

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION and
KARL HANSON,
Complainant

v.

DOCKET NO. 01-BEM-2202

MASSACHUSETTS DEPARTMENT OF
SOCIAL SERVICES
Respondent

AMENDED ORDER OF THE FULL COMMISSION

On February 7, 2006, we issued an Order affirming the decision of the Hearing Officer in this matter and Ordering Respondent to pay to Complainant the amount of \$20,000 in damages for emotional distress, within 45 days of our Order. In our Order we neglected to address the issue of interest on the award of damages. We now address this issue.

At the time of the Hearing Officer's decision, the Commission refrained from assessing interest on damage awards in cases where the Respondent was a public entity. This was because the Commission felt it was constrained from assessing interest against the Commonwealth or its instrumentalities by the Appeals Court decisions in City of Boston v. MCAD, 39 Mass. App.Ct. 234 (1995) and City of Salem v. MCAD, 44 Mass. App. Ct. 627, 646, 647 (1998), which held that interest was barred by sovereign immunity absent an express statutory waiver.

Recently the Appeals Court has revisited the issue of assessing interest against the Commonwealth and has held that pre-judgment interest may properly be awarded against the Commonwealth by MCAD under G.L. c. 151B § 9. Trustees of Health and Hospitals of the City of Boston, Inc. v. MCAD, 65 Mass. App. Ct. 329 (2005). In light of this decision, the Commission has determined that such awards are appropriate and necessary under G.L. c. 151 B § 5 to make the Complainant whole and as a function of the Commission's broad enforcement and remedial powers.

Therefore the Commission hereby amends its Order of February 7, 2006, to add a provision that Respondent, Department of Social Services, pay to the Complainant, Karl Hanson, pre-judgment interest on the amount of \$20,000 at the rate of 12% per annum, from the date the Complaint was filed with the Commission until such time as payment is made or until such time as a court judgment is rendered and post judgment interest begins to accrue.

So Ordered this 16th day of February, 2006.

Walter J. Sullivan, Jr.
Commissioner

Cynthia A. Tucker
Commissioner