

**BEFORE THE HUMAN RELATIONS COMMISSION
FOR THE STATE OF DELAWARE**

REGINA BUMBREY)	
)	
Complainant,)	
)	
v.)	Case No. KC-EA-2181-20
)	
LAB CORP DOVER, et al.)	
)	
Respondents.)	

MEMORANDUM DECISION AND ORDER

Pursuant to due notice of time and place of meeting served on all parties in interest, the above-stated cause came before a Panel of the Delaware State Human Relations Commission (“Panel”) on Thursday, March 4, 2021 via WebEx Videoconference¹ to determine whether a violation of the Delaware Equal Accommodations Law, 6 *Del. C.* Ch. 45, had occurred.

PRESENT:

Calvin Christopher, *Commissioner and Panel Chair*
Earnest Gulab, *Commissioner and Panel Member*
Chok-Fun Chui, *Commissioner and Panel Member*
Kemba S. Lydia-Moore, Deputy Attorney General, *Counsel for the Commission and the Panel*

APPEARANCES:

Regina Bumbrey, *Complainant, pro se*
Pamela Moore, Esq., MCCARTER & ENGLISH, LLP, *Counsel for Respondents*²

A meeting of the Panel convened on March 4, 2021 in order to determine whether a violation of Delaware’s Equal Accommodation Law (“DEAL”), 6 *Del. C.* § 4504, occurred. Regina Bumbrey (“Complainant” or “Ms. Bumbrey) brought a Complaint alleging that

¹ The hearing was conducted via video conference in accordance with the recommendations in section I.2 of the Governor’s *Twenty-Seventh Modification of the Declaration of a State of Emergency for the State of Delaware due to a Public Health Threat* issued on September 3, 2020.

² Ms. Moore was granted *pro hac vice* admission for this case pursuant to an Order signed by Commissioner and Panel Chair Calvin Christopher, dated April 13, 2021, *nunc pro tunc* March 1, 2021.

Respondents, Lab Corp Dover (“LC Dover”)³ and Patsy Bane⁴ (collectively “Respondents”), discriminated against Ms. Bumbrey on the basis of her disability (mental). Immediately after the hearing, the panel conducted its deliberations.

SUMMARY OF THE COMPLAINT

Ms. Bumbrey alleged in her complaint that she was refused, withheld, or denied accommodations, facilities, advantages, or privileges of a place of public accommodation because of her mental disability.

Specifically, Ms. Bumbrey contends that on June 13, 2020, she was scheduled for an employment related drug screen at LC Dover, but the staff would not perform the drug screen because Ms. Bumbrey was not wearing a face mask.

Ms. Bumbrey contends she has a mental disability, Post Traumatic Stress Disorder (“PTSD”), which is triggered when anything is put over her face. Ms. Bumbrey contends she cannot put anything over her face because it causes her to have an anxiety attack.

Ms. Bumbrey alleged that Respondent’s refusal to perform the drug screen was an illegal denial of services and accommodations due to her mental disability.

PRE-HEARING MATTERS

Respondents requested the Panel issue an adverse inference ruling against Complainant for failure to comply with a subpoena that was issued by the State Human Relations Commission (“Commission”) on January 4, 2021, pursuant to 6 *Del. C.* § 4510⁵ and Equal Accommodations Regulation (“Regulation”) 8.5.⁶

³ The Panel is aware that LC Dover is one of many patient service centers owned by Laboratory Corporations of America Holdings located throughout the United States. Herein, “LC Dover” will refer to the patient service center at issue and “Lab Corp” will refer to the entire company.

⁴ In her Complaint, Complainant was unable to specify Ms. Bane’s last name, but the Panel was apprised of Ms. Bane’s full name during the hearing.

⁵ According to 6 *Del. C.* § 4510(a), “[t]he Commission may issue subpoenas...in aid of investigations and hearings under this chapter....”

⁶ According to Regulation 8.5, “...a subpoena may be issued upon written request by any Party....”

Both parties made opening statements.

SUMMARY OF THE EVIDENCE

A. Complainant's Case

1. Complainant Regina Bumbrey⁷

Ms. Bumbrey, duly sworn, testified she scheduled an appointment at LC Dover via the website and on the website there was no available option to request reasonable accommodations. Ms. Bumbrey testified that when she arrived for the appointment on June 13, 2020 there was no opportunity to request reasonable accommodations. Ms. Bumbrey testified she did not refuse to wear a mask and instead she cannot wear a mask for medical reasons. Ms. Bumbrey explained she is unable to wear a mask, put anything over her nose and mouth, or have anything around her neck. Ms. Bumbrey further explained that this triggers her PTSD which is the result of being in an abusive relationship for four years. Ms. Bumbrey testified that she endured being beaten, raped, choked, held down, and smothered.

Ms. Bumbrey testified that during her appointment at LC Dover, Patsy Bane ("Patsy") said Ms. Bumbrey could put a paper towel over her nose and mouth and Ms. Bumbrey explained she could not cover her nose and mouth because it would trigger her PTSD. Ms. Bumbrey testified she also explained this to Kristine Arway during their telephone conversation.

Ms. Bumbrey testified there was nowhere she could notate her inability to wear a mask and no one asked if she was able to wear a mask. Ms. Bumbrey testified that when she was checked in for the LC Dover appointment there was no discussion about Ms. Bumbrey not wearing a mask. Ms. Bumbrey testified she was first asked about a mask when she was in the back and preparing to wash her hands. Ms. Bumbrey said Patsy was the person that made inquiry

⁷ See footnote 10. Ms. Bumbrey testified after Respondent's witness, Trenda Bees, was permitted to testify first due to Ms. Bees' time constraints.

and at the time Patsy was fully protected by PPE, which included a face shield.

Ms. Bumbrey testified “my issue has not been that I haven’t received services from Lab Corp. I never said I didn’t receive services. I did receive services after I endured this horrific experience, after I was sent all the way down to Milford - humiliated, disrespected after I was discriminated against because of my disability.” Ms. Bumbrey reiterated that there was no option or opportunity to request reasonable accommodations.

Ms. Bumbrey testified that Patsy was yelling and disrespectful when she spoke to Ms. Bumbrey about wearing a mask. Ms. Bumbrey testified that Patsy, a representative of LC Dover, refused to “wait on me.” Ms. Bumbrey testified that Patsy discriminated against her because of her disability. Ms. Bumbrey testified that if Patsy has a disability that prevents her from being able to provide a service then she should not be employed in her position.

On cross-examination by Ms. Moore, Ms. Bumbrey testified that on June 13, 2020 she saw a sign posted outside LC Dover^{8,9} that instructed everyone to wear a mask or face covering while utilizing Lab Corp patient service centers. Ms. Bumbrey further testified that the sign included language that people who have health conditions that prevent them from wearing a mask are excluded from this requirement. Ms. Bumbrey testified she did not tell anyone at LC Dover that she could not wear a mask and there was no indication on the sign or the website that she was required to notify anyone.

Ms. Bumbrey testified that Dr. Hassan with Center for Mental Wellness is her doctor and Ms. Bumbrey has been Dr. Hassan’s patient for approximately 1.5 to 2 years. Ms. Bumbrey testified she is diagnosed with PTSD and Anxiety, but she does not recall the date of diagnosis. Ms. Bumbrey testified that Dr. Hassan was the doctor that diagnosed her and she did not receive

⁸ See Respondent’s Exhibit 1.

⁹ See footnote 16.

treatment from anyone prior to Dr. Hassan. Ms. Bumbrey testified that her most recent appointment with Dr. Hassan occurred on January 13, 2021.

Ms. Bumbrey testified that she had an appointment with Dr. Hassan and her therapist after this incident. Ms. Bumbrey identified Stephanie Bollinger as her therapist and stated that the appointment, which was not a regularly scheduled appointment, occurred on June 15, 2020. Ms. Bumbrey testified that her most recent appointment with Ms. Bollinger occurred on January 25, 2021.

Ms. Bumbrey acknowledged receiving a subpoena to produce documentation of her medical condition and her inability to wear a mask, and stated her efforts to obtain records from Dr. Hassan have been unsuccessful. Ms. Bumbrey testified that in response to the subpoena, in February 2020, she requested records from Dr. Hassan pertaining to her diagnoses but there were technical difficulties that precluded Dr. Hassan from providing the records prior to this hearing.

Ms. Bumbrey testified she has not previously obtained documentation of her medical condition because she was advised by a representative of Governor John Carney's office that it is illegal for someone to ask for documentation of her medical condition.

Ms. Bumbrey testified she does not have documentation to support her request for monetary relief in this case. Ms. Bumbrey testified that while she initially filed discrimination claims against other Delaware businesses, she did not pursue those claims. Ms. Bumbrey testified she pursued the claim against LC Dover because she felt more discriminated by LC Dover than by the other businesses.

Ms. Bumbrey testified that the abusive relationship ended approximately 4.5 years ago and that she has a lifetime Protection From Abuse ("PFA") Order against the perpetrator.

Ms. Bumbrey testified that on June 13, 2020, Patsy said both she and Sarita¹⁰ had asthma and Ms. Bumbrey has no reason to dispute that they have asthma. Ms. Bumbrey testified that, in her opinion, if one's health interferes with the performance of their job then they should reconsider their line of work. Ms. Bumbrey testified that employees do deserve accommodations.

Ms. Bumbrey testified she has no knowledge of how many people enter LC Dover and refuse to or are unable to wear a mask. Ms. Bumbrey testified she has no knowledge of how many people enter LC Dover and are disrespected and discriminated against because their disability cannot be seen.

Ms. Bumbrey testified that the reference to "falling out" in her Complaint pertained to Patsy yelling at and speaking to Ms. Bumbrey as if she is "nobody," "not a customer," and "as if it's not her job to do this drug screening." Ms. Bumbrey testified she did not yell or curse at Patsy. Ms. Bumbrey testified she left LC Dover and later spoke with Kristine Arway who arranged to have Ms. Bumbrey receive the drug screen at another Lab Corp location.

Ms. Bumbrey testified she did yell and curse at Ms. Arway when they spoke on the phone. Ms. Bumbrey acknowledged that she was wrong for speaking to Ms. Arway in this manner as she should not have directed her anger towards Ms. Arway.

Ms. Bumbrey testified that when the incident occurred at LC Dover she could not wear a plastic face shield but she is now able to wear one because she conditioned herself to do so as she wants to avoid a repeat of the humiliation and embarrassment she experienced at LC Dover. Ms. Bumbrey testified she can use a tissue to blow her nose and she can use a napkin to clean her lips but anything covering her nose and mouth causes anxiety.

Ms. Bumbrey testified "my issue has never been that Lab Corp didn't service me, that

¹⁰ Based on all the testimony, the Panel deduced that Sarita (also identified during the hearing as Sharita and Rita) was another LC Dover employee who refused to administer Ms. Bumbrey's drug screen on June 13, 2020.

was never my issue...it was the treatment I received from Lab Corp staff...it has never been about denying me service. I never said that.”

In response to Panel questions, Ms. Bumbrey testified she was diagnosed by Dr. Hassan with PTSD approximately 1.5 to 2 years ago. Ms. Bumbrey testified that she realized she could not wear a mask on the day that wearing masks became a requirement. Ms. Bumbrey explained that she went to Walmart in Dover, DE and put on a mask to enter the store. Ms. Bumbrey further explained that she had a panic attack in front of the store and the manager was going to call an ambulance.

Ms. Bumbrey testified she did not inform LC Dover staff that she has PTSD because she did not know she had to inform them. Ms. Bumbrey testified she did not have documentation of her diagnosis and inability to wear a mask because a representative with Governor Carney’s office informed her she is not required to provide documentation, it is illegal for anyone to request documentation, and it is illegal for anyone to inquire about her specific medical condition. Ms. Bumbrey testified that she used to have a screenshot of an article on her cell phone that contained this same information. Ms. Bumbrey said she did not show the screenshot to LC Dover staff as there was no indication that she needed to notate or notify anyone of her inability to wear a mask.

Ms. Bumbrey testified she has reasonable accommodations at work and is not required to wear a mask.

Ms. Bumbrey testified she has been tested for COVID-19 on a number of occasions and the test results were negative.¹¹

Ms. Bumbrey then rested her case-in-chief.

¹¹ This testimony occurred after Respondent’s witness, Patsy Bane, testified due to additional questions posed by the Panel.

B. Respondents' Case

1. Witness Trenda Bees¹²

Ms. Bees, duly sworn, testified she is the Phlebotomy Manager for various Lab Corp patient centers located in Delaware and Maryland. Ms. Bees testified she was the Phlebotomy Manager at LC Dover on June 13, 2020 and on that day she received a call from Kristine Arway. Ms. Bees testified that Ms. Arway said she received a call from Patsy about a patient who was present at LC Dover and was not wearing a mask. Ms. Bees testified that Ms. Arway said Patsy refused to administer the patient's drug screen because wearing masks was required and because Patsy did not feel comfortable servicing the patient. Ms. Bees testified she told Ms. Arway she would call her back.

Ms. Bees testified she then called her manager, Jessica Jenkins, Lab Corp's Director of Operations - Northeast Region, to confirm what is the policy about wearing masks. Ms. Bees testified that after speaking with Ms. Jenkins she called Ms. Arway and informed her that the LC Dover employees needed to service the patient because patients are not required to wear masks if they have a medical condition that prevents them from wearing masks and because the employees have personal protective equipment ("PPE")¹³. Ms. Bees testified that during this conversation she learned Ms. Arway made arrangements for the patient to be serviced at another location.

Ms. Bees testified there were memos sent to employees about the mask wearing policy and there was a link available on Lab Corp's website that employees could access to learn about the policy and any updates. Ms. Bees testified that in the State of Delaware, Lab Corp has not

¹² In consideration of Ms. Bees' time constraints, she was called "out-of-turn" and was the first witness to testify.

¹³ Ms. Bees explained that at the time of this incident PPE consisted of a lab coat, a cloth face mask, and gloves.

experienced any other patients who have refused to wear masks nor any other incidents regarding enforcement of the mask wearing policy.

Ms. Bees testified that after this incident she spoke with LC Dover staff, Rita¹⁴ and Patsy, about the mask wearing policy, how they can access and review the written policy, and the importance of wearing PPE. Ms. Bees testified that because the policy was rapidly changing it was not appropriate to discipline Rita and Patsy for refusing to administer the drug screen, but the incident was documented.

Ms. Bees testified that there have been Lab Corp employees who contracted COVID-19 despite their use of a face mask.

On cross-examination by Ms. Bumbrey, Ms. Bees testified she did not recall having a conversation with Ms. Bumbrey three weeks after this incident. Ms. Bees also testified that there are no closed-circuit cameras or surveillance cameras at LC Dover.

2. Witness Patsy Bane

Ms. Bane, duly sworn, testified she has been employed with Lab Corp for approximately 7 years as a phlebotomist which includes administering drug screens. Ms. Bane testified she works full time (i.e. 40 hours per week) and for 5 hours every other weekend.

Ms. Bane testified there were 3 people working at LC Dover on June 13, 2020, which included Ms. Bane, who was working in the back, and Sharita¹⁵, who was working in the front. Ms. Bane testified that Sharita informed her there was a patient and Ms. Bane called the patient, Ms. Bumbrey, to the back. Ms. Bane testified she did not initially notice that Ms. Bumbrey was not wearing a mask but when Ms. Bane realized it she offered Ms. Bumbrey a mask. Ms. Bane testified that Ms. Bumbrey refused to wear a mask and stated it will cause her to have an anxiety

¹⁴ See footnote 10.

¹⁵ See footnote 10.

attack. During her testimony, Ms. Bane demonstrated that Ms. Bumbrey yelled at Ms. Bane when she communicated this to Ms. Bane.

Ms. Bane testified she then called Ms. Arway and placed her on speaker phone. Ms. Bane testified she explained that Ms. Bumbrey refused to wear a mask and then Ms. Arway suggested Ms. Bumbrey use a paper towel to cover her mouth, but Ms. Bumbrey also refused to do that. Ms. Bane testified she explained to Ms. Bumbrey that she has asthma and was uncomfortable servicing Ms. Bumbrey because she was not wearing a mask. Ms. Bane testified Ms. Bumbrey “turned around and said to me, well unlike some people that have a real job you and your bullshit ass job I came here yesterday and you was closed.” Ms. Bane testified Ms. Arway then suggested that Sharita administer the drug screen and Ms. Bane responded that Sharita’s son has asthma and Sharita is also uncomfortable doing the drug screen.

Ms. Bane testified that Ms. Bumbrey began screaming and cursing at Ms. Bane. Ms. Bane testified she was calm when interacting with Ms. Bumbrey. Ms. Bane testified she was scared due to Ms. Bumbrey’s behavior. Ms. Bane testified she again told Ms. Bumbrey neither Ms. Bane nor Sharita were comfortable administering the drug screen. Ms. Bane testified that Ms. Bumbrey retrieved her belongings and left LC Dover. Ms. Bane testified that Ms. Bumbrey called 5 minutes later and requested a supervisor’s phone number. Ms. Bane testified that Sharita provided Ms. Arway’s phone number.

Ms. Bumbrey did not cross-examine Ms. Bane but stated “I have no questions for her. Everything she just said is a lie. I have no questions for her.”

3. Witness Kristine Arway

Ms. Arway, duly sworn, testified she is the Lab Corp Sussex County Patient Service Supervisor and she has been employed with Lab Corp for 9 years. Ms. Arway testified she was the supervisor for the employees working at LC Dover on June 13, 2020, which included Patsy

and Sharita. Ms. Arway testified that on June 13, 2020 she received a call from Patsy who stated there was a patient at the site that wanted a drug screen but the patient was not wearing a mask. Ms. Arway testified she told Patsy that she believed the patient had to be serviced. Ms. Arway testified that she was on speaker during this conversation and asked if the patient, Ms. Bumbrey, could wear a tissue over her mouth and Ms. Bumbrey said "no." Ms. Arway testified she then asked if Ms. Bumbrey could wear a paper towel over her face and Ms. Bumbrey said "no." Ms. Arway testified she then asked if Ms. Bumbrey would use a face shield and Ms. Bumbrey said "no." Ms. Arway testified she then told Patsy she needed to call her supervisor, Ms. Bees.

Ms. Arway testified that Patsy said she could not administer the drug screen because she has asthma. Ms. Arway testified that at the time she was aware Patsy has asthma, but she was not aware Patsy had provided a note to the company regarding her asthma.

Ms. Arway testified she called Ms. Bees and informed her of the situation and Ms. Bees said they could not turn away a patient. Ms. Arway testified she informed Ms. Bees that she would contact the patient service center in Milford, DE to see if Ms. Bumbrey could be serviced at that location. Ms. Arway testified that immediately after she ended her conversation with Ms. Bees, Ms. Bumbrey called her.

Ms. Arway testified that Ms. Bumbrey yelled and used profanity towards her and Ms. Arway did not interrupt because it was clear Ms. Bumbrey was very upset. Ms. Arway testified that after approximately one or two minutes, she did interrupt Ms. Bumbrey and requested Ms. Bumbrey stop using profanity. Ms. Arway also testified she informed Ms. Bumbrey she was working on a solution and would return Ms. Bumbrey's call.

Ms. Arway testified that on June 13, 2020, Patsy and Sharita were the only employees present at LC Dover who were certified to administer the drug screen. Ms. Arway testified that Sharita also refused to administer the drug screen because her son has asthma.

Ms. Arway testified that after speaking with Ms. Bumbrey she called the Milford, DE patient service center and arranged with a staff member, Tiffany, to administer the drug screen. Ms. Arway testified she apprised Tiffany that Ms. Bumbrey refused to wear a mask prior to obtaining Tiffany's consent to administer the drug screen.

Ms. Arway testified that having Ms. Bumbrey go to the Milford, DE location was the best option. Ms. Arway testified that the only other option was for her to go to LC Dover to administer the drug screen and it would have taken a while for Ms. Arway to get there.

Ms. Arway testified she is familiar with the sign that was posted on the front door of LC Dover¹⁶ because she hung it there. Ms. Arway testified that it was Lab Corp's policy to make exceptions to the mask wearing policy if necessary but that was impossible here because there was no one at LC Dover on June 13, 2020 who could administer Ms. Bumbrey's drug screen.

Ms. Arway testified that a meeting was held a week later, with Patsy and Sharita, to discuss the mask wearing policy. Ms. Arway said they discussed how the policy was rapidly changing and that Lab Corp made efforts to comply with the Centers for Disease Control and Prevention's ("CDC") guidelines. Ms. Arway said they discussed that some people cannot wear masks and that Lab Corp needed to also service those people.

Ms. Arway testified that some Lab Corp employees have contracted COVID-19 although they wore PPE.

On cross-examination by Ms. Bumbrey, Ms. Arway testified it is possible that other people cannot wear masks but LC Dover has only had this one experience with that issue.

Ms. Arway testified that when she spoke with Patsy on speaker she heard Ms. Bumbrey speaking loudly but she did not hear Ms. Bumbrey cursing at Patsy.

Respondents then rested their case in chief.

¹⁶ See Respondent's Exhibit 1.

4. Additional Respondent's Exhibits

At the conclusion of the hearing¹⁷, Ms. Moore requested that the Panel take judicial notice of the information contained at the websites that were incorporated by reference in "Respondents' Answers to Questionnaire" that was provided in response to a Questionnaire issued by the Commission pursuant to Regulation 6.1.¹⁸

Without objection, the Panel admitted the documents/information into evidence as Respondents' Exhibits 2,¹⁹ 3,²⁰ and 4.²¹

C. Complainant's Closing Arguments

In closing, Ms. Bumbrey reiterated that she was poorly treated, disrespected, humiliated, and discriminated against during her appointment at LC Dover on June 13, 2020. Ms. Bumbrey argued that LC Dover's staff discriminated against her because of her disability.

Ms. Bumbrey stated she has never said there was an issue with receiving services. Ms. Bumbrey acknowledged that Ms. Arway's efforts enabled her to receive the drug screen although Ms. Bumbrey did have to travel for 30 minutes to obtain said services.

Ms. Bumbrey requested that the Panel award her \$5,000 which would pay for the therapeutic services she received following this incident.

¹⁷ At the conclusion of the hearing, the Panel permitted Respondent to admit exhibits into evidence, without objection.

¹⁸ According to Regulation 6.1, "Investigation of the complaint shall be conducted by Staff and shall commence promptly after the filing of the complaint. Investigation may include, without limitation: interviews, questionnaires...to gather relevant evidence."

¹⁹ Respondent's Exhibit 2 consists of the information pertaining to Lab Corp's mission statement, goals and objectives as they apply to customer service for people with disabilities that can be found at <https://www.labcorp.com/coronavirus-disease-covid-19/patient-information/healthy-tips-adcock>.

²⁰ Respondent's Exhibit 3 consists of the information pertaining to Lab Corp's diversity training program that can be found at <https://jobs.labcorp.com/inclusion-and-diversity>.

²¹ Respondent's Exhibit 4 is the State of Delaware *Twenty-Seventh Modification of the Declaration of A State of Emergency for the State of Delaware Due to A Public Health Threat* that can be found at <https://governor.delaware.gov/wp-content/uploads/sites/24/2020/09/Twenty-Seventh-Modification-to-State-of-Emergency-09032020.pdf>.

D. Respondents' Closing Arguments

In closing, Ms. Moore argued that in June 2020 there was rapidly changing guidance from the CDC regarding measures to be taken to prevent the spread of COVID-19 and in response to those changes Governor Carney had amended his State of Emergency Order ("Order") multiple times. Ms. Moore argued that the Order in existence at the time of this incident²² stated that cloth face coverings should be worn, people should socially distance themselves, and exceptions could be made for people who had medical conditions. Ms. Moore further argued that the Order in existence at the time included a provision that it was per se unreasonable to require accommodations if doing so imposed danger to another.

Ms. Moore argued that in this case there was clearly a conflict between the Order and laws (e.g., Occupational Safety and Hazard Administration laws) that imposed a duty upon employer's to protect employees from harm. Ms. Moore acknowledged that Ms. Bumbrey's right to not wear a mask due to her medical condition conflicted with LC Dover's employees' rights to be safe from harm. Ms. Moore stated that it was not LC Dover's desire to preclude Ms. Bumbrey from receiving services and LC Dover staff did what they could to afford Ms. Bumbrey reasonable accommodations.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Ms. Bumbrey alleges Respondents violated the DEAL and denied her access to public accommodation because of her mental disability. Section 4504(a)(1) of the DEAL provides that "no person being the owner...manager...agent or employee of any place of public accommodation, shall directly or indirectly refuse, withhold from or deny to any person, on account of race, age, marital status, creed, color, sex, disability, sexual orientation, gender identity, or national origin, any of the accommodations, facilities, advantages, or privileges

²² See Respondents' Exhibit 4.

thereof.”

The provisions of the DEAL are to be “liberally construed” to safeguard the rights set forth therein.²³ “The ultimate purpose [of the DEAL] is to eliminate the inconvenience, unfairness, and humiliation of...discrimination.”²⁴

Under Delaware law, claims alleging a direct or indirect refusal or denial of public accommodations based upon unlawful discrimination are decided using the guidance of the U.S. Supreme Court’s three-part analysis in *McDonnell Douglas Corp. v. Green*.^{25,26} This analysis requires the following steps:

- (1) The Complainant must establish a *prima facie* case of discrimination.
- (2) Once a *prima facie* case is established, the burden shifts to the respondent to present evidence of a legitimate, non-discriminatory reason for denying plaintiff access.
- (3) After this production of evidence, the complainant retains the burden of persuading by a preponderance of the evidence that the respondent’s proffered reason was a pretext for discrimination.²⁷

Here, to meet the initial burden of going forward and establishing a *prima facie* case of discrimination, Ms. Bumbrey must show: (a) that she is a member of a protected class; (b) that she was denied access to public accommodation; and (c) that non-members of the protected class were treated more favorably. Further, because Equal Accommodations hearings before the SHRC are subject to the provisions of Delaware’s Administrative Procedures Act (APA),²⁸ “the

²³ 6 Del. C. §4501.

²⁴ *Uncle Willie’s Deli v. Whittington*, 1998 WL 960709 at *4 (Del. Super. Dec. 31, 1998) (citations and internal quotations omitted).

²⁵ 411 U.S. 792 (1973).

²⁶ *See, e.g., DP, Inc. v. Harris*, 2000 WL 1211151 at *6 (Del. Super. July 31, 2000) (“Delaware Courts have applied the standard articulated in *McDonnell Douglas Corporation v. Green* for cases alleging unlawful discrimination.”) (citations omitted); *Uncle Willie’s*, 1998 WL 960709, at *4 (applying the *McDonnell Douglas* analysis to a case brought under the DEAL).

²⁷ *Salty Sam’s Pier 13 v. Washam*, 2000 WL 1211227, at *2 (Del. Super. Aug. 3, 2000) (citations omitted).

²⁸ 29 Del. C. Ch. 101.

burden of proof shall always be upon the applicant or proponent.”²⁹

The first question for the Panel to decide is whether Ms. Bumbrey is a member of a protected class. The Panel finds Ms. Bumbrey is not a member of the protected class that she identified in her Complaint (i.e. mental disability). According to the DEAL, “[d]isability’ means a physical or mental impairment which substantially limits a person’s major life activities, or being regarded as having such an impairment....”³⁰

While Ms. Bumbrey testified that she has been diagnosed with PTSD and Anxiety, she provided no documentation of said diagnoses. In the absence of documentation and the inability to determine whether Ms. Bumbrey has a mental disability via visual observation, the Panel concludes that Ms. Bumbrey has failed to satisfy her burden of proving that she is a member of a protected class.

It should be noted that Ms. Bumbrey is African-American and as such is a member of a protected class (i.e. race). However, Ms. Bumbrey’s Complaint alleges she was discriminated against due to her membership in the protected class of mental disability. The Panel may only consider the purported membership identified in the Complaint when rendering a decision.

Given that Ms. Bumbrey has not proven she is a member of the protected class identified in her Complaint, she has not established a *prima facie* case of discrimination and she cannot prevail on her complaint. Nevertheless, the Panel will address the remaining elements required to establish a *prima facie* case.

The next question for the Panel to decide is whether Ms. Bumbrey was denied access to public accommodation. “‘Place of public accommodation’ means any establishment which caters to or offers goods or services or facilities to, or solicits patronage from, the general public....”³¹

²⁹ 29 Del. C. § 10125(c).

³⁰ 6 Del. C. § 4502(7).

³¹ 6 Del. C. § 4502(14).

As a patient service center that is open to and provides services to the general public, LC Dover is clearly a place of public accommodation. It is also clear that Ms. Bumbrey was denied service at LC Dover when Patsy and Sharita refused to administer the drug screen due to concerns for their safety. However, Ms. Arway arranged for Ms. Bumbrey to receive the service at another location and therefore Ms. Bumbrey was not denied service outright. In fact, Ms. Bumbrey testified that she was not denied service. Instead, it seems that Ms. Bumbrey focused on the manner in which she was treated, which she described as disrespectful, humiliating, and horrific.

While Ms. Bumbrey was not denied service outright, one can prove a denial of service if there is an intentional delay of service to frustrate the customer or if there is a deviation of service.³² The Panel finds that there was neither an intentional delay to frustrate Ms. Bumbrey nor a deviation from the service that Ms. Bumbrey sought. Patsy and Sharita did not have prior knowledge of Ms. Bumbrey's inability to wear a mask and therefore were not aware that additional arrangements were necessary to ensure that Ms. Bumbrey received service upon arrival. It follows that Patsy and Sharita did not intentionally delay the service to frustrate Ms. Bumbrey. Additionally, when Patsy learned that Ms. Bumbrey could not wear a face mask she sought guidance from her supervisor, Ms. Arway. In turn, Ms. Arway made arrangements for Ms. Bumbrey to obtain the drug screen at a different location. Although Ms. Bumbrey's 30 minute travel time to the second location caused a delay, she received the same service that she sought at LC Dover and therefore there was no deprivation of service.

Again, Ms. Bumbrey has failed to prove one of the elements necessary to establishing a *prima facie* case of discrimination and this failure further supports the Panel's ruling that Ms. Bumbrey cannot prevail on her Complaint.

³² See *Hadfield's Seafood v. Rouser*, 2001 WL 1456795 (Del. Super.); *Witcher v. Breeding*, 2012 WL 3518079 (Del Super.).

With regards to the final element, Ms. Bumbrey did not present any evidence that non-members of the protected class were treated more favorably. Therefore, Ms. Bumbrey did not meet her burden of proof for the third element of establishing a *prima facie* case and her Complaint also fails on that basis.

CONCLUSION

After careful consideration of the evidence presented, the Panel, by unanimous vote, concludes that Ms. Bumbrey has failed to establish a *prima facie* case of discrimination and therefore Ms. Bumbrey failed to prove that Respondents violated the DEAL.

ORDER

Pursuant to 6 *Del. C.* § 4508(g), the Complaint against Respondents is **DISMISSED**.
IT IS SO ORDERED this 30th day of August, 2021.

Calvin H. Christopher

Calvin H. Christopher (Aug 30, 2021 09:46 EDT)

Calvin Christopher, *Commissioner and Panel Chair*

Earnest Gulab

Earnest Gulab (Aug 31, 2021 20:16 EDT)

Earnest Gulab, *Commissioner and Panel Member*

Chok-Fun Chui

Chok-Fun Chui (Sep 1, 2021 08:54 EDT)

Chok-Fun Chui, *Commissioner and Panel Member*