employees, such as the receptionist, filling in doing medical assistant duties, and the billing clerk filling in doing receptionist duties. Although five weeks had passed, the investigation disclosed no evidence that Respondent made any effort to determine whether Complainant was fit to return to full duty before hiring another person to replace her.

Moreover, the investigation disclosed sufficient evidence to support a reasonable suspicion that, if Respondent had engaged in an interactive process with Complainant and/or her medical providers to obtain additional information about her symptoms, limitations and anticipated timeline for recovery, Respondent could have accommodated Complainant without undue hardship by providing a brief leave of absence, a temporary reduction in work hours and/or a temporary reassignment of certain medical assistant duties among Complainant and the other medical assistants.

With regards to Respondent's assertion that Complainant applied for and received disability benefits from the State of New Jersey, Complainant stated that Sasso initially suggested to her that she file for temporary disability, when she presented the doctor's note to her. She also stated that after she was discharged, her medical condition temporarily regressed, so that she did not feel that she could immediately seek new employment. For this reason, and because Respondent had refused to provide reasonable accommodations that would have permitted her to remain in Respondent's employ, she applied for temporary disability benefits.

## ANALYSIS

At the conclusion of the investigation, the Division is required to make a determination whether "probable cause" exists to credit a complainant's allegation of discrimination. Probable cause has been described under the New Jersey Law Against Discrimination (LAD) as a reasonable ground for suspicion supported by facts and circumstances strong enough to warrant a cautious person to believe that the law was violated and that the matter should proceed to hearing. Frank v. Ivy Club, 228 N.J. Super. 40,56 (App. Div.1988), rev'd on other grounds, 120 N.J. 73 (1990), cert. den., 111 S. Ct. 799. A finding of probable cause is not an adjudication on the merits but, rather, an "initial culling-out process" whereby the Division makes a preliminary determination of whether further Division action is warranted. Sprague v. Glassboro State College, 161 N.J. Super. 218,226 (App. Div.1978). See also Frank v. Ivy Club, supra, 228 N.J. Super. at 56. In making this decision, the Division must consider whether, after applying the applicable legal standard, sufficient evidence exists to support a colorable claim of discrimination under the LAD.

In the instant case, the investigation produced evidence which supported Complainant's claim that she was subjected to unlawful discrimination with respect to denial of accommodation and discharge, based on disability. The investigation disclosed that Respondent failed to enter into an

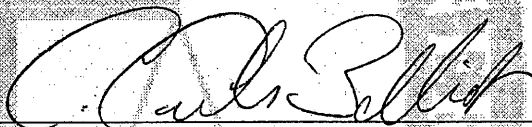
interactive process and consider the possibility of reasonably accommodating Complainant, prior to discharging Complainant. Finally, based information revealed during the investigation, Complainant's position remained unfilled during five of the six week accommodation period initially requested by her physician.

Complainant's receipt of temporary disability benefits does not absolve Respondent of the obligation to engage in an interactive process with Complainant, nor is it dispositive of the question of whether Complainant could have performed her job if Respondent had provided reasonable accommodations for her disability. New Jersey courts have held that an application for disability benefits is not irreconcilably inconsistent with an employee's claim that she could perform her job with reasonable accommodations under the LAD. See, e.g. Ramer v. New Jersey Transit Bus Operations, 335 N.J. Super. 304, 318 (App. Div. 2000).

**FINDING OF PROBABLE CAUSE**

It is, therefore, determined and found that Probable Cause exists to credit the allegations of the complaint as they pertain to denial of accommodation and discharge.

4/15/09  
Date



C. Carlos Bellido, Esq., Acting Director  
New Jersey Division on Civil Rights  
Office of the Attorney General  
Department of Law & Public Safety

STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION ON CIVIL RIGHTS  
DOCKET NUMBER: ED15HB-53390

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)  
COMPLAINANT, )  
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-vs- )  
)  
GLENDORA FAMILY )  
MEDICAL PRACTICE, )  
)  
RESPONDENT. )

**AMENDMENT TO VERIFIED COMPLAINT**

Received and Recorded  
Date:  
Department of Law and Public Safety  
Division on Civil Rights  
By: Alexander Garcon

I, C. Carlos Bellido, Esq., as the Acting Director of the New Jersey Division on Civil Rights, hereby intervene as a Complainant in the above referenced matter pursuant to N.J.A.C. 13:4-2.2(e) and hereby amend the caption of the verified complaint, received and filed on August 22, 2007, to read as follows:

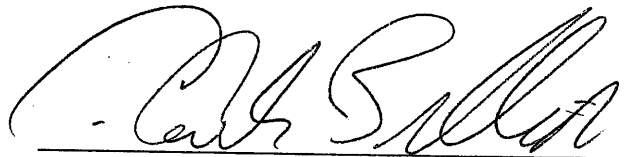
**TONI CARABALLO, and C. CARLOS BELLIDO, ESQ., ACTING DIRECTOR,**

COMPLAINANTS,

-vs-

GLENDORA FAMILY MEDICAL PRACTICE,

RESPONDENT.

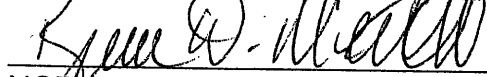


C. Carlos Bellido, Esq., Acting Director  
New Jersey Division on Civil Rights

State of New Jersey)  
County of Essex ) ss:

Sworn to and subscribed before me on

this 24th day of April, 2009.

  
NOTARY PUBLIC OF NEW JERSEY  
BEN W. WEISTRICH  
ATTORNEY AT LAW  
2010 04 24 10:00 AM