A Complainant (Represented by Friend) v A Doctor (Represented by Mr Eamon Harrington, Comyn Kelleher Tobin Solicitors) (DEC-S2007-092)

1) Reference Details

Jurisdiction: Irish Equality Tribunal
Date of Decision: 20 December 2007
Link to full case: http://www.equalitytribunal.ie/index.asp?locID=121&docID=1689&COMMAND=PRINTER

2) Facts

The complainant was a wheelchair user. She was a patient of the respondent doctor from July 2004 to September 2005. On 1 September 2005 her carer telephoned the respondent to renew her prescription. The respondent informed her that she had received a letter from the Health Service Executive (HSE), Southern Area to say that the complainant and her carer had complained about her and that she had requested the HSE to strike both of them from her patient list. The complainant arranged an appointment with the doctor to discuss the issue and this meeting took place on 7 September 2005. Both the complainant and her carer said that they made no complaint and they requested the doctor to reconsider her decision but she refused. The complainant said that overall the respondent doctor was a very good General Practitioner (GP) and she had no difficulty in getting prescriptions for medication. However the complainant said that it was difficult to convince her to refer her for tests. She accepted that her carer did complain about why it took so long for tests to be carried out.

3) Law

- Section 3 of the Equal Status Acts, 2000 – 2004 (definition of discrimination)
- Section 4 of the Equal Status Acts, 2000 – 2004 (discrimination on grounds of disability)
- Section 5 of the Equal Status Acts, 2000 – 2004 (disposal of goods and provision of services)

4) Legal Arguments

The Complainant

The complainant alleged that she had been discriminated against by her GP on the basis of disability contrary to the terms of the Equal Status Acts, 2000 – 2004. The complainant submitted that she was discriminated against on the ground of disability when the respondent removed her from the patient list without giving her a chance to refute the allegation that she had filed a complaint against the respondent. She also alleged that she was victimised, and that the respondent removed her from her panel of patients without good and sufficient reason. The complainant denied that her carer was aggressive towards the respondent at the meeting on 7 September 2005.

The Respondent
The respondent emphasised that she has a number of patients on her list who use wheelchairs and she was aware that the complainant was a wheelchair user when she accepted her on to the list. The respondent argued that she exercised her right under her contract with the HSE to request that the complainant be removed from her panel, and that the complainant remained her patient until she found another doctor.

5) Decision

The Officer of the Equality Tribunal found that the complainant was not discriminated against by the respondent on the ground of disability under the terms of ss. 3(1)(a), 3(2)(g), 3(2)(j) and 4(1) of the Equal Status Acts 2000 – 2004 and contrary to s. 5(1) of that Act. The Officer was satisfied that a complaint had been made against the GP and that this was the only reason the respondent discontinued accepting the complainant as a patient. The Officer found that no evidence had been provided by the complainant to establish that she was treated less favourably than a person who had no disability or a person with a different disability, and therefore found that the complainant had failed to establish a prima facie case of discriminatory treatment. Similarly, the Officer found that the complainant was not victimised contrary to s. 3(2)(j) of the Act in that she had not applied for a determination under the Act at the time the respondent requested her removal from the list.