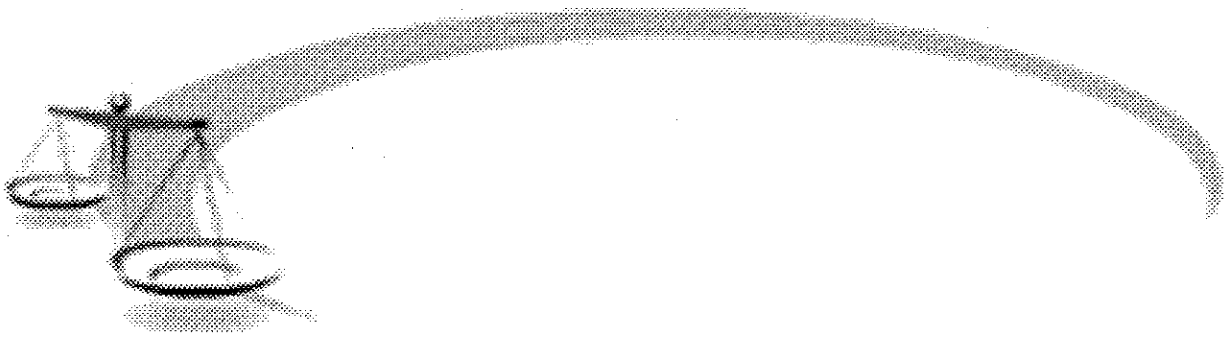

#157584-PA34 Claudia Koslosky
on behalf of
Joel Koslosky
vs. Grand Rapids Amateur Hockey Association

Order
Nanette L. Reynolds, Director

STATE OF MICHIGAN
CIVIL RIGHTS COMMISSION
State of Michigan Plaza Building
1200 Sixth Avenue
Detroit, Michigan 48226

MICHIGAN DEPARTMENT OF CIVIL RIGHTS,
ex rel. CLAUDIA KOSLOSKY on behalf of
JOEL KOSLOSKY,

Claimant,

MDCR No. 157584-PA34

v

GRAND RAPIDS AMATEUR HOCKEY
ASSOCIATION,

Respondent.

_____/

ORDER

**At a meeting of the Michigan Civil Rights Commission
held in Jackson, Michigan
on the 25th day of September, 2001**

In accordance with the Rules of the Michigan Civil Rights Commission, a Hearing Referee heard proofs and arguments and made proposed findings of fact and recommendations regarding the issues involved in this case. The parties had an opportunity to make presentations in support of or in objection to the Referee's proposals at a public meeting of the Commission held on October 30, 2000. Commissioner Calille and Commissioner Torgow have each prepared a proposed Opinion in this case. Those proposed Opinions are attached to this Order. Each proposed Opinion received the votes of four Commissioners. Neither the proposed

Opinion of Commissioner Calille nor the proposed Opinion of Commissioner Torgow was adopted by a majority vote of the Commission as required by law, MCLA 37.2601(3).

Wherefore, it is hereby Ordered that Claimant's charge of discrimination brought pursuant to the Persons With Disabilities Civil Rights Act is dismissed without a finding and without prejudice.

MICHIGAN CIVIL RIGHTS COMMISSION

Dated: October 4, 2021

Nanette Lee Reynolds, Ed. D., Director

NOTICE OF RIGHT TO APPEAL

You are hereby notified of your right to appeal within thirty (30) days to the Circuit Court of the State of Michigan, having jurisdiction provided by law. MCLA 37.2606.

#157584-PA34 Claudia Koslosky
on behalf of
Joel Koslosky
vs. Grand Rapids Amateur Hockey Association

Proposed Opinion
Albert Calille, Commissioner

STATE OF MICHIGAN
CIVIL RIGHTS COMMISSION
State of Michigan Plaza Building
1200 Sixth Avenue
Detroit, Michigan 48226

MICHIGAN DEPARTMENT OF CIVIL RIGHTS,
ex rel. CLAUDIA KOSLOSKY on behalf of
JOEL KOSLOSKY,

Claimant,

MDCR No. 157584-PA34

v

GRAND RAPIDS AMATEUR HOCKEY
ASSOCIATION,

Respondent.

_____/

PROPOSED OPINION

Albert Calille, Commissioner

Claimant, Claudia M. Koslosky, on behalf of her twelve-year-old son, Joel Koslosky, charges that the Respondent, Grand Rapids Amateur Hockey Association (hereinafter referred to as "GRAHA"), a private, non-profit membership association, discriminated against her and her son by failing to provide a sign language interpreter for her son at all GRAHA practices and games. Claimant alleges that Respondent failed to provide a reasonable accommodation and thus her son was denied equal access to Respondent services as required by the Michigan Persons With Disabilities Act (hereinafter referred to as "PWDA"), MCLA 37.1101 et. seq.

On October 23, 1997 Claudia Koslosky, on behalf of her son, Joel Koslosky, filed a complaint with Michigan Department of Civil Rights ("hereinafter referred to as "MDCR") alleging that her twelve-year-old son is deaf and has played hockey with GRAHA for three seasons and was just beginning his fourth season. She alleged that in the past her son was provided with sign interpreter services by other means. On approximately September 29, 1997, she submitted a request to GRAHA for sign interpreter services for the fourth season. She alleges she was told none would be provided due to an inability to locate outside funding to cover the cost of sign interpreter services. She alleged that her deaf son is being denied an accommodation because of his handicap.

Joel Koslosky's standing as a person with a disability is not in dispute. Also, there is no claim that Joel Koslosky was denied participation in any GRAHA program. Rather, it is alleged that he was denied a reasonable accommodation, which denied him equal access to Respondent's services.

GRAHA is an organization that provides youth with an opportunity to participate in hockey. Youth enroll in the organization and are assigned to a team. The team conducts practices and hockey games. Joel Koslosky has participated in the GRAHA for several years. It is undisputed that he is an excellent hockey player. He successfully competed in try-outs for the travel hockey team, which includes the best players. He was selected for the travel team as a result of his hockey talents and abilities. It is undisputed that at the time he was selected for the travel team he did not have a sign interpreter.

GRAHA does not own or maintain an ice rink. It pays an ice rink for use of the

ice to practice and hold games. Also, its teams play games against teams from other organizations, and these games are held at ice rinks reserved by the other teams.

For a brief time in the end of the 1996-1997 season Joel Koslosky was provided a sign language interpreter at hockey practices and games through funding (in the amount of approximately $200) by the American Hearing Impaired Hockey Association. In September of 1997, Claudia Koslosky again requested sign interpreter services for her son for the 1997-1998 season. She requested that GRAHA pay the cost for those services. GRAHA was unable to obtain outside funding for the sign interpreter. GRAHA offered to allow Ms. Koslosky to sign for her son, but she declined.

A Charge of Discrimination was issued by the MDCR on April 6, 1999. On May 14, 1999, Respondent filed an Answer to the Charge of Discrimination. One of Respondent's affirmative defenses is that GRAHA is neither a public accommodation nor a public service as defined and contemplated by the PWDA, and in the alternative, that GRAHA is a private club or establishment not open to the public and exempted from coverage by the PWDA. Respondent raised other affirmative defenses, including that the accommodation would be an undue hardship and that it had offered reasonable accommodation to Claimant.

On June 14, 1999, Respondent filed its Motion to Dismiss the Charge of Discrimination arguing there was a lack of subject matter jurisdiction. Claimant filed a response to Respondent's motion taking the position that there was subject matter jurisdiction. The Hearing Referee denied the motion for the reason that he wanted to hear facts presented by Claimant before making a decision. (Transcript p. 37).

On August 17, 1999 and September 8, 1999, a Rule 12 Hearing was held before

a Hearing Referee. Respondent renewed its Motion to Dismiss as a Motion for Directed Verdict at the close of the Claimant's proofs. Respondent's Motion for Directed Verdict alleged that it is not covered by the PWDA because it is not a public accommodation or a public service. GRAHA further alleged that it is exempt from coverage by the PWDA as a private establishment. The Hearing Referee denied the Respondent's Motion for Directed Verdict (Transcript pp. 29-30) on the basis that both parties made compelling arguments and that there were factual disputes as well as credibility issues.

The Hearing Referee found that Respondent is a place of public accommodation as defined in the PWDA and that Respondent had a duty to reasonably accommodate Claimant with respect to helping provide him with a sign interpreter during practices and games. However, the Hearing Referee found that Claimant's requested accommodation to provide Claimant with a sign interpreter on the hockey ice is unreasonable and that the requested accommodation would impose an undue hardship on Respondent. The Hearing Referee recommended the GRAHA should provide the following reasonable accommodation: pay $725 for a sign interpreter for each of the 1997-98, 1998-99 and 1999-2000 hockey seasons, for a total of $2,175, and pay $725 for each season thereafter in which Claimant is enrolled in GRAHA's ice hockey program. On March 29, 2000, the Hearing Referee submitted amended findings of fact and recommendations denying Claimant's request for an award of damages for mental anguish, emotional distress, humiliation and or pain and suffering.

Both Respondent and Claimant filed exceptions. Oral argument was held before the Commission with both parties participating on October 30, 2000.

ANALYSIS

Respondent's Exceptions challenge the Hearing Referee's finding that GRAHA is a public accommodation as defined by the PWDA, and therefore, it had a duty of reasonable accommodation towards Joel Koslosky. GRAHA further takes exception to the Hearing Referee's recommendation regarding the amounts GRAHA is required to pay Claimant.

The Claimant's Exceptions challenge the Hearing Referee's recommendations regarding the amounts Respondent is required to pay for a sign interpreter and his finding that allowing a sign interpreter on the hockey ice is an unreasonable accommodation that causes undue hardship on GRAHA.

The material facts are generally undisputed. Rather, it is the application of those facts to the PWDA that is in dispute. More specifically, the initial and primary question before this Commission is whether GRAHA, a membership organization, is a place of public accommodation as that term is used in the PWDA.

The PWDA defines a place of public accommodation as follows:

> 'Place of public accommodation' means a business, educational institution, refreshment, entertainment, recreation, health, or transportation facility of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages, or accommodations are extended, offered, sold, or otherwise made available to the public. (emphasis added)
>
> MCL 37.1301(a)

The record establishes the following facts. GRAHA is an association that organizes and monitors youth hockey programs. It has no ownership interest in any of the ice rinks where the member players practice or play games. GRAHA does not own,

operate, or maintain any of the ice rinks, nor does it own, operate or maintain any other place, location, or facility as those terms are commonly defined or understood. Individual practices and games are played at a variety of different ice rinks. Ice time for practices and games is purchased or leased from ice rinks either by GRAHA or the opposing team where a game is played.

Our Michigan Supreme Court has held that when reviewing questions of statutory construction a court must discern and give effect to the legislature's intent and the plain and ordinary wording of the statute. If the wording of the statute is unambiguous, no further judicial construction is permitted. DiBenedetto v Westshore Hospital 461 Mich 394 (2000), citing Murphy v Michigan Bell Telephone Company, 447 Mich 93 (1994).

> When reviewing questions of statutory construction, our purpose is to discern and give effect to the Legislature's intent. Murphy v. Michigan Bell Telephone Co., 447 Mich 93, 98, 523 NW.2d 310 (1994). We begin by examining the plain language of the statute. Where that language is unambiguous, we presume that the Legislature intended the meaning clearly expressed - no further judicial construction is required or permitted, and the statute must be enforced as written. Tryc v. Michigan Veterans' Facility, 451 Mich 129, 135; 545 NW.2d 642 (1996). We must give the words of a statute their plain and ordinary meaning, and only where the statutory language is ambiguous may we look outside the statute to ascertain the Legislature's intent. Turner v. Auto Club Ins. Ass'n., 448 Mich 22, 27; 528 NW.2d 681 (1995)

DiBenedetto at p. 402.

The statute at issue, the PWDA, specifically states that it applies to places of public accommodation or public service. Public service under the PWDA is defined as follows:

> 'Public service' means a public facility, department, agency, board, or commission, owned, operated, or managed by or on behalf of the state or a subdivision of the state, a county, a city, village, township, or

> independent or regional district in this state, or a tax exempt private agency established to provide service to the public. MCLA 37.1301 (b)

The record in this case does not support a finding that GRAHA is a public service. GRAHA does not provide a service to the public, but rather, is a membership organization that allows those who pay a fee to participate in its hockey program.

Claimant's primary argument is that GRAHA falls under the definition of *place* of public accommodation. A place of accommodation is unambiguously defined in the law as a "business, educational institution, refreshment, entertainment, recreation, health, or transportation facility of any kind... whose goods, services, facilities, privileges, advantages, or accommodations are extended... or otherwise made available to the public." MCL §37.1301(a).

A plain reading of the law establishes that the term "facility" is an integral part of the definition of a place of public accommodation. As already noted, well-established principles of statutory construction require that unambiguous statutory wording must be given its ordinary and generally accepted meaning. Hoover Corners, Inc. v. Conklin, 230 Mich App 567 (1998) "Facility" is generally defined in the dictionary as "something that is built or installed to perform some other function..." Black's Law Dictionary 531 (5th Ed. 1979).

The Hearing Referee failed to apply the plain and ordinary wording of the PWDA in making his findings that the GRAHA is a place of public accommodation. In this regard, since the Hearing Referee did not find an ambiguity in the term "facility", well-established principles of statutory construction require that he apply the plain and

ordinary dictionary definition of the term "facility". However, the Hearing Referee did not apply the plain and ordinary meaning of the statute, but rather, applied his own meaning of the term "facility". The only reasonable construction of the plain and ordinary dictionary definition of the term "facility" is that it means something built to perform some function. As a condition precedent to a finding that GRAHA is a public accommodation under the PWDA, there must be a finding that the GRAHA is a "facility".

The record does not support the finding that GRAHA is a "facility". GRAHA is a membership organization. Under the analogous Americans With Disabilities Act (ADA), 42 USC 12101 et. seq., courts have found that a place of public accommodation means a physical place or an organization closely connected to a physical place.[1]

In a case with virtually identical facts as the present case, it was determined under the ADA that membership organizations are not places of public accommodation. In Elitt v. USA Hockey 922 F.Supp. 217 (ED MO, 1996), plaintiff's son suffered from attention deficit disorder and requested a special accommodation from the hockey association to allow one of plaintiff's brothers or father to be on the ice with him to keep him "focused". The federal district court dismissed the complaint on the ground that it lacked subject matter jurisdiction as defendant was not subject to Title III of the ADA. Elitt, p. 223. The court stated:

"... plaintiffs must first show denial of access to a place

[1] Although the specific wording of the federal and Michigan laws may differ in some respect, the essence of the decisions interpreting the federal law as to the scope of the terms "places", "public accommodations" and "facility" apply with equal force in interpreting the Michigan statute.

> of public accommodation. Plaintiffs make no such showing because they allege denial of participation in the youth hockey league instead of denial of access to a place of accommodation, i.e. the ice rink. In order for the Elitts to have an actionable claim, they must show that defendants... fit within the definition of place of public accommodation".

Elitt at p. 223. More generally, the district court in Elitt held that:

> ". . . this Court finds that membership organizations such as Creve Coeur Hockey and U.S.A. Hockey do not constitute places of public accommodation. See Stoutenborough v. National Football League, 59 F.3d 580, 583 (6th Cir.) (National Football League, media networks, and local media affiliates do not fit under definition of places of public accommodation), cert. denied, _____U.S._____, 116 S. Ct. 674, 133 L.Ed.2d 523 (1995)"

Elitt at p. 223.

In Stoutenborough v. National Football League, 59 F.3d 580 (CA6, 1995), the United States Sixth Circuit Court of Appeals rejected plaintiff's claim that the National Football League was a place of public accommodation under Title III of the federal act. In reaching this result, the Sixth Circuit relied, in part, on the federal regulations defining "place" and "facility": "As the applicable regulations clarify, a 'place' is 'a facility, operated by a private entity, whose operations affect commerce and fall within at least one of the 'twelve' public accommodation categories.' 28 C.F.R. Sec. 36.104. 'Facility,' in turn, is defined as 'all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located.'" Id. at 583. The PWDA does not define the terms "public" and "facility". The definitions relied upon by the Sixth Circuit that are found in the federal regulations are common definitions of these terms that can and

should also apply in interpreting the similar terms used in the PWDA. Also, as noted above, the definition of the term "facility" in the federal regulations is consistent with the dictionary definition.

Courts, in analyzing places of public accommodation under the ADA, have found that membership organizations only fall under the purview of Title III when entry into a facility open to the public is dependent upon membership in the organization governing the facility. Clegg v. Cult Awareness Network 18 F. 3d 752, 755 (CA 9, 1994). The United States Ninth Circuit Court of Appeals in Clegg stated that "to conclude that Title II covers organizations having no affiliation with any public facility would be tantamount to finding that an organization is a 'place'. Such an interpretation would be at odds with the express language of the statute". Clegg p. 755.

Further, the Ninth Circuit cited with approval the United States Supreme Court decision in Daniel v. Paul, 395 U.S. 298, 307-08, 89 S.Ct. 1697, 1702, 23 L.Ed.2d 318 (1969), which held that the legislative intent in enacting laws prohibiting discrimination at public accommodations was "to [re]move the daily affront and humiliation involved in discrimination denials of access to *facilities* ostensibly open to the general public., (quoting H.R. Rep. No. 914, 88th Cong., 1st Sess., 18) (emphasis added), '" Clegg at p. 755, quoting Daniel v Paul, Supra.

The United States Seventh Circuit Court of Appeals reached the same result in Welsh v. Boy Scouts of America, 993 F.2d 1267 (CA 7, 1993). In finding that membership organizations were not intended to be covered as places of public accommodation, the Seventh Circuit noted that it was "never intended to include membership organizations that do not maintain a close connection to a structural

facility within the meaning of 'place of public accommodation'". Id. at 1269. Significantly, the court rejected a similar argument to that advanced by Claimant in the instant case: "They [plaintiffs] claim that 'the fact that [the Boy Scouts] offer entertainment to the public at various locations, all of which are 'places', . . . subjects them to the strictures of Title II. . . The clear language of the statute mandates a different conclusion . . ." Id. at 1269. Finally, the Seventh Circuit emphatically rejected the notion that a membership organization is analogous to a "facility": "The plaintiff's interpretation of Title II reaches out to include not another type of *facility* but rather a completely different type of entity (an organization of young boys in a group setting under adult leadership to foster respect for God, their country and their fellow man). The Boy Scouts is as different from the facilities listed in Title II as dogs are from cats." Id. at 1269-70, emphasis in the original.

Claimant primarily relies on Rogers v. The International Association of Lions Clubs, 636 F.Supp. 1476 (ED MI, 1986) for the position that a membership organization can be a place of public accommodation. In Rogers, following admission of a woman to membership, the local Lions Club charter was revoked and the woman was refused membership by the international organization. The local club and the woman sued the international organization under the Michigan Elliot-Larsen Civil Rights statute.[2] In granting plaintiff's motion for preliminary injunction, the district court found that the Lions Club fell within the definition of both a place of public accommodation and public service.

[2] The definitions of a place of public accommodation and public service under the Elliott-Larsen Civil Rights Act are virtually identical to those definitions in the Persons With Disabilities Civil Rights Act.

The district court concluded the Lion's Club was a place of public accommodation because it held its meetings in a public place (a Howard Johnson restaurant) and the meetings were open to non-members. The Court further found the Lions Club was a public service because the purpose of the Lions Club organization is to provide volunteer public service through its members to serve the public.

The interpretation of "place of public accommodation" adopted in Rogers is inconsistent with the plain and ordinary wording of the PWDA, which limits a "place of public accommodation" to a "facility". See Clegg, supra., Welsh, supra. and Stoutenborough, supra. Rather, the district court in Rogers held the Lions Club, a membership organization, is a "place of public accommodation" because its meetings are held in a public place and are open to the public. We believe this holding is not supported by the plain and ordinary wording of the PWDA and should not be applied to the instant case. Applying the plain and ordinary wording of PWDA compels the conclusion that GRAHA is not a "facility" or "place of public accommodation" under the PWDA.

Claimant also relies upon Communities for Equity v. Michigan High School Athletic Association (MSHAA) 26 F.Supp.2d 1001 (WD MI 1998). In that case, an action was brought by a civil rights organization and parents of high school female student athletes, in part, under the Elliott-Larsen Civil Rights Act, alleging that the defendant was a place of public accommodation or a public service. Defendants moved to dismiss plaintiffs' complaint. The court denied the motion holding that, absent further evidence and argument, it could not determine whether MSHAA was a place of public accommodation or a public service. The court found that there should

be additional discovery taken. Thus, there was no "finding" that the defendant in that case was a place of public accommodation, and therefore, it does not support Claimant's position in this case.

Thus, based on a plain and ordinary meaning of the unambiguous wording of the PWDA, we conclude that the Hearing Referee erred in finding that GRAHA is a "place of public accommodation". GRAHA is a membership organization; not a facility. Further, the record does not support that entry into a facility open to the public is dependent upon membership in the organization governing the facility.

Accordingly, we find there is no subject matter jurisdiction. Based on this holding, we need not address the other Exceptions filed by Respondent or Claimant.

Dated: 9-25-01

Albert Calille, Commissioner