

Discrimination: Patient Was Discharged Due To HIV+ Status, Damages And Penalty Imposed.

The patient was thirty-six years old and suffered from bipolar disorder and schizophrenia. She was diagnosed with HIV in 1998.

She resided for a time in a group home run by a human services agency. The program at the group home was designed to assist individuals with disabilities to move toward greater independence by providing assistance with transportation and job searches as well as room and board.

While living in the group home the patient began to have a major problem with urinary incontinence.

Staff tried to put her on a training program and had her wear an adult diaper, but it became clear that the resources at the group home were not adequate.

A decision was made to seek a placement in a personal-care facility where her needs could be better met.

The group home contacted a personal-care facility, had the patient go for a tour of the premises and an interview and helped her with her application paperwork. All the arrangements were set to go.

However, during the whole process the group home never mentioned the extent of the patient's problem with urinary incontinence. Nor did they mention her HIV status, that being confidential information that could not be divulged.

It is a discriminatory practice for a nursing facility to refuse accommodation on the basis of a number of factors, including disability.

HIV-positive status is a disability for purposes of anti-discrimination law.

The patient's physician assured the owner of the facility that the staff had no reason to be fearful of HIV infection from the patient's urine-soaked clothes or soiled bed linens.

Routine universal precautions, which had been in place at the facility for years, were all that was necessary to ensure the safety of the facility's staff.

Personal-care staff being afraid of an HIV+ patient and threatening to walk off the job is not a valid reason to discriminate against a disabled person in violation of the law.

COMMONWEALTH COURT
OF PENNSYLVANIA
October 20, 2011

Problems began within moments of the patient checking into the personal-care home. An aide who helped her unpack noticed that her clothes were soaked with urine and smelled very bad. Her clothes were washed and a toileting plan was included in her chart that she be taken to the bathroom on a q 2 hour schedule.

When her medications were checked in by a nursing assistant it was found that she was taking Valtrex for shingles and further investigation revealed that her shingles were related to HIV infection.

The owner phoned the physician to clarify what needed to be done to protect the staff from HIV. Nothing special was necessary above and beyond routine universal precautions. The owner was nevertheless very upset that the patient's HIV status had not been made known.

The patient was sent home with her sister the next day after she soiled her bed during the night. The sister realized she could not care for her at home and took her to a psychiatric hospital where she stayed for three months before being discharged to another nursing facility.

The Commonwealth Court of Pennsylvania agreed with the state Human Relations Commission that the personal-care home was guilty of HIV discrimination for sending the patient home with her sister when the facility was fully capable of caring for her with her disability. \$50,000 was awarded to the patient from the facility and the facility was fined an additional \$5,000. ***Canal Side v. Human Relations Comm., ___ A.3d ___, 2011 WL 4986670 (Pa. Comwlth., October 20, 2011).***

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