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parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0730-15T4

FRANKLIN JACK BURR, II,

Complainant-Appellant,

v.

BEHAVIORAL INTERVENTIONS,
INC. and NEW JERSEY DIVISION
ON CIVIL RIGHTS,

Respondents-Respondents.

Argued November 6, 2017 — Decided December 22, 2017

Before Judges Ostrer and Whipple.

On appeal from the New Jersey Division on
Civil Rights, Docket No. PM16MB-63000.

Evelyn F. Garcia argued the cause for
appellant (Franklin Jack Burr II, on the pro
se briefs).

Megan J. Harris, Deputy Attorney General,
argued the cause for respondent New Jersey
Division on Civil Rights (Christopher S.
Porrino, Attorney General, attorney; Andrea M.
Silkowitz, of counsel; Megan J. Harris, Deputy
Attorney General, on the brief).

DiOrio & Sereni, LLP, attorneys for respondent
Behavioral Interventions, Inc., has not filed
a brief.

PER CURIAM

Franklin Jack Burr appeals from a Division on Civil Rights (DCR) administrative agency decision finding no probable cause to credit his allegation that Behavioral Interventions, Inc. (BI) discriminated against him because of his disability. We affirm.

Burr has Asperger's syndrome.¹ In an attempt to alleviate certain court ordered restraints stemming from a prior criminal conviction he sought a risk assessment from BI, a private company that contracts with the Department of Corrections and the Parole Board to provide such services.

In 2008, Burr was convicted of third-degree endangering the welfare of a child² and sentenced to community supervision for

¹ The Center for Disease Control defines Asperger's syndrome as a developmental disability within the autism spectrum disorder (ASD). People with ASD often have problems with social, emotional, and communication skills. Facts About ASD, Autism Spectrum Disorder (ASD), <http://www.cdc.gov/ncbddd/autism/facts.html>. Further, we note in 2013 the DSM-V removed Asperger's from its own distinct classification and replaced it with a general diagnosis of scalable severity of autism spectrum disorder, which can be manifested with a diverse array of symptoms and behaviors. Nat'l Inst. of Mental Health, Autism Spectrum Disorder, Health and Education, <https://www.nimh.nih.gov/health/topics/autism-spectrum-disorders-asd/index.shtml>.

² Burr was convicted of third-degree endangering the welfare of a child. He appealed that conviction, and while his complaint was pending with the DCR, we affirmed his conviction. State v. Burr, No. A-2671-10T3 (App. Div. May 13, 2013), certif. denied, 216 N.J. 365 (2013), cert. denied, 135 S. Ct. 484 (2014), rehearing denied, 135 S. Ct. 1035 (2015).

life and Global Positioning Satellite (GPS) monitoring. Burr sought to reduce or eliminate the GPS monitoring. Burr's parole officer advised him a favorable risk assessment could persuade the Parole Board to remove GPS monitoring and referred Burr to BI for a risk assessment. On a referral form sent to BI, Burr's parole officer handwrote "Autism/Asperger's" in the designated blank for other information.

On February 16, 2016, Burr went to BI's facility for his risk assessment. When he arrived, BI case manager Lori Perruzza attempted to obtain standard intake information, and an argument ensued because Burr did not bring photo identification. When asked if he had a license, Burr responded "do you have your license?" After allowing him to proceed without identification, Burr completed an intake form, and Perruzza brought him to a private room for the risk assessment.

In the room, Perruzza sat at a table while Burr remained standing. Perruzza asked Burr if he knew why he was there, to which he responded he did not know. Perruzza explained he was there for a sex offender risk assessment. According to Perruzza, Burr became hostile, stating he is not a sex offender and requesting proof that he is a sex offender. Also according to Perruzza, Burr's voice and demeanor became more agitated as he pressed her about his conviction. Perruzza later explained a

combination of Burr's behavior and his standing presence made her uncomfortable and fearful for her safety. Moreover, she was nervous because Burr's paperwork referenced a history of violence.

Perruzza told Burr she needed to retrieve paperwork from a nearby room and left to seek assistance from her colleagues. Perruzza told her colleagues Burr was scaring her and making her uncomfortable and asked if Burr could be made to leave.

BI program manager, Peter Conerly, went into the room and asked Burr why he was agitated. Burr alleges he told Conerly he has Asperger's syndrome and has difficulty controlling the volume of his voice. Burr then again questioned his status as a sex offender. Conerly told him his risk assessment would not be conducted that day and directed Burr to leave the building. Burr repeatedly questioned Conerly's authority to remove him. BI assistant program manager, Robert Hyde, entered the room and also directed Burr to leave. Burr was escorted towards the exit by Conerly and Hyde. At a hallway door, Burr stopped walking, again questioned Conerly's and Hyde's authority to remove him, and asked for their credentials. Burr then reached for Conerly's identification badge. Conerly stepped back and showed Burr his badge. Hyde told Burr if he did not leave the building immediately, they would call the police and Burr's parole officer

would be notified. Burr walked to the lobby protesting, and left the building.

On April 30, 2016, Burr filed a verified complaint with the DCR, alleging BI discriminated against him because of his disability in violation of the Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. Burr maintained BI denied him services because of his Asperger's syndrome and took no reasonable measures to accommodate his disability, despite knowing about it. Specifically, Burr asserted BI refused to conduct the risk assessment because of his mannerisms, which are symptoms of his disability.

The DCR conducted an investigation and found no probable cause to credit the allegations of the complaint. BI is a place of public accommodation under the LAD, but the DCR investigation found no persuasive evidence Perruzza, Conerly, or Hyde had any predilection to deny service to Burr or otherwise discriminate against him because he has autism/Asperger's syndrome.

The DCR concluded the evidence did not show the accommodations Burr sought or implied he needed were reasonable. Under N.J.A.C. 13:13-4.11(a), a place of public accommodation must make reasonable accommodations to a patron with a disability unless the accommodation would impose an undue burden. "A patron seeking . . . particularized disability accommodations is required to inform

management or staff that he or she needs accommodations because of a disability, and must request or suggest specific accommodations." The DCR noted "[a] complainant must also show that the accommodations sought were reasonable."

Although the DCR acknowledged Burr put BI on notice that "failure to understand questions, answering questions in an unconventional manner and raising his voice were symptoms of his disability," the DCR determined Burr did not notify BI what specific "modification of policies, practices or procedures" he requested. Specifically, none of Burr's statements advised BI staff "he was asking them to modify their registration or assessment process to accommodate his disability." Moreover, the DCR concluded Burr would have been required to present expert medical evidence to BI to show the extent of his disability, which he did not do. Lastly, the DCR concluded even if accommodations were reasonable, BI was motivated by legitimate reasons unrelated to Burr's disability when it ended the assessment and asked him to leave.

For these reasons, the DCR issued its finding of no probable cause to support appellant's contentions. This appeal followed.

We exercise "a limited role" in the review of administrative agency decisions. In re Stallworth, 208 N.J. 182, 194 (2011). "In order to reverse an agency's judgment, an appellate court must

find the agency's decision to be 'arbitrary, capricious, or unreasonable, or not supported by substantial credible evidence in the record as a whole.'" Ibid. (quoting Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980)). A reviewing court is limited to determining:

(1) whether the agency's action violates express or implied legislative policies, that is, did the agency follow the law; (2) whether the record contains substantial evidence to support the findings on which the agency based its action; and (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.

[Mazza v. Bd. of Trustees, 143 N.J. 22, 25 (1995) (citing Campbell v. Dep't of Civil Serv., 39 N.J. 556, 562 (1963)).]

Moreover, we do not substitute our own judgment for the agency's, even though we might have reached a different result. In re Stallworth, 208 N.J. at 194 (quoting In re Carter, 191 N.J. 474, 483 (2007)).

On appeal, Burr argues the DCR erred in determining he was required to unequivocally declare his disability and describe the specific required accommodations. We disagree.

The LAD prohibits discrimination on the basis of a person's disability in a place of public accommodation. N.J.S.A. 10:5-12(f). "The LAD is intended to insure that handicapped persons

will have 'full and equal access to society, limited only by physical limitations they cannot overcome.'" Franek v. Tomahawk Lake Resort, 333 N.J. Super. 206, 217 (App. Div. 2000) (quoting D.I.A.L., Inc. v. New Jersey Dept. of Community Affairs, 254 N.J. Super. 426, 439 (App. Div. 1992)). A place of public accommodation is required to address physical barriers or accessibility issues without a specific request or notice from a patron. Lasky v. Borough of Hightstown, 426 N.J. Super. 68, 76 (App. Div. 2012). However, notice is required when a patron claims a place of public accommodation failed to make specific adaptations necessitated by the patron's disability. Ibid.

There is only limited precedent discussing notice requirements for LAD disability discrimination claims. In Lasky, 426 N.J. Super. at 68, we relied on the notice requirements of the Americans With Disabilities Act, 42 U.S.C. § 12132, and said:

There is a clear dichotomy between, on the one hand, those claims alleging an overall lack of access, which require no advance notice, and, on the other hand, those claims alleging a failure to reasonably accommodate by making specific adaptations necessitated by the individual's disability, which do require notice.

[Id. at 76.]

We added:

It is entirely reasonable and consistent with the spirit, if not letter, of the [DCR]'s

implementing regulations, to require qualified persons with a disability requesting a reasonable accommodation to apprise the public entity of his or her disabling condition and any suggestions for such possible public accommodations.


[Id. at 80.]

Burr did not notify BI of the specific "modifications of policies, practices or procedures" he required. N.J.A.C. 13:13-4.11(a). While Burr's referral form indicated a condition of Asperger's syndrome or Autism and he informed BI's staff of his disability, Burr did not identify or advise BI what specific accommodations he required. Furthermore, had Burr requested specific accommodations, he did not present expert medical evidence explaining the parameters of his disability. "[A] plaintiff has the burden to show the extent of the mental disability if relevant to the accommodations requested or offered. When the extent of the disability is not readily apparent, expert medical evidence is required." Wojtkowiak v. N.J. Motor Vehicle Com'n, 439 N.J. Super. 1, 15 (App. Div. 2015). In reaching these conclusions, we do not minimize Burr's condition, or the frustration he experienced at BI; the unpleasant encounter could have been avoided with some forethought by both parties. We simply rule he has not established legal error on the part of the DCR.

Burr's other arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(D) and (E).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION