STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST:	)	
FOR REVIEW BY:	)	CHARGE NO.: 2008CP3405
	)	EEOC NO.: N/A
BERNARD VITELLO,	)	ALS NO.: 09-0228
	)	
Complainant.	)	

ORDER

This matter coming before the Commission by a panel of two, Commissioners Greg Simoncini and Diane Viverito, 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. 2008CP3405, Bernard Vitello, Complainant, and Easter Seals Metropolitan Chicago, Inc., 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 the Department's dismissal of the Complainant's charge is **SUSTAINED** on the following ground:

FAILURE TO PROCEED

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

1. The Complainant filed a charge of discrimination with the Department on May 28, 2008, alleging that the Respondent, Easter Seals Metropolitan Chicago, denied him the full and equal enjoyment of its facilities because of his age (Count A), his race, white (Count B), and his mental disabilities, anxiety disorder, major depression, and panic disorder (Counts C, D, and E), in violation of Section 5-102(A) of the Illinois Human Rights Act (the "Act").

2. On July 24, 2008, at the Complainant's request, the Department administratively closed Counts C, D, and E of the charge.

3. On February 18, 2009, the Department mailed the Complainant Notice of a fact finding conference relative to Count A and Count B of the charge, scheduled for March 26, 2009 at 9:00 a.m. The Notice was mailed to the same address that the Complainant states is his current address on his Request. The Notice was not returned as undeliverable. The Notice informed the Complainant that his failure to attend the fact finding conference may result in the dismissal of his charge.

4. The Complainant did not attend the fact finding conference. He did not call the Department to explain his absence.

5. On April 1, 2009, the Department sent the Complainant correspondence in which it requested that the Complainant provide the Department with a documented explanation for his failure to attend the fact finding conference. The Complainant was advised that his failure to provide a documented explanation for his failure to attend the fact finding conference within 30 days of his receipt of the correspondence could result in the dismissal of his charge for failure to proceed. This correspondence was mailed to the same address where the Notice of the fact finding conference was mailed. This correspondence was not returned to the Department as undeliverable.

6. The Complainant did not contact the Department within the time specified in the April 1, 2009 correspondence.

7. On May 4, 2009, the Department dismissed the remaining Counts A and B of the Complainant's charge for Failure to Proceed. The Complainant thereafter filed a timely Request on May 6, 2009.

8. In his Request, the Complainant states that he never received a letter stating that he was to attend a fact-finding conference on March 26, 2009.

9. In its response, the Department argues that the dismissal should be sustained because the Complainant does not show good cause for his failure to attend the fact finding conference.

10. The Commission's review of the Department's investigation file leads it to conclude that the Department properly dismissed the Complainant's charge for failure to proceed because the Complainant did not show good cause for his failure to attend the fact finding conference.

11. Section 7A-102(C)(4) of the Act provides in pertinent part: … "Any party's failure to attend the [fact finding] conference without good cause shall result in dismissal or default." *See* 775 ILCS 5/7A-102(C)(4) (2009).

12. Section 2520.560 of the Illinois Administrative Code provides that the Department's dismissal of a charge…"may be based upon…complainant's failure to proceed...The notice of dismissal in such cases shall specify the manner in which the complainant has failed to proceed and shall be addressed to the complainant at the last known address…" *See* 56 Ill. Admin. Code 2520.560(b)(2) (2009).

13. The Complainant in his Request essentially argues that he did not have notice of the fact finding conference. However, there is no evidence in the file to support this contention.

14. First, the address that the Complainant provides on his Request as his current address is the address to which notice of the fact finding conference was mailed. This is also the same address to which the Department's correspondence requesting a substantiated explanation for his failure to attend, and the notice of dismissal, were sent. The Complainant puts forth no evidence to demonstrate that all notices were not properly served on him at his last known, and indeed, current address.

15. Thus, the undisputed evidence in the file demonstrates that the Complainant was given proper notice of the fact finding conference, and that he was notified that if he did not attend the fact finding conference, his charge might be dismissed. The file further demonstrates that the Complainant was given notice of an opportunity to show good cause for his failure to attend, or else risk the dismissal of his charge. The Complainant puts forth no additional evidence to show that he had good cause for his failure to attend the fact finding conference.

16. Accordingly, it is the Commission's decision that the Complainant has not presented any evidence to show that the Department's dismissal of his charge was not in accordance with the Act. The Complainant's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of the Complainant's charge is hereby **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 Easter Seals Metropolitan Chicago,

as appellees, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

STATE OF ILLINOIS	)	
	)	Entered this 12th day of August 2009.
	)	
HUMAN RIGHTS COMMISSION	)	

Commissioner Greg Simoncini

Commissioner Diane Viverito