

COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

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Massachusetts Commission Against  
Discrimination and Christopher Jenson,  
Complainants

v.

Docket: 19-NEM-00584

Rockdale Care & Rehabilitation  
Center,  
Respondent

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**DECISION ON COMPLAINANT'S PETITION  
FOR ATTORNEYS' FEES AND COSTS**

On May 15, 2023, I conducted a public hearing in this case. On September 20, 2023, I issued a Decision of the Hearing Officer ("Decision") finding Respondent Rockdale Care & Rehabilitation Center ("Rockdale Care") liable for disability discrimination in violation of M.G.L. c. 151B, § 4(16). I ordered Rockdale Care to cease and desist from all acts of disability discrimination and pay Complainant Christopher Jenson ("Jenson") \$6,600 in back pay damages and \$10,000 in emotional distress damages.<sup>1</sup> Complainant's Petition for Attorneys' Fees and Costs ("Complainant's Petition") seeks \$41 in costs and \$6,050 in attorneys' fees for a total of \$6,091 in attorneys' fees and costs. The attorneys' fees are for the work performed by Jenson's attorney, Gigi D. Tierney of Lang, Xifaras & Bullard, a firm located in New Bedford, Massachusetts. Attorney Tierney spent 24.2 hours working on this case and requests an hourly rate of \$250.

Rockdale Care has not filed an opposition to Complainant's Petition.

**I. LEGAL STANDARD**

M.G.L. c.151B, §5 allows a complainant who prevails in a matter after a public hearing before the Commission to recover reasonable attorneys' fees and costs. The "purpose of G. L. c. 151B, which is to discourage unlawful discrimination, as well as the requirement that the statute be broadly construed, see G. L. c. 151B, § 9, indicate an expressed legislative intent to encourage

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<sup>1</sup>The monetary damages include 12% per annum interest from the date the Complaint was filed with the Commission until such time as payment is made or until the Order is reduced to a Court judgment.

competent counsel to seek [] relief for discrimination claims (citations omitted).” Haddad v. Wal-Mart Stores, Inc. (No. 2), 455 Mass. 1024, 1025 (2010) (1:28); Sun and Massachusetts Commission Against Discrimination v. University of Massachusetts, Dartmouth, 36 MDLR 85, 88 (2014) (Full Commission) (“in awarding attorneys’ fees, the Commission recognizes the strong public interest in allowing claims to proceed with competent counsel to vindicate the public interest to discourage unlawful discrimination”)

The Commission has adopted the “lodestar” methodology for fee computation. See e.g. Reed and Massachusetts Commission Against Discrimination v. Pipefitters Association of Boston, Local 537, et. al., 44 MDLR 22 (2022) (Full Commission). The Commission has explained the lodestar methodology as follows.

The determination of whether a fee sought is reasonable is subject to the Commission's discretion and includes such factors as the time and resources required to litigate a claim of discrimination in the administrative forum. Baker v. Winchester School Committee, 14 MDLR 1097 (1992). The Commission has adopted the lodestar methodology for fee computation. Id. By this method, the Commission will first calculate the number of hours reasonably expended to litigate the claim and multiply that number by an hourly rate it deems reasonable. The Commission then examines the resulting figure, known as the "lodestar" and adjusts it either upward or downward or determines that no adjustment is warranted depending on various factors, including complexity of the matter. Id.

Reed, 44 MDLR at 23; School Committee of Norton v. Massachusetts Commission Against Discrimination, 63 Mass. App. Ct. 839, 850 (2005) (Commission well within its discretion to apply lodestar method)

## II. CALCULATION OF REASONABLE ATTORNEY’S FEES

### A. Reasonable Hourly Rate

The “determination of a reasonable hourly rate begins with ‘the average rates in the attorney's community for similar work done by attorneys of the same years' experience’ (citation omitted).” Haddad, 455 Mass. at 1025-1026 An important component in determining a reasonable attorney’s fee is years of experience. Haddad, 455 Mass. at 1025-1026

In addition to appearing as trial counsel in several cases before the Commission<sup>2</sup>, Attorney Tierney has been licensed to practice law in the Commonwealth of Massachusetts since 2002. I find that the requested rate of \$250.00 per hour by Attorney Tierney is reasonable,

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<sup>2</sup> MCAD & Robar v. International Longshoremen’s Association, Local 1413-1465 & Fortes, 40 MDLR 1 (2018); MCAD & Stefani v. Dep’t of State Police, 34 MDLR 6 (2011).

commensurate with her experience, and well within the range of rates charged by employment lawyers in eastern Massachusetts.

B. Number of Hours Reasonably Expended

In determining the number of hours reasonably expended in this case, the following principles apply:

Only those hours that are reasonably expended are subject to compensation under M.G.L. c. 151B. In determining whether hours are compensable, the Commission will consider contemporaneous time records maintained by counsel and will review both the hours expended and tasks involved. (citation omitted) Compensation is not awarded for work that appears to be duplicative, unproductive, excessive, or otherwise unnecessary to the prosecution of the claim. Hours that are insufficiently documented may also be subtracted from the total. Grendel's Den v. Larkin, 749 F.2d 945,952 (1st Cir.1984); Brown v. City of Salem, 14 MDLR 1365 (1992). The party seeking fees has a duty to submit detailed and contemporaneous time records to document the hours spent on the case. Denton v. Boilermakers Local 29, 673 F. Supp. 37, 53 (D. Mass. 1987); Baker v. Winchester School Committee, 14 MDLR 1097 (1992)

Reed, 44 MDLR at 23 (2022)

Complainant's Petition is supported by an affidavit from Attorney Tierney and detailed, contemporaneous time records of the tasks performed and time spent on those tasks. Attorney Tierney's records show that she represented Jenson through the investigative stage, the public hearing, and submission of a post-hearing brief. I find that the 24.2 hours Attorney Tierney expended in this case is a reasonable number of hours to spend on this matter. I note that Attorney Tierney billed 5.5 hours for "Travel to Boston MCAD and represent client at hearing." Complainants' Petition, Exhibit A. In Drigo and Massachusetts Commission Against Discrimination v. City of Boston, 42 MDLR 25 (2020) (Full Commission), the Commission considered and rejected the argument that time entries which include "travel and attendance" must be reduced as travel time and discounted at half the rate of core legal work and instead, exercised its discretion not to discount travel time. Id. at 27 Under the circumstances in this case, where the hearing was one day and the requested hourly rate was \$250, the 5.5 hours documented in this entry do not appear excessive.

III. **ORDER**

Pursuant to M.G.L. c. 151B, § 5, I order Respondent Rockdale Care & Rehabilitation Center to pay Complainant Christopher Jenson **\$6,091 in attorney's fees and costs.**<sup>3</sup>

IV. **NOTICE OF APPEAL**

Pursuant to 804 CMR 1.12(19), a Hearing Officer decision on a request for award of attorneys' fees and costs is a final decision appealable to the Full Commission pursuant to 804 CMR 1.23(1)(a), regardless of whether a party has appealed the underlying hearing decision to the Full Commission. Any party aggrieved by this Order may appeal this decision to the Full Commission. To do so, a party must file a Notice of Appeal within 10 days of receipt of this decision and file a Petition for Review within 30 days of receipt of this decision. 804 CMR 1.23 (2020). If a party files a Petition for Review, the other party has the right to file a Notice of Intervention within 10 days of receipt of the Petition for Review and shall file a brief in reply to the Petition for Review within 30 days of receipt of the Petition for Review. 804 CMR 1.23 (2020) All filings referenced in this paragraph shall be made with the Clerk of the Commission with a copy served on the other party.

So Ordered this 4th day of March, 2024

*Simone Liebman*  
Simone R. Liebman  
Hearing Officer

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<sup>3</sup> The requested costs for parking in Boston for the May 15, 2023 hearing are reasonable and compensable.