

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

<b>SANDRA PARKS</b>	:	<b>CIVIL ACTION</b>
	:	
<b>v.</b>	:	<b>NO. 06-4293</b>
	:	
<b>LIFEPATH, INC.</b>	:	

**MEMORANDUM AND ORDER**

**Kauffman, J.**

**August 9, 2007**

Plaintiff Sandra Parks (“Plaintiff”) brings this action against Lifepath, Inc. (“Lifepath” or “Defendant”) alleging violations of 42 U.S.C. § 1981 (“Section 1981”); Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq. (“Title VII”); the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101, et seq. (“ADA”); and the Pennsylvania Human Relations Act, 43 Pa. Cons. Stat. § 951, et seq. (“PHRA”). Specifically, Plaintiff alleges reverse racial discrimination in violation of Title VII, Section 1981, and the PHRA; failure to reasonably accommodate in violation of the ADA and the PHRA; and retaliation in violation of Title VII, Section 1981, the ADA, and the PHRA.<sup>1</sup> Now before the Court is Defendant’s Motion for Summary Judgment (“Motion”). For the reasons that follow, the Motion will be granted.

**I. BACKGROUND**

This case arises out of Plaintiff’s dismissal from Lifepath, where she had been employed for over 18 years. See Complaint ¶¶ 13, 14. Lifepath is a non-profit organization which provides residential and day program services to individuals with developmental difficulties, primarily those with diagnoses of mental retardation. Until May 2004, Plaintiff, a Caucasian

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<sup>1</sup> Plaintiff has withdrawn her claim for failure to reasonably accommodate under the ADA, as well as any claim that she was discriminated against on the basis of a disability in violation of the ADA. See Plaintiff’s Response to Defendant’s Brief in Support of Motion for Summary Judgment (“Response”) at 22.

female, worked for various Lifepath facilities in Sellersville, Pennsylvania as an instructor in the day program. See Deposition of Sandra Parks (“Pl’s Dep.”) at 14-15, attached to Defendant’s Motion for Summary Judgment (“Def’s Mot.”) at Exhibit 2. She was responsible for the care of between eight and ten “consumers,”<sup>2</sup> along with one assistant who was with her in their classroom at all times. See id. at 16.

On May 6, 2004, allegations that Plaintiff had abused consumers were made to Virginia Sodano, Associate Director of Lifepath’s Adult Day Program and Plaintiff’s supervisor. See Deposition of Virginia Sodano (“Sodano Dep.”) at 5, 10, attached to Def’s Mot. at Exhibit 3. Until that time, there had been no complaints about Plaintiff’s care for and treatment of consumers. See id. at 7. Sodano and another Lifepath employee, Mike Mellow, conducted an investigation into the allegations. See Affidavit of Lori Tirjan (“Tirjan Aff.”) at ¶ 3, attached to Def’s Mot. at Exhibit 7. As part of the investigation, they spoke with employees who had worked with Plaintiff on May 4 and May 5, 2004, the days the abuse was alleged to have occurred. See Sodano Dep. at 10. Specifically, Sodano and Mellow spoke with Etsuko Van Kuren, a floater assistant who had been working in Plaintiff’s classroom on May 4; Christine Eyrich, another floater assistant who had been working in Plaintiff’s classroom on May 5; Maureen Hildebrandt, a private duty registered nurse who was in Plaintiff’s classroom on May 5; and Plaintiff. See id. at 11-32. Van Kuren, Eyrich, and Hildebrandt reported various instances of alleged abuse or neglect on May 4 and May 5, but Plaintiff denied all allegations. See id.

As a result of the abuse allegations, Plaintiff was suspended from work on May 6, 2004, and terminated on May 10, 2004. See Pl’s Dep. at 74. Plaintiff requested a grievance hearing, which was held on June 17, 2004. See id. at 75. The Grievance Committee, consisting of three

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<sup>2</sup> Lifepath refers to its clients as “consumers.”

individuals, including one chosen by Plaintiff, reviewed written statements by Van Kuren, Eyrich, and Hildebrandt, heard from Sodano and Mellows about their investigation, and heard from Plaintiff. See Declaration of Sandra Parks (“Pl’s Dec.”) at ¶ 2, attached to Plaintiff’s Response to Def’s Mot. at Exhibit E; Report from June 17, 2004 Grievance Hearing, attached to Pl’s Dep. at Parks Deposition Exhibit 19 (“Parks Deposition Exhibit 19”). The committee also considered any “mitigating circumstances that would lessen the disciplinary action.” Id. It concluded that there was “sufficient evidence to uphold that verbally and physically abusive actions took place” and that Sodano “was justified in her decision to terminate Ms. Parks’ employment,” but that mitigating circumstances “would permit the lessening of the disciplinary action.” Id. According to Doug Fox, one of the committee members, they recommended two options: (1) Plaintiff could remain terminated and receive a neutral letter of recommendation, or (2) she could receive a Level 4 discipline and be transferred to another Lifepath facility.<sup>3</sup> See Affidavit of Doug Fox (“Fox Aff.”) at ¶ 6, attached to Def’s Mot. at Exhibit 9; see also Parks Deposition Exhibit 19. Plaintiff, however, claims that the committee orally told her at the hearing that she could remain terminated or accept one of the following options: (1) an assignment to another classroom at the Sellersville facility at which she had worked prior to being terminated, (2) a position at the Lifepath Ridgecrest facility, or (3) an assignment to a Group Home or residential facility close to the facility where she was working when she was fired. See Complaint ¶ 15; Pl’s Dec. at ¶ 3.

On June 29, 2004, Karen Werkheiser, a Lifepath Human Resources Specialist, sent Plaintiff a letter which reiterated the two options offered by the Grievance Committee: (1) remain terminated with a neutral reference, or (2) reinstatement with a Level 4 warning and an

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<sup>3</sup> Level 4 Discipline is a warning with termination upon the next offense.

administrative transfer. See June 29, 2004 Werkheiser Letter, attached to Pl's Dep. at Parks Deposition Exhibit 20 ("Parks Dep. Exhibit 20"). The letter indicated that the administrative transfer would be to Lifepath's adult day program facility located in Bethlehem, Pennsylvania, and listed a reduced pay rate for the new position. Id.; see also, Complaint ¶ 16. Plaintiff, through her counsel, responded to Lifepath in a July 12, 2004 letter which stated that the options offered by Lifepath were not acceptable, accused the company of reverse discrimination, demanded back pay and reinstatement to a position with commensurate salary to her old position, and requested a job at a location closer to her home due to her cerebral palsy. See July 12, 2004 Scheffer Letter, attached to Pl's Dep. at Parks Deposition Exhibit 21 ("Parks Dep. Exhibit 21").<sup>4</sup> Lifepath claims that it requested documentation of the cerebral palsy, but never received it. See Affidavit of Frank Pyle ("Pyle Aff.") at ¶¶ 10, 11, 14, attached to Def's Mot. at Exhibit 4. As a result, Lifepath reiterated its offer that she could return to work at Lifepath's Bethlehem facility. Id. at ¶ 15. Subsequently, on October 18, 2004, Plaintiff returned to work at the position in Bethlehem. See id. at ¶ 16; Complaint ¶ 21.

On November 16, 2004, Plaintiff again was accused of abusing a consumer, this time at the Bethlehem facility. See Pyle Aff. at ¶ 17; Affidavit of Michael Mellow ("Mellow Aff.") at ¶ 4 and Exhibit A, attached to Def's Mot. at Exhibit 10. Following an investigation of the incident, Lifepath determined that the allegations of abuse were founded and terminated Plaintiff on November 18, 2004. See Pyle Aff. at ¶¶ 18, 19; Mellow Aff. at ¶ 4.

On November 5, 2004, prior to her termination, Plaintiff filed a complaint with the

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<sup>4</sup> Plaintiff testified that the first time she ever told anyone at Lifepath that she has cerebral palsy was at the grievance hearing on June 17, 2004. Pl's Dep. at 19. None of Plaintiff's physical forms from Lifepath's personnel files for the years 1986 to 2003 indicate that she has cerebral palsy, or even that she is limited in her activities or her ability to perform her work duties. See id. at 99-100; Pl's Dep. at Parks Exhibit 22.

Pennsylvania Human Relations Commission (“PHRC”) and the Equal Employment Opportunity Commission (“EEOC”) alleging reverse racial discrimination and failure to accommodate her disability. See Complaint at ¶¶ 7, 8. The PHRC dismissed her complaint on April 18, 2006, and Plaintiff filed the instant action on September 26, 2006. See id. at 9.

## II. LEGAL STANDARD

In deciding a motion for summary judgment pursuant to Fed. R. Civ. P. 56, the test is “whether there is a genuine issue of material fact and, if not, whether the moving party is entitled to judgment as a matter of law.” Med. Protective Co. v. Watkins, 198 F.3d 100, 103 (3d Cir. 1999) (quoting Armbruster v. Unisys Corp., 32 F.3d 768, 777 (3d Cir. 1994)). “[S]ummary judgment will not lie if the dispute about a material fact is ‘genuine,’ that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The Court must examine the evidence in the light most favorable to the non-moving party and resolve all reasonable inferences in that party’s favor. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). However, “there can be ‘no genuine issue as to any material fact’ . . . [where the non-moving party's] complete failure of proof concerning an essential element of [its] case necessarily renders all other facts immaterial.” Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986).

The party moving for summary judgment bears the initial burden of showing the basis for its motion. See Shields v. Zuccarini, 254 F.3d 476, 481 (3d Cir. 2001). If the movant meets that burden, the onus then “shifts to the non-moving party to set forth specific facts showing the existence of [a genuine issue of material fact] for trial.” Id.

### III. ANALYSIS

#### A. Reverse Racial Discrimination Under Title VII, Section 1981, and the PHRA

Title VII and the PHRA make it illegal for an employer to discriminate against an individual on the basis of race with respect to compensation, terms, conditions, or privileges of employment. See 42 U.S.C. § 2000e-2(a); 43 Pa. Cons. Stat. § 955(a). Section 1981 prohibits racial discrimination in the making of private and public contracts. See St. Francis College v. Al-Khazraji, 481 U.S. 604, 609 (1987). Claims of disparate treatment under all three statutes must be analyzed using the burden-shifting framework developed by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). See Jones v. Sch. Dist. of Philadelphia, 198 F.3d 403, 410 (3d Cir. 1999) (applying the McDonnell Douglas framework to claims under Title VII, Section 1981, and the PHRA). Therefore, the Court will analyze Plaintiff's claims of reverse racial discrimination under Title VII, and the conclusions will apply equally to her claims of reverse racial discrimination under Section 1981 and the PHRA. See O'Brien v. City of Philadelphia, 837 F. Supp. 692, 699 (E.D. Pa. 1993) (“[g]enerally, the legal elements of a Section 1981 claim are identical to those of a Title VII disparate treatment claim, and, therefore, analysis under one theory is usually determinative of the other claim”); Weston v. Commonwealth of Pennsylvania, 251 F.3d 420, 425 n.3 (3d Cir. 2001) (“[t]he proper analysis under Title VII and the [PHRA] is identical as Pennsylvania courts have construed the two acts interchangeably”).

In order to establish a prima facie case for discrimination under Title VII, a plaintiff must demonstrate that: (1) she is a member of a protected class; (2) she was qualified for a position sought or held; (3) she was discharged from or denied the position; and (4) non-members of the protected class were treated more favorably. See McDonnell Douglas, 411 U.S. at 802. The

Third Circuit has held that reverse racial discrimination suits are viable even though the plaintiff is not a member of a racial minority. Iadmarco v. Runyon, 190 F.3d 151, 160-61 (3d Cir. 1999). In such cases, “all that should be required to establish a prima facie case ... is for the plaintiff to present sufficient evidence to allow a fact finder to conclude that the employer is treating some people less favorably than others based upon a trait [such as race] that is protected under Title VII.” Id. at 161. If the plaintiff carries her initial burden of establishing a prima facie case, the burden shifts under the McDonnell Douglas framework to the employer to articulate a legitimate, non-discriminatory reason for the employee’s discharge. See McDonnell Douglas, 411 U.S. at 802. Once the employer articulates such a reason, the burden shifts back to the plaintiff to show by competent evidence that the articulated reason is pretextual. See id. at 805.

A plaintiff who has made out a prima facie case may defeat a motion for summary judgment by “(1) discrediting the proffered reasons, either circumstantially or directly, or (2) adducing evidence, whether circumstantial or direct, that discrimination was more likely than not a motivating or determinative cause of the adverse employment action.” Sempier v. Johnson & Higgins, 45 F.3d 724, 731 (3d Cir. 1995) (quoting Fuentes v. Perskie, 32 F.3d 759, 764 (3d Cir. 1994)). “To discredit the employer’s proffered reason, the plaintiff cannot simply show that the employer’s decision was wrong or mistaken, since the factual dispute at issue is whether discriminatory animus motivated the employer, not whether the employer is wise, shrewd, prudent, or competent. Rather, the non-moving plaintiff must demonstrate such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer’s proffered legitimate reasons for its actions that a reasonable fact finder could rationally find them unworthy of credence.” Fuentes, 32 F.3d at 765 (internal quotation and citations omitted); see also, e.g., Igwe v. E.I. DuPont de Nemours & Co., 180 Fed. Appx. 353, 356 (3d Cir. 2006) (quoting

Abramson v. William Patterson College of N.J., 260 F.3d 265, 283 (3d Cir. 2001)).

The Complaint alleges that Lifepath treated Plaintiff differently from non-Caucasian employees with respect to her May 2004 termination and administrative transfer to the Bethlehem facility, as well as her November 2004 termination. Even assuming that Plaintiff has established a prima facie case of discrimination, however, she has not offered any evidence that would permit a reasonable factfinder to rationally conclude that Lifepath's proffered legitimate reason for her termination is pretextual under the McDonnell Douglas burden-shifting analysis.

Lifepath offers as its non-discriminatory reason for terminating Plaintiff both in May 2004 and November 2004, that "[b]ased upon [its] comprehensive investigation ... it had a legitimate and reasonable belief that [she] abused and neglected consumers," and that based upon its abuse policy, these acts warranted termination. Def's Brief at 17, 18.<sup>5</sup> With respect to its decision to transfer Plaintiff to Bethlehem after her reinstatement, Lifepath states that it "did not want to place Plaintiff back in the same facility where the previous incidents of abuse had occurred; they were not willing to place Plaintiff in a residential facility, due to the lack of adequate supervision; and they came to the conclusion that the [Bethlehem] facility would provide the best level of supervision for Plaintiff." See Def's Mot. at ¶22; see also Pyne Aff. at ¶¶ 4-8; Affidavit of Angie Beri ("Beri Aff.") at ¶¶ 3-9, attached to Def's Mot. at Exhibit 5.

Plaintiff denies that she abused or neglected consumers. However, she must do more than simply argue that Lifepath was wrong or mistaken in its determination that she committed these offenses in order to avoid summary judgment – she must demonstrate that Lifepath's

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<sup>5</sup> In support of this position, Lifepath has provided testimony from several employees regarding the company's policy on abuse, the company's investigation into the allegations against Plaintiff, and the Grievance Committee's findings. See Affidavit of Karen Werkheiser at ¶ 4-6, 18, attached to Def's Mot. at Exhibit 6; Tirjan Aff. at ¶ 6, 7; Sodano Aff. at ¶¶ 3-13; Fox Aff. at ¶¶ 3-5.

proffered reason for her transfer and termination is pretextual and “unworthy of credence” by a reasonable jury. Fuentes, 32 F.3d at 765; see also, e.g., Silver v. Amer. Institute of Certified Public Accountants, 212 Fed. Appx. 82, 85 (3d Cir. 2006) (“[T]he fact that [the plaintiff] disagreed with [the defendant’s] evaluation does not show pretext.”) (citations omitted). She attempts to discredit Lifepath’s proffered non-discriminatory reason by arguing that the fact that Defendant did not transfer her to one of the three specific positions allegedly offered to her at the Grievance Committee hearing is evidence of pretext. See Response at 15. She further argues that she was disciplined differently than two African-American employees, Alan Collins (“Collins”) and Mary Bean (“Bean”), and that this dissimilar treatment also demonstrates pretext.<sup>6</sup> See at 15-17.

The parties disagree as to whether the Grievance Committee actually offered Plaintiff specific transfer options at the grievance hearing, but even if she was and Lifepath later decided to transfer her to the Bethlehem facility instead, Plaintiff has not offered any evidence, either direct or circumstantial, suggesting that discriminatory intent was behind that decision. Instead, the evidence in the record supports Lifepath’s explanation that it transferred her to Bethlehem because the facility there allowed the company to properly supervise her in light of its finding that she had abused consumers. See Pyne Aff. at ¶ 8; Beri Aff. at ¶ 8.

With respect to Plaintiff’s claims that she was terminated in May 2004 after just one

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<sup>6</sup> Alan Collins was an African-American male who was employed at Lifepath’s Sellersville day program. In June 2004, he was deemed to have neglected (rather than abused) his consumers by leaving them alone for a period of time, and, therefore, to have committed a Level 4 infraction. See Werkheiser Aff. at ¶¶ 15-19. After he was involved in another incident of neglect in November 2006, he was terminated. Id. at ¶ 20. Mary Bean was an African-American female who also was employed at Lifepath’s Sellersville facility. She was accused of consumer abuse in October 2001, but Lifepath deemed the allegations unfounded after an investigation. See id. at ¶¶ 22-24. She was accused of abuse again in December 2001, and terminated following an investigation during which she was found to have committed consumer abuse. See id. at ¶¶ 25-27.

instance of consumer abuse while Collins and Bean “were not terminated until they had committed multiple instances of abuse and/or neglect” (Response at 13), she has again failed to cast sufficient doubt on Lifepath’s proffered non-discriminatory reason for its actions. Unlike Plaintiff, Collins was deemed to have neglected rather than abused his consumers, and thus, he received a Level 4 warning. However, when he, like Plaintiff, was involved in another incident after receiving that Level 4 warning, he was terminated. With respect to Bean, the first abuse allegations against her were deemed unfounded following an investigation so she was not terminated. However, she, like Plaintiff, was terminated immediately after an investigation determined that she had engaged in the consumer abuse involved in the second set of allegations.<sup>7</sup>

Plaintiff has made no other arguments that would undermine Lifepath’s proffered legitimate reason for her transfer or her termination. The Court notes that Plaintiff repeatedly responded “I don’t know” during her deposition when asked whether she believed race played a role in her May 2004 termination, her transfer to Bethlehem, or her November 2004 termination. See Pl’s Dep. at 102-3, 104, 117, 120, 121-22. Under these circumstances, Plaintiff has not created a genuine issue of material fact with respect to Lifepath’s proffered legitimate reason for her transfer and termination, and summary judgment will be granted on her reverse racial discrimination claims under Title VII, Section 1981, and the PHRA. See, e.g., Coulton v. University of Pennsylvania, 2006 WL 759701, at \*9 (E.D. Pa. March 21, 2006) (granting summary judgment where the plaintiff’s evidence of pretext did not cast sufficient doubt on the defendant’s proffered reason for terminating the plaintiff to create a genuine issue of material

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<sup>7</sup> Moreover, Plaintiff, unlike Bean, was given a second chance by the Grievance Committee even after an investigation determined that the allegations of abuse against her were founded.

fact); Creely v. Genesis Health Ventures, Inc., 2005 WL 1271876, at \*8 (E.D. Pa. May 26, 2005) (granting summary judgment where the plaintiff’s “weak circumstantial evidence” of discriminatory animus did not undermine the credibility of the defendant’s stated legitimate, non-discriminatory explanation).

## **B. Retaliation Claims**

### **1. Retaliation Under § 1981, Title VII, and the PHRA**

To establish a prima facie case of unlawful retaliation under Title VII, Section 1981, and the PHRA, a plaintiff must demonstrate that: (1) she engaged in a protected activity; (2) her employer took an adverse employment action against her either after or contemporaneous with her protected activity; and (3) there is a causal link between the protected activity and the adverse action. See, e.g., Aguiar v. Morgan Corp., 27 Fed. Appx. 110, 112 (3d Cir. 2002) (citing Weston v. Commonwealth of Pennsylvania, 251 F.3d 420, 430 (3d Cir. 2001); Robinson v. City of Pittsburgh, 120 F.3d 1286 (3d Cir. 1997)). Once the plaintiff establishes a prima facie retaliation case, the analysis follows the McDonnell Douglas framework and the burden shifts to the employer to advance “a legitimate non-retaliatory reason” for its adverse action. See Krouse v. Amer. Sterilizer Co., 126 F.3d 494, 500 (3d Cir. 1997). If the employer satisfies its burden, the plaintiff must convince the fact finder “that the employer’s proffered explanation was false, and that retaliation was the real reason for the adverse employment action.” Id. at 501.

Lifepath argues that although Plaintiff can establish the first element of a prima facie retaliation case under Title VII, Section 1981, and the PHRA, she cannot establish the second or third elements of a prima facie case, namely, that the company took an adverse action against her after or contemporaneous with her protected activity or that there is a causal link between the

protected activity and the adverse activity.<sup>8</sup> The Complaint alleges that Plaintiff's termination in November 2004 was motivated both by the July 12, 2004 letter from her lawyer alleging disparate treatment on account of race and by the PHRC complaint that she filed in November 2004. See Complaint ¶ 27. In her Response, she expands her retaliation theory to encompass Lifepath's refusal to transfer her to a position other than the one in Bethlehem, claiming that this refusal was retaliation for the July 12, 2004 letter. See Response at 26.<sup>9</sup> Plaintiff has admitted that the PHRC did not serve her complaint on Lifepath until December 10, 2004, and there is no evidence in the record that anyone at the company knew of the PHRC complaint before that date.<sup>10</sup> Therefore, since the transfer to Bethlehem and the November 16, 2004 termination (the alleged adverse employment actions) did not occur "after or contemporaneous with" Lifepath learning that Plaintiff had filed a PHRC complaint, there is no genuine issue of material fact as to whether the November 2004 termination was a retaliatory response to the PHRC complaint. See, e.g., Lisbon v. United National Group Insurance Co., 2006 WL 446072, at \*10 n.18 (E.D. Pa.

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<sup>8</sup> Lifepath makes the threshold argument that the Complaint is "totally devoid of any facts to put Lifepath on notice that [Plaintiff] was bringing forth a retaliation claim" under Title VII or the PHRA. Def's Brief at 20. Plaintiff specifically alleged retaliation in Count One of her Complaint, the Section 1981 count. See Complaint at ¶ 27. Although she does not make similar specific retaliation allegations in her Title VII or PHRA counts, the Court will read her Complaint as alleging retaliation under these two statutes since evidence supporting a prima facie retaliation case under Section 1981 also would support a prima facie case under Title VII and the PHRA.

<sup>9</sup> Plaintiff notes in her Response that she is not making a retaliation claim under Title VII or the ADA with respect to her termination from the Bethlehem position in November 2004 because such claims are not within the scope of her PHRC complaint, and thus, would be barred. See Response at 23-24. She states that she is, however, pursuing a retaliation claim under Section 1981 with respect both to her administrative transfer and to her November 2004 termination. See id. at 24.

<sup>10</sup> In addition, Plaintiff testified at her deposition that no one at Lifepath said or did anything to make her believe that they wanted her to drop her PHRC complaint or be fired. See Pl's Dep. at 136-37.

Feb. 21, 2006) (rejecting a retaliation claim based on an EEOC complaint filed after the plaintiff was terminated because there is no causal connection between a protected activity that occurs after an adverse employment action).

The same problem exists with respect to Plaintiff's claim that the transfer to Bethlehem was a retaliatory response to her allegations of disparate treatment on the basis of race. The July 12, 2004 letter from Plaintiff's counsel alleging disparate treatment was sent in response to Lifepath's June 29, 2004 letter offering Plaintiff the option of transferring to Bethlehem. See Parks Deposition Exhibits 20 and 21. As the Court discussed supra, the parties dispute whether the offer of a transfer to Bethlehem was inconsistent with the options offered at the Grievance Committee hearing. In any event, the June 29, 2004 letter establishes that the transfer to Bethlehem was proposed prior to Plaintiff's allegations that Lifepath had discriminated against her. Lifepath's subsequent communications to Plaintiff merely reiterated its offer to transfer her to Bethlehem. See, e.g., Rando v. Texaco Refining and Marketing, Inc., 165 F. Supp. 2d 1209, 1219 (D. Kan. 2001) (finding that an employee failed to establish his retaliation claim because his employer's position regarding his future at the company was taken prior to the employee's protected activity, and the employer's subsequent refusal to give the employee a different position was merely a reiteration of its prior position). Thus, Plaintiff cannot establish a causal connection between her transfer and claims of racial discrimination. Cf. Shultz v. Potter, 142 Fed. Appx. 598, 600 (3d Cir. 2005) (affirming district court's determination that an employee's suspension before she complained of discrimination was not retaliatory).

The question remains whether Plaintiff's November 18, 2004 termination was a retaliatory response to her counsel's July 12, 2004 letter. Lifepath again offers as its legitimate nondiscriminatory reason for Plaintiff's termination its determination that she neglected and

abused consumers in both May 2004 and November 2004. See Def's Brief at 23. Plaintiff, in turn, again argues that Lifepath's allegedly preferential treatment of African American employees is evidence of pretext. See Response at 26. However, the Court has rejected this argument with respect to Plaintiff's discrimination claims. Since Plaintiff has offered no other evidence of pretext, there are no genuine issues of material fact and summary judgment on her retaliation claims under § 1981, Title VII, and the PHRA will be granted.

## **2. Retaliation Under the ADA**

The ADA retaliation provision, 42 U.S.C. § 12203(a), states that “[n]o person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by [the ADA] or because such individual made a charge ... under [the ADA].” Id. The Third Circuit has held that ADA retaliation claims should be analyzed under the same framework used to analyze retaliation claims under Title VII. See Krouse v. American Sterilizer Co., 126 F.3d 494, 500 (3d Cir. 1997) (citing Stewart v. Happy Herman's Cheshire Bridge, Inc., 117 F.3d 1278, 1287 (11<sup>th</sup> Cir. 1997); Soileau v. Guilford of Maine, Inc., 105 F.3d 12, 16 (1<sup>st</sup> Cir. 1997)).

Plaintiff is not asserting a claim under the ADA with respect to her November 2004 termination from the Bethlehem position. See Response at 22, 23.<sup>11</sup> Rather, she is making a retaliation claim under the ADA only with respect to Lifepath's refusal to afford her a position somewhere other than Bethlehem after her counsel sent the July 12, 2004 letter requesting a reasonable accommodation (in addition to alleging reverse racial discrimination). See id. However, even assuming Plaintiff has set forth a prima facie case of retaliation under the ADA

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<sup>11</sup> Plaintiff testified at her deposition that she does not believe that she was terminated in either May 2004 or November 2004 because she has cerebral palsy. See Pl's Dep. at 102, 116.

with respect to Lifepath's refusal to transfer her to a position other than the one in Bethlehem,<sup>12</sup> her claim fails. As discussed above, Lifepath has offered evidence that it transferred Plaintiff to Bethlehem because the company did not want to place her back in the same facility where the previous incidents of abuse had occurred, and the Bethlehem facility provided the best level of supervision over her. See Def's Mot. at ¶22; see also Pyne Aff. at ¶¶ 4-8; Affidavit of Angie Beri ("Beri Aff.") at ¶¶ 3-9, attached to Def's Mot. at Exhibit 5. The parties dispute whether Lifepath asked for documentation of Plaintiff's cerebral palsy after receiving the July 12, 2004 letter.<sup>13</sup> Even assuming, however, that Lifepath did not ask for such documentation, its failure to do so does not discredit the company's explanation that it transferred Plaintiff to Bethlehem in order to insure that she was properly supervised.<sup>14</sup>

Plaintiff argues that Lifepath's failure to transfer her to other open positions that were posted between her reinstatement and her October 2004 start in Bethlehem demonstrates pretext. See Response at 25 (citing Pl's Dec. at ¶ 12). However, Plaintiff has not offered any evidence that these open positions offered the same level of supervision as the Bethlehem position or otherwise addressed Lifepath's concerns when deciding to transfer her to Bethlehem. In other words, she has failed to provide evidence of "weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in [Lifepath's] proffered legitimate reasons for its actions" such

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<sup>12</sup> Plaintiff testified that she told the Grievance Committee that she has cerebral palsy at the grievance hearing on June 17, 2004. Pl's Dep. at 19. Thus, there is evidence that Lifepath knew about her disability prior to her counsel's July 12, 2004 letter. Accordingly, unlike the allegations of retaliation under § 1981 and the PHRA, drawing all inferences in Plaintiff's favor, she is able to establish a causal connection between her protected activity and the alleged adverse action (i.e., the transfer to Bethlehem).

<sup>13</sup> See Def's Brief at 8-9; Response at 24-25.

<sup>14</sup> Plaintiff concedes in her Response that "the issue of medical documentation is not dispositive." See Response at 25.

that a reasonable fact finder could rationally find Lifepath's proffered reason "unworthy of credence." Fuentes, 32 F.3d at 765. Accordingly, summary judgment will be granted on Plaintiff's retaliation claim under the ADA.

#### **IV. CONCLUSION**

For the aforementioned reasons, Defendant's Motion for Summary Judgment will be granted. An appropriate order follows.

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

<b>SANDRA PARKS</b>	:	<b>CIVIL ACTION</b>
	:	
<b>v.</b>	:	<b>NO. 06-4293</b>
	:	
<b>LIFEPATH, INC.</b>	:	

**ORDER**

**AND NOW**, this 9<sup>th</sup> day of August, 2007, upon consideration of **Defendant's** Motion for Summary Judgment (docket no. 11), **Plaintiff's** Response thereto (docket no. 15), and **Defendant's** Reply (docket no. 17), and for the reasons stated in the accompanying Memorandum, it is **ORDERED** that the Motion is **GRANTED**. Accordingly, the Clerk of the Court shall mark this case **CLOSED**.

**BY THE COURT:**

/s/ Bruce W. Kauffman

**BRUCE W. KAUFFMAN, J.**