

RICHARD M. SCHALL, ESQUIRE (ID #030301987)
PATRICIA A. BARASCH, ESQUIRE) (ID #024631993)
SCHALL & BARASCH, LLC
MOORESTOWN OFFICE CENTER
110 MARTER AVE., SUITE 105
MOORESTOWN, NJ 08057
(856) 914-9200
ATTORNEYS FOR PLAINTIFF
JENNIFER GIORDANO

JENNIFER GIORDANO,	:	SUPERIOR COURT OF NEW JERSEY
Plaintiff,	:	LAW DIVISION
	:	MONMOUTH COUNTY
v.	:	DOCKET NO.
	:	Civil Action
STATE OF NEW JERSEY, MOTOR	:	
VEHICLE COMMISSION	:	
Defendant.	:	COMPLAINT AND DEMAND FOR
	:	JURY TRIAL

PRELIMINARY STATEMENT

As of March, 2017, there are more than 3.1 million women with a history of breast cancer in the United States, including women currently being treated and women who have finished treatment. In 2017, an estimated 252,710 new cases of invasive breast cancer are expected to be diagnosed in women in the United States, with another 63, 410 new cases of non-invasive breast cancer also expected.¹ A woman living in the

¹ Statistics supplied by Breastcancer.org as of March, 2017.

United States has a 12.3%, or 1 in 8, lifetime risk of being diagnosed with breast cancer.² Plaintiff Jennifer Giordano, who was diagnosed with Stage 2, invasive breast cancer in February, 2017, now brings this case against the State of New Jersey, Motor Vehicle Commission, for disability discrimination for subjecting her to abuse and humiliation in the course of her attempting to obtain an updated drivers' license. Her case arises under the New Jersey Law Against Discrimination, which makes it unlawful for any place of public accommodation, including the agencies of the State of New Jersey, to "refuse, withhold from or deny to any person any of the accommodations, advantages, facilities, or privileges" otherwise provided to the public.

THE PARTIES

1. Plaintiff Jennifer Giordano resides at 105 Breton Road, Brick, New Jersey.
2. Defendant, State of New Jersey, Motor Vehicle Commission, is the state agency responsible for the titling, registering and inspecting of automobiles and the licensing of drivers with the State. It was formed in 2003 to replace what was then called the Department of Motor Vehicles. It operates offices and facilities throughout the State of New Jersey, including an office in Eatontown, Monmouth County, where the events giving rise to this lawsuit took place.

FACTUAL ALLEGATIONS

3. The offices of the New Jersey Motor Vehicle Commission are places of public accommodation where the residents of the State of New Jersey must go to obtain and maintain up-to-date drivers' licenses.

² American Cancer Society, "Breast Cancer Facts & Figures 2015-16."

4. As places of public accommodation, these offices are required to abide by the laws of the State of New Jersey, including the New Jersey Law Against Discrimination, N.J.S.A. 10:5-12, which makes it unlawful for any place of public accommodation to discriminate against individuals with disabilities by denying to them all the “accommodations, advantages, facilities, or privileges” that these offices have been created to provide.

5. The regulations promulgated pursuant to the New Jersey Law Against Discrimination, N.J.A.C., 13:13-4.11, further require that places of public accommodation “shall make reasonable accommodations to the limitations of a patron or prospective patron who is a person with a disability, including making such reasonable modifications in policies, practices, or procedures, as may be required to afford goods, services, facilities, privileges, advantages, or accommodations to a person with a disability.”

6. Given that the Motor Vehicle Commission (MVC) is required to comply with the protections afforded by the Law Against Discrimination to the disabled citizens of the State of New Jersey, it is also required to train its employees to properly comply with those laws when they deal with disabled individuals who come to MVC offices for obtaining or updating licenses, registrations, or other necessary documentation.

7. Breast cancer, and in particular invasive breast cancer, including the effects of treatment for such breast cancer, constitute a disability protected by the New Jersey Law Against Discrimination and its regulations.

8. The treatment for invasive breast cancer typically requires a prolonged course of chemotherapy – a treatment that most often results in the individual being treated to lose all of her or his hair.

9. Studies have demonstrated that, “hair loss as a result of chemotherapy treatment for breast cancer can have profound implications for women’s mental health and social interactions.”³

10. On February 10, 2017, plaintiff’s doctors had diagnosed her with Stage 2 breast cancer, affecting her breasts and lymph nodes. They recommended that she undergo a 16 week course of chemotherapy, which was begun in late February, 2017, and completed in mid-June, 2017. In order to prevent reoccurrence of the cancer, her doctors have scheduled her for a double mastectomy to be performed in early August, 2017, with a final reconstruction anticipated to be scheduled for later this year.

11. As a result of eight rounds of chemotherapy over the course of the 16 weeks, plaintiff lost all of her hair, and, in order to cover her head, wears a head scarf or head wrap (also known as a “chemo cap”) whenever she goes out in public.

12. On Wednesday, June 14, 2017, plaintiff went to the Eatontown office of the Motor Vehicle Commission (MVC) in order to obtain an updated license reflecting her recent change of address.

13. On that June 14th date, in order to cover her head while at the MVC office, plaintiff was wearing a head wrap.

14. After waiting in the required lines and filling out the requisite forms, plaintiff was finally summoned to the counter at the MVC office, where she was

³ Trusson and Pilnick, “The Role of Hair Loss in Cancer Identity.” *Cancer Nursing*, Vol. 40, No. 2, 2017.

confronted by an MVC employee, who demanded that plaintiff remove her headwrap before any new picture could be taken, telling her, “you have to take that thing off.”

15. Despite plaintiff’s attempts to explain that she was wearing the headwrap as result of undergoing chemotherapy to deal with her breast cancer, and despite her requests that her existing picture on file with the MVC be used for the new license, the MVC representative demanded at least three times that she remove her headwrap in order to get a new license. Each time, plaintiff, who by this point had broken down in tears, denied the demands.

16. Still crying, and unsure what to do, plaintiff then called her husband to tell him that the MVC representative was demanding she remove her headwrap.

17. While all these events were taking place, over the course of five-to-ten minutes, with the MVC representative repeatedly demanding plaintiff remove her headwrap, and plaintiff pleading that she not be required to do so, and breaking down in tears because of what was happening to her, some 40 to 50 members of the public were present watching the scene.

18. Despite what was publicly and openly transpiring during this period of time, with plaintiff continuing to cry as a result of her interchange with the MVC representative, none of the other MVC representatives at the adjacent counters said anything or did anything to intervene for the five to ten minutes this was going on – all the time she was crying.

19. Finally, after some ten minutes had gone by, another MVC employee came over and whispered something to the MVC employee who had been demanding that plaintiff remove her headwrap. This second MVC employee then directed plaintiff

to come to her counter; told her that she had to go on-line to apply for a change of address, which plaintiff then did.

20. The second MVC employee then completed some additional paperwork, took payment from plaintiff, and directed her to have a seat to await receipt of a new license.

21. While waiting for her new license, another patron of the MVC, who had witnessed the way in which plaintiff had been treated, approached her to let her know how disturbed she was by the way the MVC employee had treated her.

22. As it had happened, that patron had been the next person in line to speak with the MVC employee who had repeatedly demanded that plaintiff remove her headwrap. She states that, when standing at the counter in front of the MVC employee, she overheard the MVC employee saying to the employee next to her the following: "Can you believe that bitch? Does she think she is the only person who ever had cancer?"

23. Several minutes later, a DMV manager, making no eye contact with plaintiff, approached her holding a license in his hand. After plaintiff explained to him that she had been undergoing chemotherapy, had lost her hair, and was therefore wearing a headwrap, the DMV manager, while continuing to stare at the license and not looking at plaintiff, said to her that, in the case of religious or medical reasons, applicants for a license do not have to remove a head covering .

24. In response, and pointing in the direction of the DMV employee who had demanded she remove her head covering, plaintiff stated, "well, clearly she doesn't know that."

25. At approximately 3:30 in the afternoon, after spending an hour at the MVC office, plaintiff left to go to her surgeon's office, where she previously had arranged a meeting with the surgeon's nurse.

26. Once at her surgeon's office, and still upset and disturbed by what had transpired at the MVC office, plaintiff explained everything that happened to the nurse and to the receptionist present at the time – both of whom were outraged by the treatment she had received at the hands of the MVC.

27. After leaving her surgeon's office and on her way home, plaintiff decided to return to the MVC office to try to get the names of the employees who had dealt with her. A different manager there provided her with only the first name and initial of the last name of the MVC employee who had demanded she remove her headwrap and also the name of the manager who had ultimately given her the license.

28. Over the course of the next week, plaintiff had difficulty eating and sleeping. Therefore, on Tuesday, June 20, 2017, plaintiff called and spoke by telephone to her surgeon's nurse, who thought that the symptoms might well be the result of the trauma plaintiff had been put through by the MVC employees. The nurse suggested that plaintiff call a social worker, which she did, but after not making a connection, plaintiff went to an urgent care center to see a physician to review her symptoms. Although the physician gave her a prescription for Xanax, she decided against taking the medication.

COUNT ONE
(Disability Discrimination in Violation of
the New Jersey Law Against Discrimination)

29. Plaintiff repeats and realleges the preceding paragraphs as if set forth herein in their entirety.

30. Plaintiff is a person with a “disability” within the meaning of the New Jersey Law Against Discrimination in that she has Stage 2 breast cancer and has undergone a course of chemotherapy to treat that breast cancer.

31. Defendant operates a public accommodation within the meaning of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-5.

32. Defendant discriminated against plaintiff on account of her disability by repeatedly demanding that she remove her headwrap that she was wearing as a result of her total loss of hair as a result of her chemotherapy treatment.

33. Defendant discriminated against plaintiff on account of her disability by denying her the reasonable accommodation of obtaining a driver’s license by using a prior picture on file – an accommodation which defendant only later provided after first denying that accommodation, thereby causing plaintiff to suffer humiliation, embarrassment, and significant emotional distress.

34. Defendant further discriminated against plaintiff by either not having policies and procedures in place to address plaintiff’s situation and/or failing to properly train its staff as to its policies.


35. As a result of defendant’s discrimination against plaintiff on account of her disability, plaintiff has suffered embarrassment, humiliation and emotional distress.

RELIEF REQUESTED

WHEREFORE, plaintiff demands judgment against the defendant and requests the following relief:

- a) Order that defendant adopt policies and train its employees in those policies to ensure that plaintiff, or other individuals in her situation, are not discriminated against in the way that happened here;
- b) that defendant compensate plaintiff for the emotional distress, humiliation, and anguish she has suffered on account of defendant's discrimination against her;
- c) Order that defendant pay punitive damages on account of its conduct toward plaintiff;
- d) Award plaintiff her reasonable costs and attorneys' fees incurred in the litigation of this matter, including an enhancement of those fees as permitted under the law, and further including all time incurred in the effort to resolved the matter pre-litigation; and
- e) Grant plaintiff such other relief as the Court deems just and proper.

SCHALL & BARASCH, L.L.C.

BY: 
RICHARD M. SCHALL
PATRICIA A. BARASCH
Attorneys for Plaintiff

Dated: July 24, 2017

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on all issues as permitted by law.

BY: Patricia A. Barasch
RICHARD M. SCHALL
PATRICIA A. BARASCH
Attorneys for Plaintiff

Dated: July 24, 2017

CERTIFICATION PURSUANT TO RULE 4:5-1

1. I certify that, to my knowledge, the matter in controversy is not the subject of any other action pending in Court nor of a pending arbitration proceeding.

2. To my knowledge, no other action or arbitration is contemplated.

BY: Patricia A. Barasch
RICHARD M. SCHALL
PATRICIA A. BARASCH
Attorneys for Plaintiff

Dated: July 24, 2017

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Patricia Barasch is hereby designated as trial counsel in this matter.

BY: 
PATRICIA A. BARASCH
Attorneys for Plaintiff

Dated: July 24, 2017