



CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

1900 SW 4th Avenue, Room 3100

Portland, OR 97201

phone: (503) 823-7307 - fax: (503) 823-4347

web: www.portlandoregon.gov/auditor/hearings



HEARINGS OFFICER'S ORDER

TriMet vs. Anna M. Hartwick

CASE NO. 3120568

(TriMet Exclusion Number 179422)

HEARING DATE: December 6, 2012

APPEARANCES:

Ms. Anna Hartwick, Excluded Party

Deputy Adam Zishka, for 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. Anna M. Hartwick on November 21, 2012. The case was forwarded to the City of Portland Hearings Office on November 27, 2012. The Hearings Office mailed a Notice of Hearing to the parties on November 28, 2012, within the time prescribed in the TriMet Code. The notice contained the required information concerning Ms. Hartwick's rights in the hearing process.

Sufficiency of the Notice of Exclusion: A copy of the Notice of Exclusion was provided to Ms. Hartwick 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. Deputy Zishka appeared and testified on behalf of TriMet. Deputy Zishka testified that on November 21, 2012 he was conducting fare inspections at the Clackamas Town Center MAX platform when he contacted Ms. Hartwick. Deputy Zishka testified that he contacted Ms. Hartwick after she exited a MAX train, and that he asked her for proof of fare payment. Deputy Zishka testified that Ms. Hartwick responded by telling him that her fare was in her backpack and that she wasn't riding TriMet any further. Deputy Zishka testified that he told Ms.

Hartwick that she must have her fare available for inspection because she just exited a TriMet vehicle. Deputy Zishka testified that Ms. Hartwick became agitated and began yelling profanities at him. Deputy Zishka testified that Ms. Hartwick told him that she needed assistance getting her backpack off, but added that he was uncomfortable helping her because of her volatile manner. Deputy Zishka testified that Ms. Hartwick continued yelling and creating a scene on the platform. Deputy Zishka testified that other passengers on the platform appeared concerned by Ms. Hartwick's behavior and that the passengers altered their paths to avoid contact with Ms. Hartwick. Deputy Zishka testified that he was eventually able to obtain Ms. Hartwick's identification and issued her this exclusion. Deputy Zishka testified that after the exclusion was issued, Ms. Hartwick remained on the platform and continued to yell profanities at him. Deputy Zishka testified that he then issued Ms. Hartwick an Interdiction Command to immediately exclude her from TriMet property for 4 hours. Deputy Zishka testified that only after receiving the Interdiction Command did Ms. Hartwick leave the platform.

Ms. Hartwick received a Notice of Exclusion on November 21, 2012 for allegedly violating TMC 28.15C-Criminal Activity by engaging in conduct constituting the crime of Disorderly Conduct under ORS 166.125 while on TriMet property. A person violates ORS 166.125 if the person, with the intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, engages in fighting, violent, tumultuous or threatening behavior or makes unreasonable noise.

Ms. Hartwick appeared at the hearing and began her testimony in a very confrontational manner. Ms. Hartwick began her testimony by accusing the Hearings Officer and Deputy Zishka of not knowing her rights with regards to an alleged disability. The Hearings Officer attempted to focus Ms. Hartwick's testimony, and avoid any further attacks on those present at the hearing, by asking Ms. Hartwick questions about what occurred prior to her receiving the exclusion. Ms. Hartwick stated that her brother was picking her up at the Clackamas Town Center platform, and that prior to exiting the MAX train she placed her fare into one of three bags she was carrying. Ms. Hartwick testified that she believed her fare was in her backpack when she was contacted by Deputy Zishka. Ms. Hartwick testified that Deputy Zishka wouldn't help her remove her backpack, and instead that he accused her of having a disability and/or not taking her "medication." Ms. Hartwick testified that she was using profanity toward Deputy Zishka and that she was "in pain" due to a recent surgery. Ms. Hartwick testified that she gets defensive when someone asks her about having a disability, and that she "deals with it" however she can. Ms. Hartwick agreed that her behavior created a scene on the platform. Exhibits 1 through, and including, 6 were received into the record without objection.

The Hearings Officer finds the testimony of Deputy Zishka to be credible and accurately reflects the events leading up to the issuance of the Notice of Exclusion issued to Ms. Hartwick on November 21, 2012. The Hearings Officer finds it is more probable than not that on November 21, 2012 Ms. Hartwick violated TMC 28.15C by creating a risk of public inconvenience, annoyance or alarm by engaging in tumultuous behavior while on a TriMet platform; conduct which constitutes the crime of Disorderly Conduct. The Hearings Officer finds the Notice of Exclusion issued to Ms. Hartwick on November 21, 2012 is valid.

Special Exceptions: The Hearings Officer finds there is sufficient evidence in the record to suggest that Ms. Hartwick is transit dependent and needs access to TriMet to meet her medical needs. Ms. Hartwick shall be permitted to use TriMet services to tend to her medical needs, as long as she has with her written proof from her medical provider of a scheduled medical appointment. Written proof from a medical provider may be in the form of an appointment card, letter or printed email, and such proof must contain the date, time and location of the medical appointment.

Due to Ms. Hartwick's confrontation behavior with the Hearings Officer, and a very full docket of cases, the Hearings Officer asked Ms. Hartwick to submit a written request detailing any other need she may have for TriMet services during the exclusion period. Ms. Hartwick declined to submit a written request to allow her to use TriMet services for any purpose other than medical appointments.

ORDER AND DETERMINATION:

1. Validity of the Notice of Exclusion:

The Hearings Officer modifies the Notice of Exclusion issued to Ms. Hartwick on November 21, 2012.

2. Length of the Exclusion:

The exclusion shall become effective with this Order, on December 18, 2012, and shall conclude on February 16, 2013.

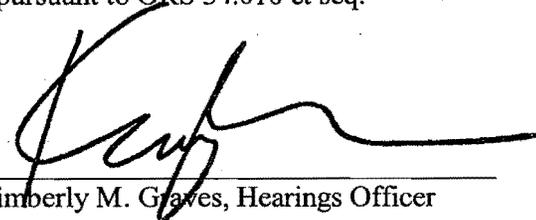
3. Scope of the Exclusion:

Ms. Hartwick shall be permitted to use TriMet services to tend to her medical needs, as long as she has with her written proof from her medical provider of a scheduled medical appointment. Written proof from a medical provider may be in the form of an appointment card, letter or printed email, and such proof must contain the date, time and location of the medical appointment.

4. This order has been mailed to the parties on December 11, 2012, not more than five (5) business days following the hearing, and will become final on December 18, 2012.

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

Dated: December 11, 2012



Kimberly M. Graves, Hearings Officer

KMG:c2/m1

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