



CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

TriMet vs. Alicia M. Chivers

CASE NO. 3120151

(TriMet Exclusion Number 188797)

HEARING DATE: April 17, 2012

APPEARANCES:

Ms. Alicia Chivers, Excluded Party

Mr. Donald Keller, on behalf of TriMet

HEARINGS OFFICER: Ms. Kimberly M. Graves

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. Alicia M. Chivers on March 12, 2012. The case was forwarded to the City of Portland Hearings Office on March 14, 2012. The Hearings Office mailed a Notice of Hearing and Interim Order extending the stay on the exclusion to the parties on March 15, 2012, within the time prescribed in the TriMet Code. The notice contained the required information concerning Ms. Chivers' rights in the hearing process.

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

Stays: The exclusion was stayed on the Hearings Officer's direction on March 15, 2012.

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. Mr. Keller appeared and testified on behalf of TriMet. Mr. Keller testified that he was conducting fare inspections at the Sunset Transit Center on March 12, 2012, when he asked Ms. Chivers for proof of fare payment. Mr. Keller testified that Ms. Chivers told him that she must have left her wallet and didn't have a fare.

Ms. Chivers received a Notice of Exclusion on March 12, 2012, for allegedly violating TMC 29.15 (fare violation). A person violates TMC 29.15 (fare violation) if the person rides a TriMet vehicle without having, in his/her possession, proof of purchase of a valid fare. Also, a person violates TMC 29.15 (fare violation) if the person, upon request of a TriMet representative, fails to display for the representative's view, proof of purchase of a valid fare.

Ms. Chivers appeared at the hearing and stated that she does not contest the basis for the exclusion. Exhibits 1 through, and including, 6 were received into the record without objection.

The Hearings Officer finds the testimony of Mr. Keller to be credible and to accurately reflect the events leading to the issuance of the Notice of Exclusion to Ms. Chivers on March 12, 2012. The Hearings Officer finds that it is more probable than not that on March 12, 2012, Ms. Chivers did not display for viewing by the TriMet representative, while riding a MAX train outside of the fareless area, proof of purchase of a valid fare. The Hearings Officer finds it is more probable than not that Ms. Chivers, on March 12, 2012, did violate TMC 29.15 (fare violation). The Hearings Officer finds the Notice of Exclusion issued to Ms. Chivers on March 12, 2012, is valid.

Special Exceptions: The Hearings Officer finds there is sufficient evidence in the record to suggest that Ms. Chivers is transit dependent and needs access to TriMet during the exclusion. Ms. Chivers shall be permitted seven days a week between 8:00 a.m. and 11:00 p.m. to ride bus #52 between SW Farmington/Murray and the Beaverton Transit Center, and the Blue or Red line MAX train between the Beaverton Transit Center and downtown Portland. Ms. Chivers may also ride, during the above listed hours, any TriMet line with in the Free Rail Zone on the west side of the Willamette River.

ORDER AND DETERMINATION:

1. Validity of the Notice of Exclusion:

The Hearings Officer modifies the Notice of Exclusion issued to Ms. Alicia M. Chivers on March 12, 2012.

2. Length of the Exclusion:

The exclusion shall become effective with this Order, on April 25, 2012, and shall conclude on May 25, 2012, at 5:00 p.m.

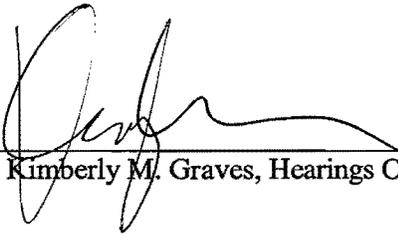
3. Scope of the Exclusion:

Ms. Chivers shall be permitted seven days a week between 8:00 a.m. and 11:00 p.m. to ride bus #52 between SW Farmington/Murray and the Beaverton Transit Center, and the Blue or Red line MAX train between the Beaverton Transit Center and downtown Portland. Ms. Chivers may also ride, during the above listed hours, any TriMet line with in the Free Rail Zone on the west side of the Willamette River.

4. This order has been mailed to the parties on April 20, 2012, not more than five (5) business days following the hearing, and will become final on April 25, 2012.

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

Dated: April 20, 2012



 Kimberly M. Graves, Hearings Officer

KMG:jeg/rs

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Appeal Form page 2	Turner, Anna	Received
2	TriMet Fare Inspection System printout	Turner, Anna	Received
3	Notice of Exclusion	Turner, Anna	Received
4	Mailing List	Hearings Office	Received
5	Notice of Hearing	Hearings Office	Received
6	Statement of Rights	Hearings Office	Received