

BEFORE THE IOWA CIVIL RIGHTS COMMISSION

DORIS A. CARRUTHERS, Complainant

VS.

PRUDENTIAL INSURANCE COMPANY OF AMERICA, Respondent.

CP# 07-85-13292

THIS MATTER, a complaint filed by DORIS A. CARRUTHERS (Complainant), with the Iowa Civil Rights Commission (Commission), charging PRUDENTIAL INSURANCE COMPANY OF AMERICA (Respondent), with discrimination in public accommodation on the basis of sex, came on for hearing in Des Moines, Iowa, on March 1, 1988, before IONE G. SHADDUCK, serving as Hearing Officer. The case in support of the complaint was presented by Rick Autry, Assistant Attorney General. The Complainant was represented by James F. Elliot and Sarah Wenke, private attorneys. Respondent was represented by Patrick M. Roby, Attorney at Law.

Respondent submitted a renewed motion to dismiss and Complainant submitted a resistance thereto. The motion will be ruled on in this proposed decision.

Attorneys Elliot and Wenke submitted a Motion for Costs and Attorney Fees. That motion will also be ruled on in the proposed decision.

All motions and objections not specifically ruled on in this proposed decision are denied or overruled.

The deposition and exhibits of DAN JACKSON, marked Joint Exhibit 1, were received into evidence by stipulation and will be considered as part of the transcript of testimony.

Transcript pages 84 and 85 are reversed; page 84, line 25 should be "disparate*" instead of "disciplinary"

ISSUES TO BE CONSIDERED:

I. DOES THE INSURANCE DIVISION OF THE IOWA DEPARTMENT OF COMMERCE HAVE EXCLUSIVE JURISDICTION OVER UNFAIR OR DISCRIMINATORY POLICIES/PRACTICES IN INSURANCE?

II. IS PRUDENTIAL INSURANCE COMPANY OF AMERICA A PUBLIC ACCOMMODATION UNDER IOWA CODE CHAPTER 601A?

III. DOES PRUDENTIAL'S POLICY OF DENYING INSURANCE TO PERSONS WHOSE PRINCIPAL SOURCE OF INCOME IS PUBLIC ASSISTANCE HAVE A DISPARATE IMPACT ON WOMEN?

IV. WAS CARRUTHERS DAMAGED BY THAT POLICY?

After having reviewed the record and briefs of counsel, the Commissioners make the following findings of fact, conclusions of law, rulings, recommended decision and order.

FINDINGS OF FACT

1. The Complainant, Doris A. Carruthers, timely filed verified complaint CP# 07-85-13292 with the Iowa Civil Rights Commission on July 16, 1985, alleging a violation of Iowa Code section 601A.7, discrimination in public accommodations on the basis of sex, by Respondent Prudential Insurance Company of America.
2. The complaint was investigated, probable cause found, conciliation attempted but failed. Notice of Hearing was issued on January 5, 1988.
3. In 1984, Doris Carruthers, a female, was 35 years of age, divorced, and had two children, ages 16 and 4. At that time she was a student studying to be a licensed practical nurse (LPN). She had seen media ads to buy a "piece of the rock" Prudential's advertisements. There was a Prudential agent, Dan Jackson, who was a neighbor of friends, the Skinner's. During the summer of 1984, Carruthers talked with Jackson about taking out some kind of insurance policy. On July 31, 1984, Jackson prepared a computer print-out on three different types of policies for a female age 35. (Complainant's Exhibit 3)
4. During the time at issue, Carruthers was receiving ADC payments, food stamps and Title 19 medical care plus \$60.00 a month mileage to attend school.
5. In January 1985, Carruthers again talked with Jackson. An application was filled out by Jackson and signed by Jackson and Carruthers on January 14, 1985. The policy applied for was "LIFE 90"; initial amount was \$5,000.00; supplementary benefits for insured were "DTR age 65" in the amount of \$15,000.00; and

"CLT" for the children in the amount of \$10,000.00 each. The monthly premium submitted with the application was \$18. 10. (Complainant's Exhibit 4)
6. In a letter dated February 6, 1985, Prudential sent Carruthers a letter denying her application for insurance because her "main source of income [was] derived from public assistance." Her premium of \$18. 10 was returned.
7. At the time of wanting insurance coverage, Carruthers was not receiving child support nor did the children's father carry any insurance to protect the children. The insurance would have allowed the children at age 25 to continue coverage without a health check. It also would have given Carruthers security that the children would be protected in the case of her death.
8. Carruthers had figured out how she could handle the premiums, but nevertheless anticipated the denial of her application. She was very upset by the denial and felt like a second-rate citizen.

She did not pursue obtaining insurance with any other company. She believed the denial by Prudential was not legal.

9. At the time of the hearing, Carruthers was age 39. (Transcript 75).

10. Dan Jackson was a sales agent for Prudential working out of Prudential's Ottumwa office. That office employed 16 agents, 2 sales managers and 2 clerks. Prudential advertised services in the Yellow Pages. (Complainant's Exhibit 1). It also advertised its services through the newspaper and radio, locally and nationally. Prudential's office in Ottumwa had a parking area for customers. (Complainant's Exhibit 2).

11. When Jackson filled out Carruthers application for insurance, he did not know she was on public assistance. He did know that Prudential did not issue contracts to persons on public assistance. Prudential's underwriting department made decisions as to acceptance or rejection of applications for insurance.

12. A portion of the proposed policy for Carruthers did have a guaranteed cash value. In 3 years she would have paid in \$669.00 and the cash value would have been \$38.55. (Joint Exhibit 1, p. 51-52).

13. Prudential sells insurance to those members of the general public who qualify health-wise, need-wise, and have the ability to pay. Jackson has sold insurance to persons earning only \$200 or \$300 a month but only when not receiving public assistance.

14. As of January 1985 (the date of application for insurance by Complainant to Respondent), there were 31,844 ADC cases on file with the Iowa Department of Human Services. Of that number, 2,374 were males and 29,424 were females. (Complainant's exhibit 5). Similar figures for January 1988 were 2,887 males and 27,929 females on ADC out of a total of 29,913 ADC cases. (Complainant's exhibit 6). These comparative figures have remained consistent. (Transcript 22).

15. ADC is a program that pays money benefit and income maintenance benefits to people who are poor because a parent is gone from the home or incapacitated or in certain cases when both parents are unemployed. ADC families are allowed to possess \$1000.00 above exempt resources. Any cash value of life insurance would be included in that \$1000.00. Persons on ADC are not prohibited from using their benefits for life insurance. (Transcript 26-28).

16. The 1987-1988 Statistical Profile of Iowa as produced by the Iowa Department of Economic Development showed that of a total population of 2,913,808, there were 1,497,682 females and 1,415,705 males. The source of this Profile was the 1980 Census of Population and Housing, U.S. Department of Commerce, Bureau of the Census. (Complainant's Exhibit 9).

17. Based on the Statistical Profile mentioned in #16 and the data set forth under #14, a significant statistical difference was found between the proportion of males over 17 and the proportion of females over 17 who would be denied insurance because of the policy which excludes ADC recipients from buying insurance. (See Affidavit of Camilla Mitchell).

CONCLUSION OF LAW

The complaint was timely filed, processed and the issues in the complaint are properly before the Commissioners.

ISSUE I - DOES THE INSURANCE DIVISION OF THE IOWA DEPARTMENT OF COMMERCE HAVE EXCLUSIVE JURISDICTION OVER UNFAIR OR DISCRIMINATORY POLICIES/PRACTICES IN INSURANCE?

Respondent claims that Iowa Code Chapter 507B regulates trade practices in the business of insurance in accordance with the mandates of the McCarran-Ferguson Act, 15 U.S.C. §1011 et seq. Respondent claims further that since the conduct of Respondent is not proscribed by Chapter 507B, Complainant has failed to state a claim upon which relief can be granted.

It is agreed that the trade practices in the business of insurance are regulated by Chapter 507B. It is disagreed that Complainant has failed to state a claim upon which relief can be granted. Iowa Code section 601A.16(1) mandates that a person claiming to be aggrieved by an unfair or discriminatory practice initially seek administrative relief by filing a complaint with the Iowa Civil Rights Commission. Complainant Carruthers claims to be aggrieved by an unfair or discriminatory act of Prudential. She has filed a complaint with the Iowa Civil Rights Commission as is her right and the act she must do to initially seek administrative relief for discriminatory acts covered by Iowa Code Chapter 601A. Carruthers is alleging discrimination in public accommodation. which is under the jurisdiction of the Commission.

IT IS concluded that the insurance division of the Iowa Department of Commerce does not have exclusive jurisdiction over unfair or discriminatory policies/practices in insurance.

ISSUE II - IS PRUDENTIAL INSURANCE COMPANY OF AMERICA A PUBLIC ACCOMMODATION UNDER IOWA CODE CHAPTER 601A?

1. Iowa Code section 601A.2(10)(1985) provides the following definition:

"Public accommodation" means each and every place, establishment, or facility of whatever kind, nature, or class that caters or offers services, facilities, or goods for a fee or charge to nonmembers of any organization or association utilizing the place, establishment, or facility provided that any place, establishment, or facility that caters or offers services, facilities, or goods to the nonmembers gratuitously shall be deemed a public accommodation if the accommodation receives governmental support or subsidy. Public accommodation shall not mean any bona fide private club or other place, establishment, or facility which is by its nature distinctly private, except when such distinctly private place, establishment, or facility caters or offers services, facilities, or goods to the nonmembers for fee or charge or gratuitously, it shall be deemed a public accommodation during such period.

"Public accommodation" includes each state and local government unit or tax-supported district of whatever kind, nature, or class that offers services, facilities, benefits, grants or goods to the public, gratuitously or otherwise. This paragraph shall not be construed by negative implication or otherwise to restrict any part or portion of the pre-existing definition of the term "Public accommodation".

A breakdown of the essential elements of a public accommodation follows:

- a. "each and every place, establishment, or facility"
- b. "of whatever kind, nature, or class"
- c. "that caters or offers services, facilities, or goods for a fee or charge"
- d. "to nonmembers of any organization or association utilizing the place, establishment, or facility"

There is only one exception to the "each and every"--the one providing for "distinctively private" places, establishments, or facilities. Prudential does not claim to fall under this exception, nor do they.

Prudential is an establishment, a place of business and fixtures and by this definition a "place." Among many others, Prudential leases or owns property where it conducts its business in Ottumwa, Iowa. Black's Law Dictionary 920 (rev. 5th ed. 1979). "Facility" is something ... that is built, installed, or established to serve a particular purpose. Webster's New Collegiate Dictionary 406 (1980). Prudential has been established for among other purposes, the specific purpose of a mutual life insurance company. It is a facility included in the broad coverage of "whatever kind, nature, or class. * It is not necessary that Prudential be all three, i.e., a place and an establishment and a facility. The Iowa Supreme Court in Cerro Gordo Cty. Care Face v. Iowa Civil Rights Comm'n., 401 N.W.2d 192, 197 (Iowa 1987), ruled that the word "or" meant "alternative".

However, in United States Jaycees and Iowa Jaycees v. ICRC, 427 N.W.2d 450 (Iowa 1988), the Iowa Supreme Court reversed the Commission interpretation of its statute and ruled that "place" meant a "physical environment" and that "establishment" meant "place" and that "facility" was "something (as a hospital, machinery, plumbing) that is built, constructed, installed or established to perform some particular function or to serve or facilitate some particular end." They concluded that the ordinary usage of these terms connotes a "spatial dimension." The Court further concluded that although the Iowa Jaycees maintained an office - a physical facility - there was no allegation of discrimination in the use of that facility. Based on this reasoning, the Ottumwa office of Prudential - a physical facility - would be covered if a protected class would be denied use of that physical facility, but the service provided inside would not be covered because there was no spatial dimension to those services.

It is concluded that the Jaycee's decision is not controlling in this case because the service provided by Prudential is very different. The Jaycees are a membership organization. It is,

therefore, concluded that Prudential Insurance Company of America is a public accommodation under Iowa Code 601A.

ISSUE III. DOES PRUDENTIAL'S POLICY OF DENYING INSURANCE TO PERSONS WHOSE PRINCIPAL SOURCE OF INCOME IS PUBLIC ASSISTANCE HAVE A DISPARATE IMPACT ON WOMEN?

The evidence is clear that Prudential's policy of denying insurance to persons whose principal source of income is public assistance does have a disparate impact on women.

IV. WAS CARRUTHERS DAMAGED BY THAT POLICY?

The evidence supports the conclusion that Carruthers was damaged by that policy. On January 14, 1985, she applied for insurance [See finding of fact #5, Complainant's Exhibit 4]. Prudential should process her application as of that date, with the specific provisions requested in that application, pay all premiums to date of the final decision in this case so that all benefits of the policy will be as they would have been if the application had been accepted. Furthermore, the policy of denying insurance to persons whose principal source of income is public assistance should be deleted and such persons should be allowed to carry insurance with Prudential based on the same considerations as persons whose principal source of income is not public assistance. This change of policy should take effect immediately and proof of the change should be submitted to the Commission within 60 days of the date of this order.

It is further recommended that Carruthers should be awarded attorney fees and costs in the amount of:

Fees: \$5,000.00

Costs: \$ 656.55

based on Affidavits submitted at the Hearing on March 1, 1988 and received by the Commission on April 15, 1988.

The motion by Respondents for costs and attorney fees is denied. There is no statutory authority for such awards.

DECISION AND ORDER

Prudential Insurance Company of America violated Iowa Code 601A.7 (1985), in refusing to accept Doris A. Carruthers' application for insurance because her principal source of income was from public assistance.

1. IT IS ORDERED that Prudential shall process Carruthers' application as of January 14, 1985, as specifically set forth in Complainant's Exhibit 4, and pay all premiums to the date of the final decision in this case so that all benefits of the policy are as they would have been if the application had been accepted on that date.

2. IT IS FURTHER ORDERED that Prudential shall change their policy to allow persons on public assistance to obtain insurance based on the same consideration as persons not on public assistance. Proof of this policy change shall be submitted to the Iowa Civil Rights Commission within 60 days of the date of this decision.

3. IT IS FURTHER ORDERED that Prudential shall pay Complainant's attorney fees in an amount of \$5,000.00 and costs in the amount of \$656.55.

Signed this 24th day of May, 1989.

RUBY ABEBE,
Commissioner