

State of Wisconsin



Labor and Industry Review Commission

Bobby G. Buggs, Jr., Complainant

Public Accommodation Decision¹

**State of Wisconsin, Department of
Workforce Development, Division of
Vocational Rehabilitation, Respondent**

Dated and Mailed:

ERD Case No. CR202000684

October 30, 2023
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The Order of the administrative law judge is **affirmed**. Accordingly, the complainant's complaint is dismissed.

By the Commission:

/s/

Michael H. Gillick, Chairperson

/s/

Georgia E. Maxwell, Commissioner

/s/

Marilyn Townsend, Commissioner

¹ **Appeal Rights:** See the pink enclosure for the time limit and procedures for obtaining judicial review of this decision. If you seek judicial review, you **must** name the Labor and Industry Review Commission as a respondent in the petition for judicial review.

Appeal rights and answers to frequently asked questions about appealing a fair employment decision to circuit court are also available on the commission's website, <http://lirc.wisconsin.gov>.

Procedural Posture

This case is before the commission to consider the complainant's allegation that the respondent denied him the full and equal enjoyment of a public place of accommodation or amusement based on his disability, in violation of the Wisconsin Public Accommodation and Amusement Law, Wis. Stat. § 106.52 (the "WPAAL"). An equal rights officer for the Equal Rights Division (the "Division") of the Department of Workforce Development issued a preliminary determination dismissing the complaint based on a conclusion that the respondent was not subject to the WPAAL. The complainant timely appealed the preliminary determination. An administrative law judge ("ALJ") for the Division issued a decision and order affirming the dismissal of the complainant's complaint, finding that the respondent was not subject to the WPAAL. The complainant has filed a timely petition for commission review of the ALJ's decision.

The commission has considered the petition and the positions of the parties, and it has reviewed the information that was before the ALJ. Based on its review, the commission finds that the respondent is not subject to the WPAAL for the services at issue in this case, and affirms the dismissal of the complainant's complaint.

Memorandum Opinion

The WPAAL defines a "public place of accommodation or amusement" at sec. 106.52(1)(e)1, Wis. Stat., as follows:

"Public place of accommodation or amusement" shall be interpreted broadly to include, but not be limited to, places of business or recreation; lodging establishments; restaurants; taverns; barber or cosmetologist; aesthetician, electrologist or manicuring establishments; nursing homes; clinics; hospitals; cemeteries; and any place where accommodations, amusement, goods, or services are available either free or for a consideration, subject to subd. 2.

By adopting the above-cited language, the legislature did not intend to subject every place of business where goods or services are provided to the provisions of the WPAAL. Rather, in order to be a place of public accommodation under the WPAAL, the respondent must be comparable to or consistent with the businesses listed in the statute itself. *Sauers v. Village of Prairie du Sac*, ERD Case No. CR201802285 (LIRC Sept. 27, 2019).

"The plain meaning of the statute requires that a place of public accommodation be of the same type as those identified in the statute. We decline to read the statute so as to render the entire listing irrelevant to the statute's meaning.... When the legislature lists a series of

businesses subject to the provisions of the act, it intends to include businesses of a like kind, and not businesses that are totally dissimilar from those identified. This rule is sometimes stated as *noscitur a sociis*, which means that a word is known by the company it keeps.”

Hatheway v. Gannett Satellite Network, 157 Wis. 2d 395 (Ct. App. 1990).

For the purpose of a jurisdictional challenge, the commission will accept as true the facts as alleged by the complainant. Here, the complainant alleges he was discriminated against in the provision of “customized self-employment” services, which he describes as the counseling and assessment process used by the respondent, the Division of Vocational Rehabilitation (“DVR”) in evaluating whether self-employment was a suitable vocation for him. This assessment, in turn, determines the complainant’s eligibility for certain DVR funding for proposed self-employment endeavors. The complainant describes the evaluation process as “clinical or clinical-like services” offered by DVR and compares that interaction between the complainant and the respondent to the services offered by hospitals, clinics, and nursing homes –entities which are specifically included in the non-exhaustive list of places covered under the WPAAL.

The commission does not find this argument persuasive. The assessment activities at issue in this case are part and parcel of the eligibility determination process for program funding. The counseling is not akin to clinical services offered by a hospital, clinic, or nursing home, in that the counseling is not a service provided to the general public but is a vetting process for determining eligibility for funding for a particular program administered by DVR. The “customized self-employment” assessment process provided by the respondent in determining eligibility for program funding of a self-employment endeavor is too dissimilar from the types of businesses and services enumerated in the WPAAL to be included as a covered place of public place of accommodation under the WPAAL.

The complainant also takes issue with the ALJ’s conclusion that DVR is not covered by the WPAAL, arguing that the decision of the ALJ wholly exempts DVR from coverage under any situation. The commission agrees that there may be situations involving services provided by DVR where the protections of the WPAAL could be invoked and declines to find that DVR can never be covered by the WPAAL. Indeed, although government agencies often do not meet that standard (*see, Perry v. Rock Co. Sheriff’s Department*, ERD Case No. 199701305 (LIRC June 25, 1997), holding that a sheriff’s department does not supply necessities or comforts of the kind identified in the statute, and *Moore v. City of Madison*, ERD Case No. CR200100980 (LIRC Sept. 26, 2002), holding that a city clerk’s office is not covered by the WPAAL because it does not operate in order to provide goods or services to individuals), the

commission has occasionally found coverage for public agencies (*see Young v. DWD Division of Employment and Training*, ERD Case No. CR201703258 (LIRC Jan. 31, 2022), dismissing on the merits, but recognizing coverage under the WPAAL for a job service center. However, because the services at issue here are not comparable to those specifically provided for in the WPAAL, DVR is not a public place of accommodation or amusement in this instance. Accordingly, the complainant's complaint is dismissed.²

cc: Attorney Nicolas Kurutz, Disability Rights Wisconsin, Inc.
Attorney Rachel Bachhuber, Department of Justice

² The commission finds that the respondent is not subject to the WPAAL *for the services at issue in this case* and dismisses on that basis. Wis. Admin. Code § DWD 221.04(1)(b). It does not find that DVR can never be subject to the WPAAL.

It also appears to the commission that the complainant may have failed to state a claim for which relief can be granted, which would warrant a dismissal under Wis. Admin. Code § DWD 221.04(1)(c), given that this case appears to be an attempt to relitigate an already resolved denial of funding for self-employment activities. However, the commission declines to analyze the case under that subsection, having already found that subsection (b) applies.