

State of Wisconsin



Labor and Industry Review Commission

Michael Young  
Complainant

County of Outagamie  
Department of Health & Social Services  
Respondent

ERD Case No. CR201800268

Public Accommodation Decision<sup>1</sup>

Dated and Mailed:

AUG 30 2018

The decision of the administrative law judge (copy attached) is **affirmed**. Accordingly, the complainant's complaint is dismissed.

By the Commission:

Handwritten signature of Georgia E. Maxwell in blue ink.

Georgia E. Maxwell, Chairperson

Handwritten signature of Laurie R. McCallum in black ink.

Laurie R. McCallum, Commissioner

Handwritten signature of David B. Falstad in black ink.

David B. Falstad, Commissioner

<sup>1</sup> **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 discriminated against him based upon his race and ancestry, in violation of the Wisconsin Public Accommodation and Amusement Law (hereinafter "WPAAL"). An administrative law judge for the Equal Rights Division (hereinafter "Division") of the Department of Workforce Development issued a decision dismissing the complaint because the complainant failed to state a claim under the WPAAL. The complainant has filed a timely petition for commission review of the administrative law judge's decision.

The commission has considered the petition and the positions of the parties, and it has reviewed the information that was before the administrative law judge. Based on its review, the commission agrees with the decision of the administrative law judge, and it adopts the findings and conclusions in that decision as its own.

### **Memorandum Opinion**

In his petition for commission review the complainant argues that the respondent has engaged in a variety of unlawful conduct including, but not limited to, issuing court orders stopping him from communicating with his children, defrauding him out of several thousand dollars for the birth of his children for which his insurance had already paid, and deducting ten dollars a month from his benefit checks. The commission agrees with the administrative law judge that the complainant has not stated a claim that is covered by the WPAAL.

To begin with, the respondent is not a "public place of accommodation or amusement" under the definition contained in the law:

"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.

Wis. Stat. § 106.52(1)(e).

Even assuming that the respondent's Department of Health & Social Services could be considered a "business," it does not supply necessities and/or comforts of the kind offered by the businesses identified in the statute and is so dissimilar in nature from the businesses listed in the statute as to not constitute a place of public accommodation. *See, Perry v. Rock Co. Sheriff's Department*, ERD Case No. 199701305 (LIRC June 25, 1997).

Further, the complainant has not alleged any conduct by the respondent that could conceivably fall within the prohibitions contained in the WPAAL, which provides in relevant part that no person may do any of the following:

1. Deny to another or charge another a higher price than the regular rate for the full and equal enjoyment of any public place of accommodation or amusement because of sex, race, color, creed, disability, sexual orientation, national origin or ancestry.

...

2. Give preferential treatment to some classes of persons in providing services or facilities in any public place of accommodation or amusement because of sex, race, color, creed, sexual orientation, national origin or ancestry.

...

Wis. Stat. § 106.52(3)(a).

The complainant's complaints about the way in which the respondent resolved certain custody disputes, the manner in which he was billed for the birth of his children, and the fact that the respondent garnished his benefits checks to cover child support or childbirth related payments do not allege any injury that would, if proven, violate the WPAAL. The complainant has not contended that he was denied goods or services or charged more for good or services because of his race or ancestry, nor does he suggest that other classes of people were afforded preferential treatment with respect to the services they received based upon their race or ancestry. Although the complainant may believe that he was treated unjustly with respect to a variety of his dealings with the respondent, these are not matters that can be addressed in the context of a public accommodations claim. Accordingly, the dismissal of the complaint is affirmed.

cc: Attorney Remzy Bitar

**STATE OF WISCONSIN  
DEPARTMENT OF WORKFORCE DEVELOPMENT  
EQUAL RIGHTS DIVISION**

---

Michael Young  
P.O. Box 1394  
Fond du Lac, Wisconsin 54936-1394

Complainant

v.

**DECISION AND ORDER ON APPEAL  
OF PRELIMINARY DETERMINATION  
ERD Case No. CR201800268**

County of Outagamie  
Department of Health & Social Services  
401 S Elm Street  
Appleton, Wisconsin 54911

Respondent

---

PROCEDURAL BACKGROUND

On January 31, 2018, the Complainant, Michael Young, filed a complaint with the State of Wisconsin, Department of Workforce Development - Equal Rights Division (the "Division") alleging that the Respondent, Outagamie County Health and Social Services, had discriminated against him because of his race or ancestry in violation of the Wisconsin Public Accommodations and Amusements Law (WPAAL), Wis. Stat. § 106.52, by taking ten dollars per month from his social security checks from the year 2000 through the present, and by making child custody-related decisions that he found to be adverse.

On February 13, 2018, an Equal Rights Officer (Investigator) for the Division issued an Intake Preliminary Determination and Order dismissing the complaint for failure to state a claim under a law the Department has jurisdiction to enforce. The Investigator noted in his determination that the complaint relates to collection efforts of the Respondent's Department of Health and Human Services Child Support Agency, and does not relate to the type of service industry business covered by the WPAAL.

The Complainant filed an appeal of the Intake Preliminary Determination and Order on February 19, 2018. The Respondent filed a response to the Complainant's appeal on March 16, 2018.

DECISION

The Complainant appears to allege that the Respondent discriminated against him within the meaning of the WPAAL when it made an adverse custody decision regarding at least one of his children, and by garnishing child support payments from his benefits checks.

However, as noted by the Respondent in its argument in response to the Complainant's appeal, the Outagamie County Health and Social Services department does not fall within the definition of a public place of accommodation or amusement within the meaning of the WPAAL in the circumstances underlying the complaint.

As the Labor and Industry Review Commission (LIRC) noted in a decision in which it found the WPAAL not to apply in a case against a Respondent County Sheriff's Department:

case law has held that by adopting [the language of the statute] the legislature did not intend to subject every place of business where goods or services are provided to the provisions of the public accommodation act, that to be a place of public accommodation under the public accommodations act, the business must be comparable to or consistent with the businesses in the statute itself. Perry v. Rock Co. Sheriff's Dept. (LIRC, 06/25/97), citing Hatheway v. Gannett Satellite Network, 157 Wis. 2d 395, 400-401, 459 N.W. 2d 873 (Ct. App. 1990).

LIRC reaffirmed the above reasoning in a more recent case in which it found the WPAAL not to apply in a case involving a Respondent health insurer, commenting:

LIRC has [...] issued a number of decisions relying on Hatheway which find that named respondents in public accommodation discrimination complaints are not "public place[s] of accommodation or amusement" as contemplated by the law. A number of these have involved complaints against government agencies, where the dissimilarity to the type of establishment described in the law is even sharper. Tabatabai v. Wisconsin Physician Serv. Health Ins. (LIRC, 02/29/12).

As a division of a government agency making custody determinations, ordering the payment of child support, and/or garnishing moneys for child support payments, the Respondent is not sufficiently similar to the "places of business or recreation; lodging establishments; restaurants; taverns; barber or cosmetologist, aesthetician, electrologist or manicuring establishments; nursing homes; clinics; hospitals; [and] cemeteries" named as examples of public places of accommodation or amusement in the WPAAL. See Wis. Stat. § 106.52 (1)(e).

The Respondent also asserts correctly in its argument that a complaint may be dismissed if it fails to state a decipherable claim under the WPAAL.

Wisc. Admin. Code § DWD 221.03(3)(d) requires that a complaint contain a "concise statement of the essential facts" underlying the Complainant's claim.

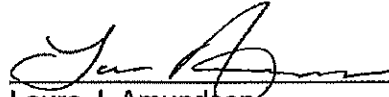
In addition to the allegations addressed above, the Administrative Law Judge infers that the Complainant may be attempting to allege that the County of Outagamie has charged him more than once for hospital services relating to the birth of one of his children in the year 2000. However, the Complainant has failed to clearly state any such allegation, to allege any facts concerning how any payment for hospital services for the birth of his child in the year 2000 relate to his race or ancestry, or to specify what role if any the Respondent County of Outagamie Department of Health and Social Services has in his payment of any bill for hospital services (as opposed to child support). Accordingly, the complaint further fails to state a claim as to any allegation against this Respondent concerning payment for hospital services rendered in the year 2000.

ORDER

The Intake Preliminary Determination and Order dismissing the complaint for failure to state a claim under the WPAAL is affirmed, and the complaint is dismissed with prejudice.

JUL 13 2018

Dated at Milwaukee, Wisconsin \_\_\_\_\_



\_\_\_\_\_  
Laura J. Amundson  
Administrative Law Judge

Copy: Complainant  
Respondent  
Remzy Bitar, Attorney for Respondent