

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

BARBARA WALTER, Individually and on	:	
Behalf of Similarly Situated Individuals	:	CIVIL ACTION
	:	
Plaintiff,	:	NO. 05-418
	:	
v.	:	
	:	
SOUTHEASTERN PENNSYLVANIA	:	
TRANSPORTATION AUTHORITY	:	
	:	
Defendant.	:	

ORDER

AND NOW, this 25th day of August, 2006, upon consideration of Defendant's Motion for Reconsideration or Alternatively for Certification of Issues for Immediate Appeal (Document No. 36, filed June 16, 2006), Plaintiff's Response to Defendant SEPTA's Motion for Reconsideration or Certification of Issues for Immediate Appeal (Document No. 43, filed July 10, 2006), Defendant's Reply Memorandum in Support of its Motion for Reconsideration or Alternatively for Certification of Issues for Immediate Appeal (Document No. 44, filed August 4, 2006), Defendant SEPTA's Motion for a Stay Pending Disposition of Motion for Reconsideration or Alternatively for Certification of Issues for Immediate Appeal (Document No. 37, filed June 16, 2006), Plaintiff's Memorandum of Law in Opposition to Defendant's Motion for a Stay (Document No. 41, filed June 22, 2006), and SEPTA's Reply Memorandum of Law in Support of its Motion for a Stay (Document No. 42, filed June 30, 2006), following a telephone conference with the parties, through counsel, on August 22, 2006 with the parties, through counsel, **IT IS ORDERED** as follows:

1. That part of defendant's Motion which seeks reconsideration is **DENIED**;

2. That part of defendant's Motion which seeks certification of issues for immediate appeal is **MARKED WITHDRAWN** at defendant's request;¹ and,

3. Defendant's Motion for a Stay is **DENIED**.

MEMORANDUM

Plaintiffs Barbara Walter ("Walter") and Laura Greene ("Greene"), each of whom has a mobility impairment, filed this suit against SEPTA for violating the paratransit provision of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12143. Defendant filed a motion to dismiss the amended complaint, which was granted in part and denied in part in a Memorandum and Order dated June 2, 2006. Walter v. Southeastern Pennsylvania Transp. Auth., 434 F. Supp. 2d 346 (E.D. Pa. 2006). The Court granted defendant's motion to dismiss plaintiff Greene's case,² but denied defendant's motion to dismiss plaintiff Walter's case. Defendant filed a motion for reconsideration of the Court's June 2, 2006 Memorandum and Order. For the reasons below, defendant's motion for reconsideration is denied.

¹ Defendant's motion for reconsideration requested, in the alternative, that the Court certify issues for immediate appeal. However, in defendant's reply memorandum in support of its motion for reconsideration, defendant stated that it was withdrawing its motion for certification of issues for immediate appeal. Def. Reply at 3. Counsel for defendant confirmed during the August 22, 2006 telephone conference that defendant wished to withdraw the request for certification. Therefore the Court has marked that part of the motion which seeks certification of issues for immediate appeal as withdrawn.

² The court dismissed plaintiff Greene's case because her claim was based on the inaccessibility of the R2 commuter rail station in Chester, Pennsylvania. Walter v. Southeastern Pennsylvania Transp. Auth., 434 F. Supp. 2d 346, 349 (E.D. Pa. 2006). The Court concluded that the paratransit statute at issue did not apply to individuals, such as plaintiff Greene, who cannot access commuter rail stations. Id. at 360-61.

1. Background

The following is an abbreviated version of the facts found in Walter v. Southeastern Pennsylvania Transp. Auth., 434 F. Supp. 2d at 348-49. Only those facts pertaining to plaintiff Walter have been included, since plaintiff Greene's case was dismissed.

Plaintiff Walter ("plaintiff") is a resident of Philadelphia. She has multiple sclerosis and uses an electric scooter for mobility. She regularly travels to Center City, Philadelphia for meetings and social and cultural events. Defendant SEPTA, a public transit authority, operates CCT Connect, a paratransit system for individuals with disabilities.³ Prior to June 2004, plaintiff received paratransit transportation services via CCT Connect. In June of 2004, SEPTA notified paratransit riders that all buses on its fixed route system were now equipped with wheelchair-accessible lifts and/or ramps. Soon thereafter, defendant informed plaintiff that she would only be eligible for paratransit services during inclement weather because she could now use the fixed-route buses, despite the fact that taking the bus to destinations in Center City, Philadelphia would require plaintiff to use and transfer among several different bus routes. Plaintiff filed this lawsuit on the ground that she cannot use SEPTA's rail lines to reach these destinations in Center City because the stations at which she would disembark – namely the Walnut-Locust Station on the Broad Street Subway and the 13th Street Station on the Market-Frankford Elevated Line – are not yet fully accessible to individuals in wheelchairs.

³ Paratransit is a "comparable transportation service required by the ADA for individuals with disabilities who are unable to use fixed route transportation systems." 49 C.F.R. § 37.3. "By 'paratransit,' we describe those transportation services, usually performed by wheelchair-accessible vans, that are provided to the handicapped separate from the mass transit's normal operations In general, paratransit is transportation that is provided upon request by the handicapped individual." ADAPT v. Skinner, 881 F.2d 1184, 1186 n.1 (3d Cir. 1989).

It is plaintiff's position that, under the federal regulations, she is eligible for paratransit because of the inaccessibility of the key stations. The regulations provide, in relevant part:

With respect to rail systems, an individual is eligible [for paratransit] under this paragraph if the individual could use an accessible rail system, but –
(A) there is not yet one accessible car per train on the system; or
(B) *key stations have not yet been made accessible.*

49 C.F.R. § 37.123(e)(2)(iii) (emphasis added). Because the Walnut-Locust Station on the Broad Street Subway and the 13th Street Station on the Market-Frankford Elevated Line are both “key stations” under the ADA,⁴ plaintiff argues she was entitled to paratransit services until those stations were made wheelchair accessible.

Defendant countered that under the statutory paratransit eligibility definition, as opposed to the regulatory definition, plaintiff was not eligible for paratransit. The relevant statutory subsection provides paratransit for:

Any individual with a disability who needs the assistance of a wheelchair lift or other boarding assistance device (and is able with such assistance) to board, ride, and disembark from any vehicle which is readily accessible to and usable by individuals with disabilities if the individual wants to travel on a route on the system during the hours of operation of the system at a time (or within a reasonable period of such time) when such a vehicle is not being used to provide designated public transportation on the route.⁵

42 U.S.C. § 12143(c)(1)(A)(ii). Defendant further argued that the paratransit regulations found

⁴ The DOT gave public transportation entities the authority to define which stations were “key stations,” considering criteria such as larger-than-average boardings, transfer points, end stations, etc. See 49 C.F.R. § 37.47(b). Prior to the passage of the ADA, SEPTA and disabilities rights activists reached a settlement agreement determining which stations in the SEPTA system would be identified as key stations. § 37.53(a)(2). These key stations included the Walnut-Locust Station on the Broad Street Subway and the 13th Street Station on the Market-Frankford Elevated Line. Am. Compl. ¶¶ 22, 27.

⁵ The regulatory definition relied upon by plaintiff was an interpretation of this second category of paratransit eligibility.

at 49 C.F.R. § 37.123(e)(2)(iii) were an unreasonable interpretation of the statutory paratransit eligibility provisions and should be struck down under Chevron, U.S.A., Inc. v. Natural Resources Defense Council, 467 U.S. 837 (1984). **Finally, defendant asserted that even if the Court upheld the paratransit eligibility definitions found at 49 C.F.R. § 37.123(e)(2)(iii), plaintiff was not eligible for paratransit merely because two key stations – Walnut-Locust Station on the Broad Street Subway and the 13th Street Station on the Market-Frankford Elevated Line – had not been made handicap accessible.**

In its June 2, 2006 Memorandum and Order, the Court first held that the statutory paratransit definitions were ambiguous as applied to rail systems, despite the fact that the paratransit statute applied to public entities operating rail transit systems. Walter, 434 F. Supp. 2d at 354. Because the statute was ambiguous, the Court turned to the question of whether the DOT regulations defining Category 2 paratransit eligibility were a permissible construction of the statute under Chevron. The Court held that “because Congress explicitly delegated authority to the DOT to promulgate paratransit regulations, and because the paratransit regulations further the intent of the ADA . . . the DOT’s interpretation of the statutory . . . paratransit eligibility is reasonable.” Walter, 434 F. Supp. 2d at 356-57. Finally, the Court addressed defendant’s argument that the regulatory language did not require it to provide paratransit until *all* key stations have been made accessible, and concluded that an individual would be eligible for paratransit for a trip if she cannot use a rail system because key stations necessary for the trip have not been made accessible. Id. at 358-59.

2. Analysis

A court may grant a motion for reconsideration on one of three grounds: (1) an

intervening change in the controlling law; (2) the availability of new evidence not available when the court granted the prior motion; or, (3) the need to correct a clear error of law or fact or prevent “manifest injustice.” Max’s Seafood Café v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999); Ostroff v. Alterra Healthcare Corp., 2006 WL 2086970, at *1 (E.D. Pa. July 25, 2006). The party seeking reconsideration bears the burden of demonstrating one of these grounds. Max’s Seafood Café, 176 F.3d at 677; In re Loewen Group Inc. Sec. Litig., 2006 WL 27286, at *1 (E.D. Pa. Jan. 5, 2006) (“In a motion for reconsideration, the burden is on the movant.”) (internal quotation omitted).

Defendant’s motion for reconsideration is based on the third ground, the need to correct clear errors of law. Defendant argues that the Court’s June 2, 2006 opinion contained several clear errors of law, including:

1. The holding that the paratransit statute, 42 U.S.C. § 12143(c)(1)(A)(ii), is ambiguous;
2. The holding that the regulation found at 49 C.F.R. § 37.123(e)(2)(iii) does not conflict with the paratransit statute; and,
3. The interpretation of “key stations have not yet been made accessible” to require paratransit for individuals who cannot use a rail system because key stations necessary for a trip have not been made accessible.

In explaining why these holdings were clear errors of law, defendant does little more than repeat the same arguments made in its motion to dismiss. Defendant does not present any arguments or analyses which the Court did not consider in reaching the conclusions in the June 2, 2006 Memorandum & Order.⁶ Instead, defendant simply argues that the Court reached the wrong

⁶ For example, defendant argues that the paratransit regulation upheld by the Court, 49 C.F.R. § 37.123(e)(2)(iii)(B), “imposes a significant cost on transit authorities.” Def. Memo at 11. However, the Court specifically considered the financial impact of its ruling on defendant, and stated that “under the statutory timetable, a conclusion that 49 C.F.R. § 37.123(e)(2)(iii)(B) requires that Category 2 paratransit eligibility continue until the key stations necessary for a

conclusions. This is not a basis for granting a motion for reconsideration. “A motion for reconsideration will not be granted where it asks the Court to rethink what it had already thought through – rightly or wrongly.” Jurinko v. Med. Protective Co., 2006 WL 1791341, at *2 (E.D. Pa. June 23, 2006) (internal citation omitted); see also Ostroff, 2006 WL 2086970, at *3 (holding that “recycled” arguments are not a basis for granting a motion for reconsideration). Accordingly, defendant’s motion for reconsideration is denied.

BY THE COURT

/s/ Honorable Jan E. DuBois
JAN E. DUBOIS, J.

disabled person’s trip have been made accessible should not prove unduly burdensome for SEPTA.” Walter, 434 F. Supp. 2d at 358-59.