

UNITED STATES EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

MATTHEW HERRERA, on behalf of himself
and others similarly situated,

Charging Party,

No.

-against-

THE STATE OF NEW YORK, THE NEW
YORK STATE OFFICE OF MENTAL
HEALTH, THE NEW YORK STATE
DEPARTMENT OF CIVIL SERVICE, and
THE NEW YORK STATE CIVIL SERVICE
COMMISSION,

Respondents.

State of New York)
) : ss
County of The Bronx)

MATTHEW HERRERA SUMMARY

Last year, the State of New York refused to hire me for a position that I am able to perform, solely because my vision falls just below the State’s bright-line rule barring job applicants with less than 20/40 vision. I believe this blanket vision standard violates the Americans with Disabilities Act (“ADA”) and the New York State Human Rights Law (“NYSHRL”) because it is not properly related to the job’s essential duties, not consistent with business necessity, and not individualized. The vision standard discriminates against me and others similarly situated, based on disability, by excluding us from employment without regard to our actual capabilities to do the job or consideration of accommodations that would allow us to do the job.

AFFIDAVIT OF MATTHEW HERRERA

I, Matthew Herrera, believe that the State of New York, through the actions of the New York State Office of Mental Health (“OMH”), New York State Department of Civil Service

(“Department of Civil Service”) and the New York State Civil Service Commission (“Civil Service Commission”), (collectively, “Respondents”), has, and continues to, discriminate against me on the basis of my disability by illegally disqualifying me from employment as a Mental Health Therapy Aide Trainee (“MHTAT”). In support of this Charge, I allege the following:

BACKGROUND FACTS

1. When I was six years old, I experienced an eye condition called bilateral retinal detachment, which caused impairment to my vision. I am now in my thirties, and have always successfully managed my lowered vision through correction with contact lenses or glasses.

2. At my most recent vision exam, the optometrist rated my vision using a Snellen chart—a standard eye chart—and found that, with glasses, I have binocular visual acuity of 20/60.

3. For the past eight years, I have worked in the fields of security and mental health services. I have never asked an employer for any reasonable accommodation related to my vision before, and I have never received any accommodation to successfully do my job.

4. For example, for more than three years, I was the resident manager for a 110-unit supportive housing residence serving individuals who were formerly homeless. There, often as the only staff member on site, I routinely responded to incidents including domestic disputes, trespassers, and medical and psychiatric health emergencies. Before that, I spent another four years as a security guard for facilities serving individuals with mental illness and chemical dependency. My vision was never an issue in either of these roles.

MHTAT APPLICATION AND CONDITIONAL OFFER

5. In early April 2019, I learned of a Spanish Language MHTAT position at the Audubon Clinic, an outpatient mental health clinic located in the Washington Heights neighborhood of New York City.

6. It is my understanding that the Audubon Clinic is part of a program called Washington Heights Community Service, which is affiliated with the New York State Psychiatric Institute. Letterhead I received from the program identifies the New York State Psychiatric Institute as a research institute of OMH.

7. I immediately applied for the MHTAT position by submitting application forms directly to Washington Heights Community Service and, on or about April 10, 2019, interviewing in person with the director and clinical director of the program.

8. My interviewers gave me a tour and described what an MHTAT's responsibilities are in the context of the Audubon Clinic's outpatient setting. Specifically, they spoke to me about front desk duties, patient intake, and overall patient support.

9. I did not review a written MHTAT job description, nor was I told that there was a specific vision requirement associated with the job until after I was disqualified.

10. When I later saw a job description for the MHTAT position, it was similar to the one currently posted on the Department of Civil Service's website, which states MHTATs: "provide direct services, treatment, rehabilitation, and support to individuals diagnosed with mental illness help individuals to participate in games and recreational programs; coach and encourage individuals to develop daily living skills; and provide a clean, safe, and comfortable environment." (Exhibit 1). The posting further states MHTATs "develop, carry out, and record care plans," and that the position may be physically demanding: "You would need to be prepared to act to ensure the health and safety of patients and staff in emergency situations. You must be able to do such things as bend, stretch, and stand for long periods of time." *Id.*

11. Within less than two weeks of my interview, I received a Conditional Offer of Employment Letter, dated April 22, 2020, for the MHTAT position. (Exhibit 2).

MEDICAL EXAM AND NOTICE OF DISQUALIFICATION

12. Upon receiving the conditional employment offer, I followed instructions from OMH to submit documentation, consent to a background investigation, get fingerprinted, undergo a physical exam (that did not include vision or hearing tests), and take civil service examinations related to the position.

13. On May 28, 2019, I traveled twelve hours round-trip by bus to Cohoes, N.Y., from my home in the Bronx so I could take a separate pre-placement physical/medical exam.

14. At the physical/medical exam, a group of about a dozen doctors directed me and other job applicants to complete a circuit of evaluations, including hearing and vision tests and a physical obstacle course.

15. My vision test lasted approximately five minutes.

16. The vision test consisted of nothing more than reading a Snellen eye chart.

17. The person administering the test did not ask me any questions about my eye condition or my functional vision.

18. On or about June 8, 2019, I received a notice from the Department of Civil Service that I failed to meet qualifying physical/medical standards for the MHTAT position. (Exhibit 3).¹ The notice's cover letter enclosed the findings from my physical/medical exam vision test. *Id.*

19. The June 8, 2019, letter also enclosed a "Statement of Physical and Medical Requirements" for the MHTAT position, with the vision standard highlighted in yellow. *Id.* The vision standard states: "Candidates must have binocular vision not less than 20/40 with or without correction. Binocular peripheral vision should not be less than 140 degrees." *Id.*

¹ The notice's cover letter is misdated, reading June 8, 2018, rather than 2019.

20. On the failure notice, a box was checked for “Binocular visual acuity less than 20/40 with or without correction.” *Id.*

21. Next, I received a final determination letter from the Department of Civil Service, dated August 15, 2019, disqualifying me from the position based on my vision. (Exhibit 4).

22. The August 15, 2019 final determination letter contains no analysis. *Id.*

APPEAL TO THE CIVIL SERVICE COMMISSION

23. On August 21, 2019, I timely appealed the final determination by submitting an appeal form to the Civil Service Commission. (Exhibit 5).

24. In my request for appeal, I asked for the opportunity to show that I could perform the MHTAT job despite my vision score, urging the Department of Civil Service to consider a letter from my eye doctor and speak to a reference who supervised me in work similar to that of an MHTAT. *Id.*

25. I enclosed with my appeal form a letter from my optometrist, LoriAnn Gics-Scerbo, dated August 14, 2019, stating: “While Mr. Herrera does not technically pass the required 20/40 binocular visual acuity with glasses, I feel that his level of visual acuity is sufficient for patient intake, paperwork, computer work, charting in medical records, transport of patients, and kitchen prep work. He may benefit from using magnifiers and/or cell phone to enlarge small print, but that would only be with exceptionally small characters.” (Exhibit 6).

26. I also secured representation from The Legal Aid Society to assist me in the appeal. My Legal Aid lawyer wrote a letter to the Civil Service Commission, dated September 27, 2019, highlighting the Civil Service Commission’s failure to explain why a 20/40 vision requirement was relevant to MHTAT job duties and faulting the lack of any individualized consideration of my candidacy. (Exhibit 7).

27. My Legal Aid lawyer received a notice, dated November 22, 2019, that a meeting about my appeal would be held in Albany, N.Y., on December 17, 2019. (Exhibit 8). Enclosed with the notice was a pre-hearing memorandum to the Civil Service Commission from the Department of Civil Service's Dr. Richard A. Ciulla, dated October 30, 2019. *Id.*

28. Dr. Ciulla's memorandum makes clear that the Department of Civil Service did not assess my specific ability to perform the duties of an MHTAT; the agency only cared that I failed to meet the blanket vision bar: "While Dr. Gics-Scerbo opined that Mr. Herrera had sufficient vision to perform some of the duties of a MHTA, he still has not met the vision standard." *Id.*

29. Dr. Ciulla's memorandum goes on to rely on generalizations and assumptions to explain why 20/40 vision is necessary for an MHTAT: "MHTAs are responsible for providing direct services and support for individuals with mental illness within the facility and in the community. They are responsible for the safety of their clients and the public. They must rapidly intervene in crisis situations. Awareness of their surroundings and the status of clients is essential. They may transport clients and must assure security doors are locked." *Id.*

30. By letter dated April 3, 2020, the Civil Service Commission denied my appeal. (Exhibit 9).

31. The appeal decision attempts to justify my disqualification by echoing many of Dr. Ciulla's generalizations. It states that "adequate vision" is required to safely perform the MHTAT's essential functions because MHTATs "are responsible for the safety of their clients and the public. They must be able to monitor their clients over extended distances, such as in a ward hallway or outdoor setting and rely on visual observation to rapidly intervene in crisis situations. Visual awareness of their surroundings and the status of clients is essential. MHTATs play an important role in facility security and may be required to transport clients in agency vehicles." *Id.*

OBSERVATIONS ABOUT THE MHTAT ROLE

32. I believe I have adequate vision to safely perform the duties of an MHTAT.

33. I believe so even more strongly now that I work with MHTATs every day and share various job duties with them.

34. After I was disqualified for the MHTAT position based on my vision, and while my appeal of that determination was pending with the Civil Service Commission, I applied and was hired for a different OMH job at Washington Heights Community Service's Audubon Clinic: Peer Specialist.

35. The Peer Specialist position did not have the same vision requirement as the MHTAT position.

36. I have been working as a Peer Specialist at the Audubon Clinic since early December 2019.

37. While the Peer Specialist role is distinct from, and gets paid less than, an MHTAT, my current position involves a similar level of patient interaction and has some overlapping duties with the MHTAT position, such as leading patient groups and transporting patients to appointments.

38. Any staff travel with Audubon Clinic patients is done using public transportation; neither Peer Specialists nor MHTATs are required to drive a vehicle.

39. In my time working at the Audubon Clinic, I have had no problems performing these transportation duties, maintaining awareness of my surroundings, or monitoring patients.

40. I would like to be an MHTAT and receive compensation for Respondents' discriminatory actions to disqualify me for the job solely because my vision is lower than 20/40.

41. Since Respondents have a blanket rule disqualifying a class of individuals with vision disabilities, I believe this is a systemic problem, and I request that the EEOC investigate all of the claims I make in this Charge on a class-wide basis.

Dated: June 8, 2020

DocuSigned by:
Matthew Herrera

Matthew Herrera
Bronx County

Sworn to before me this 8th day
of June 2020

Torie Atkinson

(Notary Public)

Torie Atkinson

New York County

my commission expires 4/4/2024

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Licensed in N.Y. County

Made pursuant to Executive Order 202.7