STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST:	)	
FOR REVIEW BY:	)	CHARGE NO.: 2008CA3086
	)	ALS NO.: 09-0032
LENA ALLEN	)	EEOC NO.: 21BA81888
Complainant.	)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Marti Baricevic, Robert S. Enriquez, and Gregory Simoncini presiding, upon the Complainant's Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Department") of Charge No. 2008CA3086, Lena Allen, Complainant, and Advocate South Suburban Hospital, Respondent; and the Commission having reviewed *de novo* the Department's investigation file, including the Investigation Report and the Complainant's Request and supporting materials, and the Department's response to the Complainant's Request; and the Commission being fully advised of the premises;

NOW, THEREFORE, it is hereby **ORDERED** that:

(1) The Department's dismissal of Count A of the Complainant's charge is **VACATED**, and Count A of the Charge is **REINSTATED** and **REMANDED** to the Department for further Processing and Proceedings, consistent with this Order and the Act; and

(2) The Department's dismissal of Count B, Count C and Count D of the Complainant's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following findings of fact and reasons:

1. The Complainant has a physical disability (hearing disorder). On April 30, 2008, the Complainant filed a four-count charge of discrimination with the Department in which she alleged that the Respondent had failed to accommodate her physical disability (Count A), and discharged her from employment because of her race (African American), her age (60 years old), and her physical disability (Counts B-D) in violation of Section 2-102(a) of the Illinois Human Rights Act (the "Act"). The Department subsequently dismissed the Complainant's charge on January 2, 2009, for lack of

substantial evidence of discrimination. On February 2, 2009, the Complainant filed a timely request for review.

2. The undisputed facts in the investigation file reveal that the Complainant worked for the Respondent as a Medical Transcriptionist II. The Complainant first began working for the Respondent in June of 1995. In 1999, the Complainant was diagnosed with hearing loss. The Complainant received various accommodations for her disability. In 2003, the Respondent reimbursed the Complainant for money she had expended in order to purchase a headset to block out noise while she worked at the Respondent's worksite. The Respondent also moved the Complainant into a cubicle with higher walls so as to block out office noise, which interfered with the Complainant's hearing capabilities. In October of 2007 the Complainant was permitted to work from home.

3. The Complainant alleges that in September of 2007, she told the Respondent's Director of Medical Records, Darla Lopez, that she needed new computer speakers in order to perform her duties. The Complainant never received new speakers.

4. The Complainant alleges that on January 16, 2008, she sent an e-mail to her supervisor, Donna Brei, in which she stated that she needed to purchase new computer speakers in order to do her job properly. The Complainant did not receive or purchase new speakers.

5. The Complainant went on medical leave on February 28, 2008. Her leave was scheduled to expire on April 1, 2008. Upon notice from the Respondent that she would be terminated if she did not return to work by April 3, 208, the Complainant contacted the Respondent's Disability Counsel. As a result, on April 7, 2008, the Respondent extended the Complainant's medical leave through May 16, 2008. According to the Complainant's Request, she is on "permanent" medical leave. It does not appear from the file that the Complainant ever returned to work.

6. The Respondent has an "Advocate Accommodation Policy." The Respondent also has a medical leave policy in place which states that once the employee is released by their physician to return to work, the employee must contact her manager at least one week in advance. Further, the Respondent has a "no call, no show" policy which provides that if an employee fails to report to work without contacting the Respondent for three consecutive days, then the employee will be considered to have voluntarily resigned her position.

7. In her charge and her Request, the Complainant states that she was denied an accommodation for her physical disability (Count A), and that she was terminated from employment on April 8, 2008 because of her race, age, and disability (Counts B-D).

8. In its Response, the Department recommends that the Commission sustain its dismissal of Count B, Count C and Count D of the charge due to lack of substantial evidence of discrimination. Specifically, the Department argues that there is no evidence that the Complainant was terminated.

9. However, as to Count A of the charge, the Department recommends that the Commission vacate the Department's dismissal of Count A of the charge, enter a finding of substantial evidence as to Count A of the charge, and remand Count A of the charge

back to the Department for such further action as is provided in the Act. In support of that position, the Department argues that there remains a dispute over whether or not the Respondent denied the Complainant's September 2007 request for accommodation. Further, the Department argues that the Respondent did deny the Complainant's January 2008 request for accommodation.

Counts B,C, and D: Termination Based on Race, Disability and Age

10. The Commission's review of the investigation file leads it to conclude that the Department properly dismissed Count B, Count C, and Count D, of the Complainant's charge, which allege that the Respondent discharged the Complainant on April 8, 2008 based on her race, age and physical disability. There is no substantial evidence in the record to support this allegation.

11. Specifically, there is no evidence which demonstrates that the Respondent discharged the Complainant on April 8, 2008. The undisputed evidence shows that the Complainant was warned of an impending termination if she did not return to work once her medical leave expired on April 1, 2008. However, the Complainant's medical leave was extended through May 16, 2008, and thus her employment with the Respondent continued, at least through the end of her medical leave. Therefore, having failed to present evidence to prove that she was terminated on April 8, 2008, the Complainant cannot make out a *prima facie* case of discriminatory discharge, as alleged in Counts B-D.

12. Accordingly, it is the Commission's decision that the Complainant has not presented any evidence to show that the Department's dismissal of Count B, Count C and Count D of her charge was not in accordance with the Act. The Complainant's Request as to Count B, Count C and Count D of the charge is not persuasive.

Count A: Failure to Accommodate a Disability

13. As to Count A, of the charge, in its Response to the Complainant's Request, the Commission finds that the Department does not oppose the Request as to Count A of the charge. Both the Department and the Complainant ask that the Commission vacate the dismissal of Count A of the charge and remand Count A of the charge to the Department for further processing. Specifically, the Department is now of the position that there is substantial evidence of discrimination as to Count A of the charge. Therefore, the Commission hereby vacates the Department's dismissal of Count A of the charge, and reinstates and remands Count A, of the charge to the Department for further processing and proceedings consistent with this Order and the Act.

THEREFORE, IT IS HEREBY ORDERED THAT:

(1) The Department's dismissal of Count A of the Complainant's charge is **VACATED**, and Count A of the Charge is **REINSTATED** and **REMANDED** to the Department for further Processing and Proceedings, consistent with this Order and the Act; and

(2) The Department's dismissal of Count B, Count C and Count D of the

Complainant's charge is **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and the Respondent Advocate South Suburban Hospital, as appellees, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

STATE OF ILLINOIS)
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HUMAN RIGHTS COMMISSION)

Entered this 22nd day of April 2009.

Commissioner Marti Baricevic

Commissioner Robert S. Enriquez

Commissioner Gregory Simoncini