



CITY OF
PORTLAND, OREGON
OFFICE OF THE CITY AUDITOR
Hearings Office

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HEARINGS OFFICER'S ORDER

TriMet vs. Maria A. Shaw

CASE NO. 3100235
(TriMet Exclusion Number 159320)

HEARING DATE: July 1, 2010

APPEARANCES:

Maria A. Shaw, Excluded Party

No Appearance by TriMet

HEARINGS OFFICER: Gregory J. Frank

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. Maria A. Shaw on June 14, 2010. The case was forwarded to the City of Portland Hearings Office on June 23, 2010. The Hearings Office mailed a hearing notice to the parties on June 23, 2010, within the time prescribed in the TriMet Code. The hearing notice contained the required information concerning Ms. Shaw's rights in the hearing process. A rescheduled hearing notice and Interim Order were mailed to the parties on July 2, 2010.

Sufficiency of the Notice of Exclusion: A copy of the Notice of Exclusion was provided to Ms. Shaw when she was excluded. The notice did reference 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: Ms. Shaw appeared at the hearing and testified on her own behalf. No person appeared at the hearing to testify on behalf of TriMet. The Hearings Officer makes this decision based upon the testimony of Ms. Shaw and the documents admitted (without objection from Ms. Shaw) into the evidentiary record (Exhibits 1 through and including 7).

Ms. Shaw was issued a TriMet Notice of Exclusion on June 14, 2010 for allegedly violating TMC 28.15 A. [Excessive Noise]. A person violates TMC 28.15 A. [Excessive Noise] if the person makes "excessive or unnecessary noise, including boisterous and unreasonably loud conduct" within a TriMet vehicle "with the intent to cause inconvenience, annoyance or alarm to the public, District personnel, or a peace officer or with reckless disregard to the risk thereof."

Ms. Shaw testified that on June 14, 2010 she boarded a bus with her husband and one or more juvenile grandchildren. Ms. Shaw stated that when she boarded the bus she purchased an Honored Citizen ticket. Ms. Shaw stated that she did not have in her possession, on June 14, 2010, proof that she was eligible for an Honored Citizen ticket/rate because the proof of eligibility card had been stolen from her. Ms. Shaw stated that a TriMet representative came aboard the bus and asked Ms. Shaw to show her proof of purchase of a valid fare. Ms. Shaw stated that about this time her husband was yelling at her and she yelled to him to "shut the f... up!" Ms. Shaw stated that she became increasingly mad because she was concerned about her grandchildren's welfare. Ms. Shaw stated that, as directed by the TriMet representative, she got off of the bus. Ms. Shaw testified that as one of her grandchildren were getting off of the bus the grandchild fell down. Ms. Shaw stated she was not screaming while on the bus. Ms. Shaw stated she has/had a brain tumor and as a result she is a "mental" person and others should not expect to her to act perfectly. Ms. Shaw stated she "just lost it" on June 14, 2010.

TriMet representative Hughes submitted a written statement (Exhibit 3). Mr. Hughes' statement is generally consistent with Ms. Shaw's testimony in that Ms. Shaw was unable to produce for inspection a valid fare (Honored Citizen eligibility) and that Ms. Shaw was upset and yelling "at the man she was with." Mr. Hughes stated that Ms. Shaw's yelling created an annoyance to himself and to passengers and the bus driver.

The Hearings Officer finds, based upon the evidence in the record, that Ms. Shaw's testimony was most persuasive. Ms. Shaw acknowledged that she yelled an obscenity towards her husband, she was mad and that she just lost it while on the bus. The Hearings Officer finds that Ms. Shaw, on June 14, 2010, on a TriMet bus did recklessly made loud and offensive noise that caused inconvenience, annoyance and alarm to the passengers on the bus, the driver of the bus and Mr. Hughes (a TriMet representative). The Hearings Officer finds it more probable than not that on June 14, 2010 Ms. Shaw did violate TMC 28.15 A [Excessive Noise]. The Hearings Officer finds that the Notice of Exclusion issued to Ms. Maria A. Shaw on June 14, 2010 is valid.

Special Exceptions: Ms. Shaw testified that she has no need to ride TriMet and therefore, finds that Ms. Shaw is not currently transit dependent. If, during the term of this exclusion, Ms. Shaw does find herself transit dependant, then Ms. Shaw may submit, in a 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 Ms. Shaw feels she is transit dependent (i.e. no driver's license, no family or friends available to drive you to your desired locations) or disabled
- Ms. Shaw's residence address
- Address for all locations that are necessary for Ms. Shaw to go where she needs access TriMet vehicles
- 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. Shaw 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. Maria A. Shaw on June 14, 2010.

2. Length of the Exclusion:

The exclusion shall become effective with this Order, on July 20, 2010, and shall conclude on August 17, 2010 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 July 15, 2010, not more than five (5) business days following the hearing, and will become final on July 20, 2010.

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

Dated: July 15, 2010



 Gregory J. Frank, Hearings Officer

GJF:gj/cb

Enclosure

<u>Exhibit #</u>	<u>Description</u>	<u>Submitted by</u>	<u>Disposition</u>
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	Mailing list	Hearings Office	Received
5	Hearing notice	Hearings Office	Received
6	Statement of Rights	Hearings Office	Received
7	Rescheduled hearing notice	Hearings Office	Received

