



CITY OF
PORTLAND, OREGON

HEARINGS OFFICE

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HEARINGS OFFICER'S ORDER

TriMet vs. Jennifer L. York

CASE NO. 3090116
(TriMet Exclusion Number 135111)

HEARING DATE: April 14, 2009

APPEARANCES:

Excluded party did not appear

TriMet was not represented

HEARINGS OFFICER: Mr. Ian Simpson

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Timelines: The Hearings Officer finds the following concerning the Notice of Exclusion being issued:

TriMet issued the Notice of Exclusion to Ms. Jennifer L. York on March 25, 2009. The case was forwarded to the City of Portland Hearings Office on March 31, 2009. The Hearings Office mailed a hearing notice to the parties on March 31, 2009, within the time prescribed in the TriMet Code. The notice contained the required information concerning Ms. York's rights in the hearing process.

Sufficiency of the Notice of Exclusion: A copy of the Notice of Exclusion was provided to Ms. York when she was excluded. The notice referenced the violating conduct/applicable code provision.

Stays: The exclusion was subject to an automatic stay upon being issued.

Mitigating and/or Aggravating Factors: The Hearings Officer finds no mitigating or aggravating factors existed when the Notice of Exclusion was issued.

Probability that the excluded individual engaged in the conduct supporting the exclusion: TriMet has the burden to demonstrate that it is more probable than not that the conduct forming the basis to issue the Notice of Exclusion occurred. Officer M. Vertner, who issued the Notice of Exclusion to Ms. York, provided a written report for the record. The officer's written report stated:

Ofc Thompson and I were riding e/b max train. At fare complex [sic] max stop – I asked female identified by Oregon ID for proof of fare – Jennifer York showed me ticket that was not validated – she said she was running for the train and didn't validate it. Tri-Met [sic] said she has recourse [sic] 2 prior cites for no fare.

Ms. York was cited with violating TMC 29.15 Fare Violation. Ms. York failed to appear at the hearing and did not submit a written request to the Hearings Office to reschedule the hearing. She presented no evidence to contest the credibility or relevance of the officer's written report. Exhibits 1 through and including 7 were received into the record without objection. The Hearings Officer considers the officer to be credible and the facts contained in the report to be true. The Hearings Officer finds that it is more probable than not that the conduct forming the basis to issue the Notice of Exclusion occurred.

Special Exceptions: The Hearings Officer finds there is no evidence in the record to suggest that Ms. York is disabled, transit dependent, or that the exclusion is based upon expressive conduct or exercising religious opinion protected by the United States or Oregon Constitutions.

If Ms. York believes that she is transit dependent she may submit, in writing to the Hearings Office, a request for a "Qualified Exclusion." A Qualified Exclusion permits a transit dependent person to utilize, on a limited basis, TriMet property and vehicles. To be considered for a Qualified Exclusion the writing submitted to the Hearings Office must include at least the following information:

- Why you feel you are transit dependent (i.e. no driver's license, no family or friends available to drive you to your desired locations)
- Residence address
- Address for all locations that are necessary to use TriMet
- Reasons trips are necessary (e.g., travel to and from medical and legal appointments, school or training classes, place(s) of employment, obtaining food, clothing and necessary household items, or for accessing any critical services)
- Days of week and time during the days when trips are expected to be made and the particular bus line or Max line #.

The Hearings Officer will make a determination, based upon the information supplied, whether or not Ms. York is transit dependent and which trips, if any, are trips of necessity.

ORDER AND DETERMINATION:

1. Validity of the Notice of Exclusion:

The Hearings Officer sustains the Notice of Exclusion issued to Ms. Jennifer L. York on March 25, 2009.

2. Length of the Exclusion:

The exclusion shall become effective with this Order, on April 21, 2009, and shall conclude on May 16, 2009 at 5:00 p.m.

3. Scope of the Exclusion:

The scope of the exclusion shall be as described in the Notice of Exclusion.

4. This order has been mailed to the parties on April 16, 2009, not more than five (5) business days following the hearing, and will become final on April 21, 2009, three (3) business days following the order being mailed.

5. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: April 16, 2009



 Ian Simpson, Hearings Officer

IS: gj/cb

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Appeal Form page 2	Turner, Anna	Received
2	TriMet Fare Inspection System print out	Turner, Anna	Received
3	Notice of Exclusion	Turner, Anna	Received
4	Issuing Person's Affidavit	Turner, Anna	Received
5	Mailing list	Hearings Office	Received
6	Hearing notice	Hearings Office	Received
7	Statement of Rights	Hearings Office	Received