

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON  
APPOINTMENT BY THE ALASKA STATE COMMISSION FOR HUMAN RIGHTS**

Paula M. Haley, Executive Director, Alaska State )  
Commission for Human Rights, ex rel. )  
DORETTA WHEELER, )  
)  
Complainant, )  
)  
v. )  
)  
STATE OF ALASKA, DEPARTMENT OF )  
HEALTH AND SOCIAL SERVICES, DIVISION )  
OF ALASKA PIONEER HOMES )  
)  
Respondent. )

OAH No. 14-0659-HRC  
ASCHR No. J-12-018

**REVISED RECOMMENDED DECISION**

**I. INTRODUCTION**

This matter comes before the Alaska State Commission for Human Rights (ASCHR) on an allegation from Doretta Wheeler that her employer, the Division of Alaska Pioneer Homes (Division),<sup>1</sup> violated the Alaska Human Rights Law (AHRL) by failing to provide a reasonable accommodation in the form of reassignment or additional leave. A hearing was held, and both parties submitted objections after the recommended decision was issued. This decision has been reissued in response to those objections.

Based on the evidence presented, the Division improperly failed to accommodate Ms. Wheeler’s disability by terminating her instead of continuing with the interactive process to determine whether she could be reassigned to a different position. Based on this violation, Ms. Wheeler should receive “make whole” relief in the amount of \$84,716 (calculated as of December 31, 2014,) with interest continuing to accrue until the Commission enters its final order; neither reinstatement nor front pay are recommended. Finally, the Commission should require the Division to provide training to the Human Resources staff assigned to the Division in the laws prohibiting discrimination in employment based on disability.

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<sup>1</sup> The Alaska Pioneer Homes is a division of the State of Alaska Department of Health and Social Services. The Department of Health and Social Services is one of the largest Departments. It alternates with the Department of Transportation for the title of the largest.

## II. FACTS

Doretta Wheeler was a Certified Nurse Aide (CNA) at the Palmer Pioneer Home (Palmer Home) for 18 years. The Palmer Home is a residential facility serving Alaska's senior population by providing assisted living and nursing facility level of care. Working as a CNA is physically demanding.<sup>2</sup> Ms. Wheeler was considered an above-average employee.<sup>3</sup> She was happy in her position and was able to physically perform her duties until experiencing problems with her left hip in 2010.<sup>4</sup>

On December 2, 2010, Ms. Wheeler had her left hip replaced. Her recovery was expected to last six weeks, but it lasted 12 weeks due to unforeseen medical complications. Ms. Wheeler returned to work on February 23, 2011.

In June 2011, the Palmer Home changed how it was scheduling and assigning work to the CNAs. Ms. Wheeler expressed her dissatisfaction over the changes to some of the Palmer Home residents, causing increased anxiety among some of the residents. As a result, she received a letter of warning and a letter of expectations from the management.<sup>5</sup> In August, her coworkers complained that Ms. Wheeler was uncooperative. The Palmer Home management considered disciplining Ms. Wheeler for violating its Letter of Expectations, but ultimately changed its mind because of her "tenure, past performance, acknowledgment of issues and commitment to improve performance."<sup>6</sup>

On August 17, 2011, Ms. Wheeler suffered a complete dislocation of her artificial hip. She did not return to work after this date. On September 16, 2011, Ms. Wheeler's provider placed her on permanent hip restrictions which prevented her from working as a CNA.

On September 19, 2011, the Division informed Ms. Wheeler that her FMLA<sup>7</sup> leave would end October 19, 2011.<sup>8</sup> In the meantime, on September 27, 2011, Human Resource Specialist Cindy Carte sent Ms. Wheeler a letter outlining her employment options in light of her injury; specifically, either reassignment as an ADA accommodation or administrative separation (termination).<sup>9</sup>

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<sup>2</sup> Testimony of Wheeler.

<sup>3</sup> *See generally* Exh. 9.

<sup>4</sup> Testimony of Wheeler.

<sup>5</sup> Exh. E.

<sup>6</sup> Exh. 63 at SOA 1202.

<sup>7</sup> Family Medical Leave Act.

<sup>8</sup> Exh. 1; Exh. M at 2 - 3.

<sup>9</sup> Exh. 2.

Ms. Wheeler elected light duty or reassignment.<sup>10</sup> On October 26, 2011, the Division confirmed with Ms. Wheeler that, because of her restrictions, a reasonable accommodation would be reassignment.<sup>11</sup> The Department of Administration’s Standard Operating Procedure for Reassignment of a Qualified Employee with a Disability<sup>12</sup> states that, once it receives an employee’s completed reassignment profile; its Human Resource Specialist will spend seven business days looking for positions within the Department where the employee presently works. If a position within that Department is not located, the search for a suitable position would expand to all State of Alaska job openings. The statewide search would continue for the next 15 business days. If the reassignment search was unsuccessful, Ms. Wheeler would be terminated.<sup>13</sup>

While she was absent, Ms. Wheeler’s shifts were covered by other full-time CNAs staying late or coming in early, and by CNA “floaters.”<sup>14</sup> Meanwhile, the Palmer Home could not fill Ms. Wheeler’s position unless and until she separated from her CNA position.<sup>15</sup> This resulted in overtime costs and scheduling challenges for the Palmer Home while they covered Ms. Wheeler’s absence.

The Palmer Home was anxious to fill Ms. Wheeler’s position and began working with HR specialist Cindy Carte as early as November 3, 2014 on that process.<sup>16</sup> Ms. Carte suggested that the Division could hire internally and potentially approve a hire “as long as you keep one vacant shift available until [Ms. Wheeler] separates.”<sup>17</sup> By “separates,” Ms. Carte was referring to Ms. Wheeler vacating her current position, either by reassignment or termination.<sup>18</sup> The decision was made to post Ms. Wheeler’s position in-house beginning November 14, 2011.

Ms. Carte received Ms. Wheeler’s completed reassignment application on Monday, November 14, 2011, the first day Ms. Wheeler’s position was posted in-house.<sup>19</sup> On the facsimile cover sheet, Ms. Wheeler asked Ms. Carte to call her “as soon as you can. Have update

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<sup>10</sup> Exh. 3.  
<sup>11</sup> Exh. 5; Exh. M.  
<sup>12</sup> Exh. 29.  
<sup>13</sup> Exh. 29; Testimony of Camille Brill.  
<sup>14</sup> Regular part-time employees.  
<sup>15</sup> Exh. 63 at SOA 1302.  
<sup>16</sup> *Id.* at SOA 1333.  
<sup>17</sup> *Id.* at SOA 1334.  
<sup>18</sup> Testimony of Carte.  
<sup>19</sup> Exh. 63 SOA 1327, 1330.

on condition.”<sup>20</sup> Ms. Carte called Ms. Wheeler to discuss the update. Ms. Wheeler informed Ms. Carte that she was having another hip surgery the next day, November 15, 2011.

That same day Ms. Carte wrote a letter to Ms. Wheeler summarizing the relevant portions of the phone call and informing Ms. Wheeler of her termination:

On November 14, 2011 our office received your completed application with a note to contact you because your condition had changed. I spoke with you over the phone and you informed me that you injured your hip again and would be undergoing surgery on November 15, 2011. I explained that in order to locate a potential position to reassign to you, you would need to be released to perform work of some kind. You informed me that at this time you were not released to perform work of any kind and would require time to recover after your surgery.

As you have not been released to return to work and you have fully exhausted your family leave entitlements, the Department has determined it is unable to continue to hold your Certified Nurse I position vacant. You will be administratively separated from your position without prejudice effective November 16, 2011. This action is not disciplinary and if in the future, you are able to return to work with a full release from a certified physician, Please contact us regarding your rehire eligibility.<sup>21</sup>

This is the only contemporaneous record of the discussion. It was sent to Ms. Wheeler via certified mail.

There is a factual dispute as to what Ms. Wheeler said regarding her return to work during this November 14, 2011 telephone conversation. Ms. Wheeler testified that she told Ms. Carte that she would be able to return to her CNA position without restrictions within a few weeks. Ms. Carte testified that Ms. Wheeler would not or could not tell her when she would return and was asking for indefinite leave. As initially argued by the Division, it was Ms. Wheeler’s request for indefinite leave which caused Ms. Wheeler’s termination, not her inability to perform any work.

Ms. Wheeler had her surgery as scheduled on November 15. She was administratively terminated November 16.<sup>22</sup> Eight days later, on November 23, she was released to return to work as a CNA with no restrictions.<sup>23</sup> Because she had been terminated, Ms. Wheeler felt there was no need to contact the Division and update them on her condition. Rather, she waited until a

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<sup>20</sup> Exh. 6.  
<sup>21</sup> Exh. 7.  
<sup>22</sup> Exh. 7.  
<sup>23</sup> Exh. Q.

CNA position was posted and on December 15, 2011 applied. She was not the successful candidate.

### **III. DISCUSSION**

#### *A. Applicable Law*

It is a violation of AS 18.80.220 to discriminate (take an adverse employment action) because of a person's physical disability. The parties agree that Ms. Wheeler is an individual with a disability and that she suffered an adverse action because of her disability. At issue is whether the Division illegally discriminated against Ms. Wheeler when it stopped looking for a suitable reassignment position for Ms. Wheeler and terminated her after learning she needed an additional surgery for her disability.

An employer has a duty to reasonably accommodate a disabled employee.<sup>24</sup> Ms. Wheeler has the burden to show that there was a reasonable accommodation available. A reasonable accommodation is one that is not unduly burdensome on the employer.

Ms. Wheeler has identified two accommodations that would have allowed her to perform the essential functions of her job: 1) reassignment or 2) a leave of absence to recover from surgery. She also contends that when the Division terminated her it abandoned the interactive process.

Conversely, the Division contends that there was no interactive process to continue because Ms. Wheeler abandoned the interactive process when she left to have surgery and was unavailable to work for an undefined period of time. It reasons that if Ms. Wheeler was not available to be reassigned or, in the alternative, if she was able to perform her duties as a CNA, then reassignment was not required. As to the second proposed accommodation, the Division has taken the position that this Commission should adopt a bright line rule that a disabled employee's request for indefinite leave is *per se* unreasonable and an abandonment of the interactive process by the employee. If the process is abandoned by the employee, the Division argues, it is relieved of its duty to help the employee ascertain what accommodation is necessary.

When deciding complaints of alleged discrimination because of a physical or mental disability, the Commission may consider 42 U.S.C. § 12101 - 12113 (Americans with Disabilities Act) and relevant federal case law as a guideline provided they do not limit the Alaska

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<sup>24</sup> *Moody-Herrera v. State, Dept. of Natural Resources*, 967 P.2d 79 (Alaska 1998).

Commission for Human Rights' obligation to construe AS 18.80 liberally.<sup>25</sup> Therefore, when looking at the rules generally applicable to ADA cases, they will be applied consistent with this instruction.

B. *The Interactive Process*

Employers “who fail to engage in the interactive process in good faith face liability if a reasonable accommodation would have been possible.”<sup>26</sup> ADA case law recognizes that “both parties bear responsibility for determining what accommodation is necessary,” and that the interactive process is a joint process that “requires a great deal of communication.”<sup>27</sup> If communication has been imperfect, one must “look for signs of failure to participate in good faith or *failure by one of the parties to help the other party* determine what specific accommodations are necessary.”<sup>28</sup>

The interactive process and the duty to provide a reasonable accommodation are ongoing and may require more than one accommodation.<sup>29</sup> An individual is only entitled to those accommodations that are necessitated by the disability and will provide an equal employment opportunity.<sup>30</sup> Whether an accommodation is reasonable is a multi-step inquiry specific to the employee and the employee's request.<sup>31</sup> First, an employer must consider whether the accommodation is needed. Next, an employer must determine whether the accommodation would be effective. Finally, if the accommodation is effective, an employer must consider whether it would cause an undue hardship.<sup>32</sup> This is an individualized process.

Ms. Brill testified regarding the ADA interactive process and assessment of whether a particular accommodation is reasonable. The process she described is the one in the preceding paragraph. Unfortunately, that is not the process followed in this case.

Ms. Carte testified that the decision to terminate Ms. Wheeler was made without any consideration given to whether an accommodation would be unduly hard on the Palmer Home. As she explained, the Division was only looking at whether the request for an accommodation

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<sup>25</sup> 6 AAC 30.910.

<sup>26</sup> *Barnett v. U.S. Air*, 228 F.3d 1105, 1116 (9th Cir. 2000), *vacated on other grounds* 535 U.S. 291 (2002).

<sup>27</sup> *Bultemeyer v. Fort Wayne Community Schools*, 100 F.3d 1281, 1285 (7<sup>th</sup> Cir. 1996).

<sup>28</sup> *Id* (emphasis added).

<sup>29</sup> EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, [http://www.eeoc.gov/policy/docs/accommodation.html#N\\_98\\_](http://www.eeoc.gov/policy/docs/accommodation.html#N_98_) (accessed July 3, 2015).

<sup>30</sup> *Id* at ¶ 32.

<sup>31</sup> *Id.*; Testimony of Brill.

<sup>32</sup> *Id* at ¶ 32.

was reasonable: “in this case, not having a time frame of when to return . . . it was unreasonable to hold the reassignment process.”<sup>33</sup> Ms. Carte confirmed that she did not consider whether Ms. Wheeler’s continued absence would cause an undue hardship because, in her mind, the interactive process had not reached that step.

The decision to halt the reassignment process was an unreasonable abandonment of the interactive process. Ms. Wheeler timely submitted her reassignment application on November 14. The process of identifying a new position for Ms. Wheeler, by Division policy, could take up to 22 working days. Ms. Wheeler’s surgery was set for November 15. She was terminated on November 16.

Because Ms. Wheeler was having surgery the very next day, the Division should have waited to see how the surgery went before terminating. This is true regardless of whether Ms. Wheeler asked for an additional two weeks, six weeks, or an indefinite amount of leave. Ms. Wheeler had requested reassignment. The Division did not know what job, if any, would be available but they should have continued the reassignment process. If a job was available, at that time determine whether Ms. Wheeler would be able to return to work in the reassigned position. In Ms. Wheeler’s case, if the reassignment process was not pended for surgery, the process would not have terminated until Tuesday, December 6, 2011.

The Division could have, and should have, continued the reassignment process, and followed up with Ms. Wheeler after her surgery to determine whether reassignment was still an appropriate accommodation. The Division could have also asked for permission to speak with Ms. Wheeler’s doctor to obtain more information. If after these additional inquiries the Division was still unable to obtain more definitive information about when Ms. Wheeler could return to work, it would have been appropriate then for the Division to consider whether an indefinite leave would create an undue hardship.<sup>34</sup>

The Division argues that it did not end the interactive process because in its termination letter it invited Ms. Wheeler to contact the Division in the future to discuss whether she was eligible for rehire.<sup>35</sup> The Division contends that it was Ms. Wheeler who ended the process because she did not contact the Division when she was able to return to work. However, the

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<sup>33</sup> Testimony of Carte.

<sup>34</sup> Because the Division prematurely terminated the interactive process, it is not necessary to determine whether, as argued by the Division, a request for an indefinite amount of leave is *per se* unreasonable.

<sup>35</sup> Respondent’s Objections to Recommended Decision.

adverse employment action at issue here is the decision to terminate her employment. Ms. Wheeler's actions or inactions after the AS 18.80 violation are at most relevant to the appropriate remedy for the violation.

The Division also argues that employers cannot be expected to engage in the interactive process for an indefinite amount of time after hearing from the employee that she was not sure when she could return to work.<sup>36</sup> But this argument fails to acknowledge the factual circumstances of this case. Ms. Wheeler had only recently exhausted her FMLA leave – leave that she had a right to under federal and state law. The Division had agreed to explore reassigning her to a different position as a reasonable accommodation, and had given Ms. Wheeler until November 14 to submit her reassignment application. She did submit that application, and also informed the Division she was scheduled for surgery on the 15<sup>th</sup>. She was terminated on the 16<sup>th</sup>. Ms. Wheeler's failure to immediately contact the Palmer Home was reasonable under the circumstances.

The Division's policy provides for a reassignment process that can last up to 22 business days to determine whether there was an acceptable position for Ms. Wheeler. Waiting a few more days to find out if more information was available after the surgery would not have interfered with the four-week reassignment determination, and would not have created unlimited future delays.<sup>37</sup> After all, the November 14 letter informing Ms. Wheeler of the Pioneer Home's decision focused on whether Ms. Wheeler would be released to perform work and a recovery period. This was the Division's conclusion before Ms. Wheeler even had surgery. It could have been that her provider would have released her to do work of some sort after surgery. The Division simply jumped the gun on separating Ms. Wheeler and failed to let the interactive process work.

The facts establish by a preponderance of the evidence that the Division failed to help Ms. Wheeler determine what specific accommodation was necessary. This failure prematurely terminated the interactive process.

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<sup>36</sup> *Id.*

<sup>37</sup> A reasonable assumption is that employees and their doctors will have a more accurate estimate of an anticipated return to work date after the surgery than before the surgery.



### C. *Remedy*

When a party is found to have engaged in a discriminatory practice, the Commission is required to order that the party refrain from engaging in that practice in the future.<sup>38</sup> The Commission may also order other appropriate relief, including reinstatement, requirements for training and posting of notices and awards of back pay or front pay to employees harmed by the discriminatory practice.<sup>39</sup> Except for reinstatement, these items are appropriate in this case. The Executive Director has also requested that the Division adopt and disseminate a policy of nondiscrimination, and that relief is also appropriate under AS 18.80.130(a)(1).<sup>40</sup>

The Executive Director has calculated Ms. Wheeler's back pay in the amount of \$84,716 as of December 31, 2014. This amount was calculated using Ms. Wheeler's likely wages, less offsets and back pay plus interest.<sup>41</sup> The Division does not challenge the calculation. Rather, it asks that back pay not commence until December 15, 2011, the date it was aware that Ms. Wheeler was eligible for employment. The Division also notes that it is being assessed additional interest based in part on the fact that it took the Executive Director two years to investigate this matter, and asks that interest be suspended for the period of time when the case was not moving forward. Both of these requests are denied. Interest is not a penalty imposed upon an employer. Rather it is intended to "make whole" the complainant. While the Division is not responsible for the amount of time it took for this case to be resolved, neither is Ms. Wheeler. To suspend interest would deprive Ms. Wheeler of the ability to return to the position she would have been in had the Division not illegally discriminated against her.

Ms. Wheeler also requests reinstatement to her prior position. She is correct that AS 18.80.130(a)(1) does contemplate reinstatement as an option: however, her position requires she be certified as a CNA. She no longer holds that certification.

The applicable CNA regulation provides that for Ms. Wheeler to renew her license, she is required to complete a renewal application form, pay a fee, fulfill continuing education requirements, and either a) work as a paid CNA for 160 hours over two years or b) complete a

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<sup>38</sup> AS 18.80.130(a).

<sup>39</sup> AS 18.80.130(a)(1).

<sup>40</sup> See *Parrish v. A B & M Enterprises*, OAH No. 11-0064-HRC (ASCHR 2012) (requiring adoption and dissemination of policy prohibiting discrimination), available on line at <http://aws.state.ak.us/officeofadminhearings/Documents/HRC/HRC110064.pdf>.

<sup>41</sup> See Complainant's Prehearing Brief at pages 27 – 30. Interest calculated quarterly at an annual interest rate of 3.75%. Pursuant to AS 18.80.130(f), the interest rate is the rate established by AS 09.30.070.

competency evaluation.<sup>42</sup> Ms. Wheeler had the ability to maintain her CNA certification. She simply needed to show she had worked as a CNA or take a competency evaluation.

Ms. Wheeler testified that she did not apply for any CNA positions other than those at the Palmer Home. There are other entities that employ CNAs where she could have met the 160-hour employment requirement to maintain her license. She did not. She could have maintained her license by taking a competency evaluation. She did not. The relationship between Ms. Wheeler's termination and her failure to maintain her CNA certification is tenuous at best. While Ms. Wheeler's initial unemployment was due to the Division's illegal discrimination, it was her decision not to seek a job in the CNA field over the next four years or maintain her certification. The evidence does not support the remedy of reinstatement or, in the alternative, front pay.

#### **IV. RECOMMENDATION**

I recommend that the Alaska State Commission for Human Rights enter an order finding that the Division discriminated against Ms. Wheeler when it terminated her, thereby ending the interactive process. I recommend that the Alaska State Commission for Human Rights award Ms. Wheeler "make whole" relief in the amount owing as of December 31, 2014, \$84,716, with interest continuing to accrue from December 31, 2014 until the Commission enters its final order. I also recommend that the Division of Alaska Pioneer Homes provide training to the Human Resources staff assigned to the Division in the laws prohibiting discrimination in employment based on disability.

DATED this 30<sup>th</sup> day of October, 2015.

*Signed* \_\_\_\_\_  
Rebecca L. Pauli  
Administrative Law Judge

[This document has been modified to conform to the technical standards for publication.]

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<sup>42</sup> 12 AAC 44.815(b), (c), and (d).

BEFORE THE ALASKA STATE COMMISSION FOR HUMAN RIGHTS

ALASKA STATE COMMISSION )  
 FOR HUMAN RIGHTS, PAULA M. )  
 HALEY, EXECUTIVE DIRECTOR, )  
*ex rel.*, DORETTA WHEELER, )  
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 Complainant, )  
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 v. )  
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 STATE OF ALASKA, DEPARTMENT )  
 OF HEALTH AND SOCIAL SERVICES, )  
 DIVISION OF ALASKA PIONEER )  
 HOMES, )  
 )  
 Respondent. )

Received  
 MAR 09 2016  
 State of Alaska  
 Office of Administrative Hearings  
 ASCHR No. J-12-018  
 OAH No. 14-0659-HRC

FINAL ORDER

By order dated February 19, 2016, the Hearing Commissioners in accordance with AS 18.80.130 and 6 AAC 30.480 adopted the Administrative Law Judge's Revised Recommended Decision dated October 30, 2015 insofar as it recommended: (a) back pay in the amount of \$84,716 with interest accruing from December 31, 2014 to the present; and (b) that the Respondent provide training to human resources staff regarding laws prohibiting discrimination on the basis of disability.

Pursuant to 6 AAC 30.480, the parties were provided an opportunity to submit objections to a proposed modification to the Revised Recommended Decision that would provide for reinstatement of Ms. Wheeler. The Executive Director submitted limited objections requesting that Ms. Wheeler be provided until the end of May, 2016 to obtain her CNA certification which it contends is necessary because the next CNA

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examination that she may be able to attend is scheduled for May 21, 2016. The Executive Director also requests that the order provide that Ms. Wheeler be reinstated to the position that she held prior to her dismissal which was as a night shift employee and that she be reinstated with the seniority and salary that she would have had if she had not been dismissed from employment. The Commission agrees that Ms. Wheeler should be provided a reasonable period of time to obtain her certification and will establish May 31, 2016 as the date by which she must obtain her certification in order to be reinstated to employment. An order of reinstatement includes making an employee whole such that they do not suffer tangible negative consequences from their dismissal. Accordingly, the remedy properly includes placing the employee on the shift that they worked previously if the employer continues to employ CNAs on that shift, and with seniority and at the wage rate that they would have been entitled to if their employment had continued without the dismissal.

The Respondent submitted objections which were not directed at the Commission's proposed modification of the Administrative Law Judge's Recommended Decision but instead contested the underlying decision that there was a violation of Alaska's law against discrimination. Respondent argues that it acted lawfully in dismissing Ms. Wheeler because she asked for an indefinite leave which Respondent contends should be considered a per se unreasonable accommodation. The Commission does not agree and adopts the Administrative Law Judge's decision that Respondent unreasonably terminated the interactive process based on the facts of this case. Revised Recommended Decision at 8. Ms. Wheeler was provided until

1 November 14 to submit her reassignment application; she submitted the application on  
2 that day and informed the Respondent that she was scheduled for surgery on November  
3 15. Respondent dismissed her the next day even though its policy provided for a  
4 reassignment process of up to 22 business days. According to the Administrative Law  
5 Judge, Respondent "simply jumped the gun" which is an accurate description of the  
6 facts of this case. Contrary to the suggestion in the Respondent's objections, this  
7 decision does not leave an employer with no option other than to wait an indefinite  
8 amount of time to hear from an employee about when they may be able to return to  
9 work. To the contrary, an employer could request that the employee provide  
10 information regarding when the employee will be able to return to work and make an  
11 assessment based on that information. But that did not happen here as the employee  
12 was immediately dismissed.

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15 Additionally, Respondent claims in its objections that Ms. Wheeler failed to  
16 mitigate her damages. The Revised Recommended Decision (at 9) notes that the  
17 Respondent did not challenge the back pay calculation, and the Ruling on Objections  
18 issued by the Administrative Law Judge on October 30, 2015 also reveals that  
19 Respondent did not raise the issue of mitigation of damages in the objections it filed to  
20 the Recommended Decision. In these circumstances, the Commission will not set aside  
21 the back pay damages established by the Administrative Law Judge.  
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24 In sum, the Hearing Commissioners adopt the Administrative Law Judge's  
25 Revised Recommended Decision of October 30, 2015 finding that Ms. Wheeler was  
26 wrongfully dismissed in violation of AS 18.80.220. The Commission directs the  
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**FINAL ORDER** – Page 3




*ASCHR, Paula M. Haley, Executive Director, ex rel. Doretta Wheeler v. State of Alaska,  
Department of Health and Social Services, Division of Alaska Pioneer Homes, ASCHR  
No. J-12-018, OAH No. 14-0659-HRC*

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following remedy: (a) back pay in the amount of \$84,716 with interest accruing from December 31, 2014 to the present; (b) Respondent shall provide training to human resources staff regarding laws prohibiting discrimination on the basis of disability; (c) Ms. Wheeler shall be reinstated to the position that she held prior to her dismissal, including the work shift that she was assigned to assuming that CNAs are still assigned to that shift, at a wage rate and with seniority calculated as if she had had no break in service; (d) Ms. Wheeler's reinstatement is conditioned on her obtaining a valid CNA license or certification no later than May 31, 2016.

Judicial review is available to the parties pursuant to AS 18.80.135 and AS 44.62.560-.570. An appeal must be filed with the superior court within 30 days from the date this Final Order is mailed or otherwise distributed to the parties.

IT IS SO ORDERED.

DATED: March 7, 2016	 <hr/> Kathryn Dodge, Commissioner
DATED: March 7, 2016	 <hr/> Jason B. Hart, Commissioner
DATED: March 7, 2016	 <hr/> Lester Lunceford, Commissioner

BEFORE THE ALASKA STATE COMMISSION FOR HUMAN RIGHTS

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 DIVISION OF ALASKA PIONEER )  
 HOMES, )  
 Respondent. )

ASCHR No. J-12-018

OAH No. 14-0659-HRC


CERTIFICATE OF SERVICE

I hereby certify that on March 8, 2016 a copy of the foregoing **FINAL ORDER** and **CERTIFICATE OF SERVICE** was hand-delivered to:

Stephen Koteff, Human Rights Advocate  
 Alaska State Commission for Human Rights  
 800 A Street, Suite 204  
 Anchorage, AK 99501

and served electronically and by first-class U.S. mail, postage prepaid, to:

Margaret Paton-Walsh  
 Assistant Attorneys General  
 State of Alaska  
 1031 West 4<sup>th</sup> Avenue, Suite 200  
 Anchorage, AK 99501  
 margaret.paton-walsh@alaska.gov

  
 Margaret Taylor