STATE OF WISCONSIN PERSONNEL COMMISSION

JOAN LAZARUS,

Complainant,

v

Secretary, DEPARTMENT OF EMPLOYE TRUST FUNDS,

Respondent.

Case No. 90-0014-PC-ER

FINAL DECISION AND ORDER

This case is before the Commission following the issuance of a proposed decision by the hearing examiner pursuant to §227.46, Stats. The Commission has considered the objections and arguments filed by the parties and consulted with the examiner.

This case raises the question of whether respondent violated the prohibition against employment discrimination on the basis of creed set forth in the WFEA (Wisconsin Fair Employment Act) at §§111.322(1), 111.337(1), Stats., by failing to provide complainant, an adherent of the Christian Science religious faith, with health insurance coverage encompassing payment for treatments administered by Christian Science practitioners. A Christian Science publication incorporated into the proposed decision as Finding No. 3, discusses this form of treatment as follows:

> While there can be different forms of treatment rendered by medical doctors, there is only one kind of treatment given by Christian Science practitioners. It consists entirely of prayer, a method of spiritual healing described in the New Testament and systematically relied upon by Christian Scientist for over a century.

Coverage of treatment by Christian Science practitioners is not available because respondent's policy, essentially, is to limit coverage to treatment that is "medically recognized as being consistent with the diagnosis and treatment of an illness," Finding No. 13, or what could be characterized as medical treatment.

Respondent has not denied complainant a fringe benefit that is available to any other employe. All employes, including complainant, are eligible for group insurance coverage that encompasses medical treatment. Furthermore, respondent has not made available any form of non-medical treatment to any employes. Therefore, there does not appear to be any form of disparate treatment with respect to complainant. See Phillips v. Wis. Personnel Commission, 167 Wis. 2d 205, 482 N.W. 2d 121 (Ct. App. 1992).

The proposed decision, however, concludes that respondent's failure to provide the coverage desired by complainant constitutes a violation of its duty of accommodation set forth in §111.337(1), Stats. which provides:

> Employment discrimination because of creed includes, but is not limited to, refusing to reasonably accommodate an employe's or prospective employe's religious observance or practice unless the employer can demonstrate that the accommodation would pose an undue hardship on the employer's program, enterprise or business.

The WFEA does not define "accommodation." However, in American Motors Corp. v. DILHR, 101 Wis 2d 337, 370, 305 N.W. 2d 62 (1981) (dissenting opinion), the concept of accommodation is characterized as follows:

> As the majority explains, an accommodation case is one in which the court is to determine "an employer's obligation where arguably there is a conflict between an employee's religious practices and the employer's personnel and management procedures." Supra, p. 348.

In the instant case, it does not appear to the Commission that there could be a potential conflict of this nature. Rather, complainant is seeking a fringe benefit (coverage for treatment by Christian Science practitioners) that is outside the scope of the fringe benefits respondent provides. The employer's failure to grant a religiously-motivated request for a fringe benefit not provided for by its "personnel and management procedures" to any employe does not create a "conflict between an employee's religious practices and the employer's personnel and management procedures." (emphasis added) id. Rather, this situation might be analogized to a situation where an employer denies an employe's request for the use of a fleet car to drive to religious

services, citing a policy that fleet cars are not available for any personal usage.

The proposed decision's conclusion that this case involves an accommodation appears to rest on the implicit finding in the opinion section, pp. 11-12, that treatment by a Christian Science practitioner is, or is generally recognized as, medical treatment:

> To the extent the respondent is asserting that prayer by a Christian Science practitioner is not generally recognized as medical treatment so as not to constitute a condition of employment requiring an accommodation, there was no expert testimony that Christian Science treatment is not generally recognized as medical treatment.

While the Commission would agree with the examiner that there was no expert scientific or medical opinion testimony in the record that Christian Science treatment is not generally recognized as medical treatment, in the context of the record in this case this does not lead to a finding that Christian Science treatment is medical treatment. Indeed, such a finding would be inconsistent with the formal findings of fact set forth in the proposed decision.

The examiner finds at Finding #2 that: "[o]ne of the tenets of Christian Science religion is a belief in the treatment of disease through spiritual means; accordingly, Christian Scientists do not ordinarily subscribe to the medical treatment of disease or injury." (emphasis added) Finding #3 contains the following "information regarding Christian Science care and treatment" taken from Christian Science publications:

> Christian Science practitioners treat their patients solely by spiritual means through prayer, excluding all physical or medicinal remedies ... Christian Science practitioners see a sharp distinction between medical treatment and Christian Science treatment ... the Christian Science method is purely spiritual; it calls for a mental and moral change, for finding one's true relationship with God. This doesn't mix well with a system [medical treatment] that looks into the body for causes and treats disease on physical and chemical basis. It really isn't fair to either method to try to mix them. (emphasis added)

These findings are totally inconsistent with a finding that treatment by a Christian Science practitioner constitutes or is generally recognized as

constituting, medical treatment. There is no expert opinion evidence in the record that would support such a proposition.

The proposed decision cites a number of statutory references to Christian Science treatment as support for the proposition that such treatment constitutes or is generally recognized as medical treatment. For example, §§341.14(1a), (1m), Stats., provide for certification by a physician, a chiropractor, or a Christian Science practitioner that a person "is disabled so as not to be able to get about without great difficulty" for the purpose of procuring "disabled person plates." These provisions arguably evidence a legislative recognition of parity among the fields of medicine, chiropractic and Christian Science treatment for the purpose of certifying a certain degree of disability. However, other provisions appear to recognize a fundamental distinction between medical treatment and Christian Science treatment. For example, the examiner also cites §448.03(6), Stats., which provides, inter alia: "[n]o law of this state regulating the practice of medicine and surgery may be construed to interfere with the practice of Christian Science." However, this subsection then goes on to provide: "[a] person who elects Christian Science treatment in lieu of medical or surgical treatment for the cure of disease may not be compelled to submit to medical or surgical treatment." (emphasis added). Another legislative recognition of the dichotomy between these forms of treatment is contained in the Worker's Compensation Act at §102.42(1), Stats., which provides, inter alia:

> The employer shall provide such medical, surgical, chiropractic, psychological, podiatric, dental and hospital treatment, medicines, medical and surgical supplies, crutches, artificial members, appliances, and training in the use of artificial members and appliances, or at the option of the employe, if the employer has not filed notice as provided in sub. (4), Christian Science treatment in lieu of medical treatment, medicines and medical supplies .... (emphasis added)

What these legislative enactments reflect is not that the legislature has recognized that Christian Science treatment constitutes medical treatment. Rather, they show that for certain specific purposes the legislature has chosen, presumably for reasons of public policy, to provide government recognition of Christian Science treatment, not as a form of medical treatment, but as a different approach to illness that is chosen by adherents of that faith.

Therefore, since there is no real evidence in the record that treatment by a Christian Science practitioner either is, or is generally recognized as medical treatment, and there is substantial evidence to the contrary, including publications of the Christian Science religion itself, it was not appropriate to require that respondent have introduced expert opinion that treatment by a Christian Science practitioner does not constitute medical treatment as a predicate for such a finding.

The Commission would reach the foregoing conclusion that it cannot be found on this record that treatment by a Christian Science practitioner either constitutes medical treatment or is generally recognized as constituting medical treatment regardless of how the burden of proof is allocated. However, it appears that the examiner's allocation of the burden of proof to respondent with respect to accommodation was more extensive than statutorily contemplated. Section 111.337(1), Stats., provides:

> Employment discrimination because of creed includes, but is not limited to, refusing to reasonably accommodate an employe's or prospective employe's religious observance or practice unless the employer can demonstrate that the accommodation would pose an undue hardship on the employer's program, enterprise or business. (emphasis added)

Therefore, once it has been established that the employer's statutory duty of accommodation comes into play, the burden of proof shifts to the employer to establish hardship, an issue that the employer is far better situated to address than the employe. As was discussed above, the issue of accommodation does not arise unless "arguably there is a conflict between an employee's religious practices and the employer's personnel and management procedures." American Motors Corp. v. DILHR, 101 Wis. 2d 337, 348, 305 N.W. 2d 62 (1981). The complainant's overall burden of proof includes the burden of establishing such a conflict. If complainant had established that treatment by a Christian Science practitioner constituted, or was generally recognized as constituting medical treatment, this presumably would have established an arguable conflict between her religious practice and respondent's policy. That is, respondent arguably would be providing employes with insurance coverage for medical treatment, but not including a particular kind of medical treatment that happens to be religiously based within its definition of medical

treatment. However, as discussed above, on this record there is no possible conflict because what complainant is requesting from respondent is an additional benefit not available to any employe — i.e., coverage for the treatment of disease by spiritual, as opposed to medical means.

By finding that respondent did not discriminate against complainant on the basis of creed when it did not provide coverage to pay for treatment by a Christian Science practitioner, the Commission neither expresses nor intends to imply any opinion about whether this is advisable from the standpoint of personnel management or public policy. That issue is in the domain of the Group Insurance Board and the legislature.

ORDER

1. The proposed Findings of Fact #1 — #26 contained in the proposed decision and order, a copy of which is attached hereto, are incorporated by reference and adopted as the Commission's findings.

2. The Commission rejects the proposed conclusions of law #2 — #4, the proposed opinion, and the proposed order, for the reasons set forth above.

3. The Commission promulgates the following conclusions of law:

a) The Commission has jurisdiction over this matter pursuant to §230.45(1)(b), Stats.

b) Complainant has the burden of proof to establish by a preponderance of the evidence that respondent discriminated against her on the basis of creed in violation of the WFEA with respect to its failure to provide her with group health insurance coverage for treatment by Christian Science practitioners, except that if it were established that the accommodation requirement of §111.337(1), Stats., comes into play, respondent would have the burden of establishing by a preponderance of the evidence that accommodation would pose an undue hardship on its program.

c) Complainant failed to sustain her burden of proof.

d) Respondent did not discriminate against complainant on the basis of creed in violation of the WFEA with respect to its failure to provide her with group health insurance coverage for treatment by Christian Science practitioners.

4. This complaint of discrimination is dismissed.

Dated: September 21, 1992 STATE PERSONNEL COMMISSION

DONALD R. MURPHY, Commissioner

AJT/gdt/2

GERALD F. HODDINOTT, Commissioner

(Note: Chairperson, McCallum did not participate in the consideration or decision of this matter.)

Parties:

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NOTICE
OF RIGHT OF PARTIES TO PETITION FOR REHEARING AND JUDICIAL REVIEW OF AN ADVERSE DECISION BY THE PERSONNEL COMMISSION

Petition for Rehearing Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition with the Commission for rehearing. Unless the Commission's order was served personally, service occurred on the date of mailing as set forth in the attached affidavit of mailing. The petition for rehearing must specify the grounds for the relief sought and supporting authorities. Copies shall be served on all parties of record. See §227.49, Wis. Stats., for procedural details regarding petitions for rehearing.

Petition for Judicial Review. Any person aggrieved by a decision is entitled to judicial review thereof. The petition for judicial review must be filed in the appropriate circuit court as provided in §227.53(1)(a)3, Wis. Stats., and a copy of the petition must be served on the Commission pursuant to §227.53(1)(a)1, Wis. Stats. The petition must identify the Wisconsin Personnel Commission as respondent. The petition for judicial review must be served

application for rehearing. Unless the Commission's decision was served personally, service of the decision occurred on the date of mailing as set forth in the attached affidavit of mailing. Not later than 30 days after the petition has been filed in circuit court, the petitioner must also serve a copy of the petition on all parties who appeared in the proceeding before the Commission (who are identified immediately above as "parties") or upon the party's attorney of record. See §227.53, Wis. Stats., for procedural details regarding petitions for judicial review.

It is the responsibility of the petitioning party to arrange for the preparation of the necessary legal documents because neither the commission nor its staff may assist in such preparation.

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JOAN LAZARUS,

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Case No. 90-0014-PC-ER

PROPOSED

DECISION
AND
ORDER

This matter arises from a complaint of discrimination based on creed. The parties agreed to the following issue for hearing:

> Whether the respondent discriminated against the complainant based on creed with respect to the provision of health insurance as alleged in the complainant's charge of discrimination.

At the commencement of the hearing, the parties filed a stipulation of facts. That stipulation, along with subsequent testimony, provides the basis for the following findings of fact.

FINDINGS OF FACT

1. Complainant is an adherent of the Christian Science religious faith.

2. One of the tenets of Christian Science religion is a belief in the treatment of disease through spiritual means; accordingly, Christian Scientists do not ordinarily subscribe to the medical treatment of disease or injury. However, as required by law, a doctor or mid-wife may attend childbirth; the use of a surgeon to set broken bones is not objected to; the use of stitches in the case of a severe laceration is not objected to; diagnostic x-rays are not objected to; and other laboratory methods of diagnosing disease are not objected to, for example, if required for employment, for insurance purposes (such as workers compensation) or to show immunity to a particular disease.

3. Materials prepared by the First Church of Christ, Scientist in Boston Massachusetts and by the Christian Science Publishing Society (Respondent's Exhibits 3 and 4) offer the following information regarding Christian Science care and treatment:

Christian Science Practitioners

Christian Science practitioners treat their patients solely by spiritual means through prayer, excluding all physical or medicinal remedies....

A directory of Christian Science practitioners is published every month in The Christian Science Journal, the official organ of The Mother Church, The First Church of Christ, Scientist in Boston, Massachusetts. Practitioners are allowed to list their cards in the Journal only after they have proved they possess the necessary qualities to do successful healing through prayer as understood in Christian Science, and are members of The Mother Church. They are self-employed, devote full time to this work and can engage in no other gainful employment (unless they are working for The Mother Church in another capacity). They determine their own charges, and are paid by their patients. Payment made to a Christian Science practitioner for treatment of a physical problem is recognized as a legitimate "medical" deduction by the Internal Revenue Service in the United States and by Revenue Canada.

* * *

Freedom of Choice

Christian Scientists acknowledge the right of each individual to choose the method of healing which seems to be the most efficacious -- including the right of the individual to elect to have medical treatment, even though Christian Scientists see a sharp distinction between medical treatment and Christian Science treatment. Experience has shown that under usual circumstances the two healing methods cannot be effectively combined. Christian Science treatment consists entirely of prayer based on a spiritual, systematic study of God, and man's relationship to Him, and the application of underlying spiritual truths to the healing of disease, sin, and other human discords.

THE PRACTITIONER, THE PATIENT, AND PRAYER

While there can be different forms of treatment rendered by medical doctors, there is only one kind of treatment given by Christian Science practitioners. It consists entirely of prayer, a method of spiritual healing described in the New Testament and systematically relied upon by Christian Scientists for over a century. For this reason, it is unrealistic for insurance companies to require that Christian Science treatment be given in the physical presence of the patient to qualify for insurance benefits.

In the public practice of Christian Science healing, practitioners regularly receive requests from Christian Scientists and others for healing of all types of sickness and bodily injury. Contact may be made by telephone, cable, telegram, letter, or personal visit. Unlike a medical doctor who must see his patient in order to make a diagnosis and prescribe some form of treatment, a Christian Science practitioner does not need to see the patient since Christian Science treatment does not include physical examination, diagnosis or material remedies. Christian Science treatment is by prayer alone and it is simply not necessary for the practitioner to be physically present with the patient for treatment to be effective. In practice, most healing work

done by Christian Science practitioners today is done in response to a phone call for help. [Pages 3, 4 and 7 of Respondent's Exhibit 3, "Information About Christian Science Care and Treatment."]

* * *

13. Must a person have faith in Christian science in order to be healed by it?

Not necessarily. Some people have been healed when they turned to Christian Science as a last resort, though with very little hope that it could help them. But faith is a valuable asset -- faith not so much in Christian Science as in God's willingness and power to save humanity from evil of every kind. The Bible tells us that he who comes to God must believe that God is and that He is a rewarder of those who diligently seek Him. But Christian Science teaches that faith, to be really firm and effective, must rest not on blind belief but on an understanding of the present perfection of God's spiritual creation. This is the crucial difference that separates Christian Science from "faith healing."

* * *

15. Is a Christian Scientist allowed to go to a doctor?

A Christian Scientist, like anyone else, is a free moral agent. When he joins the Church of Christ, Scientist, it's understood that he will rely on God instead of drugs for healing. He voluntarily chooses this as his way of life, and usually because he has found this kind of healing more effective than any other. But if in extreme circumstances or under heavy family pressure he resorts to material means, he won't be treated as an outcast by the Church. The point to remember is that Christian Scientists choose spiritual means because such healing not only makes the body well but also brings the individual closer to God in his living, thinking, and acting.

16. Why not combine Christian Science with medical treatment?

Well, you see, they start from opposite standpoints. Christian Scientists appreciate the humanitarian work of doctors -- for those who wish to rely on their form of treatment. But the Christian Science method is purely spiritual; it calls for a mental and moral change, for finding one's true relationship to God. This just doesn't mix well with a system that looks into the body for causes and treats disease on a physical and chemical basis. It really isn't fair to either method to try to mix them. [Respondent's Exhibit 4, Questions and Answers on Christian Science, The Christian Science Publishing Society, Boston, 1974, pages 8-11. Footnote omitted.]

4. Bed rest is a medically recognized form of convalescent medical care for certain illnesses or conditions.

5. The services of a Christian Science practitioner are made available to all persons, regardless of their religious beliefs. Christian Science practitioners must be members of a branch church and of the Mother Church. They do not distribute religious materials from

their offices and, as a general matter, do not proselytize. However, practitioners may loan religious materials to a patient in order to help the patient reach an understanding so as to bring about healing. Practitioners are not required to pay any money to the Mother Church other than a charge based upon the number of lines of their listing in the *Christian Science Journal.*

6. If a Christian Scientist decides to be treated for a medical condition by a physician rather than by a Christian Science practitioner, the patient will remain a Christian Scientist in good standing and there will be no repercussions by the Church.

7. The State of Wisconsin does not regulate or license Christian Science practitioners.

8. At all relevant times, the complainant has been employed by the University of Wisconsin-Madison as an Associate Professor.

9. The State of Wisconsin offers optional group health insurance coverage to its employes in the form of 34 group health insurance plans, including one "standard plan." The other 33 plans are generally referred to as the "insured plans." The theory behind group coverage is to spread out risks within the entire group.

10. The "standard plan" is a health insurance plan offered to state employes and administered by the Wisconsin Physicians Service (WPS) for the Group Insurance Board (GIB) on a self-insured basis. The standard plan covers approximately 11,000 state employes at an average cost of between $200 and $300 per month for each employe. With family members, the plan covers approximately 27,000 people. Claims paid under the plan average approximately $2,000 per year per person. The benefits under the standard plan are established by state law and the Group Insurance Board exercises limited authority to modify these benefits.

11. The total cost to the state for the standard plan is between $50 million and $60 million per year, including administrative expenses of approximately $3 million to $5 million.

12. The Department of Employe Trust Funds implements decisions made by the Group Insurance Board. Claims paid for standard plan participants are paid from state trust funds.

13. The health insurance coverage made available to the complainant under the standard plan did not provide for payment for treatments administered by Christian Science practitioners but did, nevertheless, cover the cost of confinement in Christian Science sanatoriums under conditions set forth in the standard plan. WPS, which administers the standard plan, takes the position that Christian Science practitioners are not payable under

the plan because, at a minimum, the Christian Science practitioner is not a payable provider and the treatment is not medically recognized as being consistent with the diagnosis and treatment of an illness. Therefore, even if a physician recommended treatment by a Christian Science practitioner, the cost of that treatment would not be reimbursed under the standard plan.

14. The standard plan provides for payment for services which are 1) medically necessary; 2) consistent with the diagnosis and treatment of an illness; and 3) provided by or under the supervision of a physician. The exception to these general requirements are statutorily mandated coverage for chiropractic services, for mammograms and for certain HIV treatment. The standard plan does not provide coverage for cosmetic surgery, eyeglasses exams, acupuncture, certain types of organ transplants, procedures determined by the medical community to be investigative or experimental in nature and treatments that are not generally recognized by the medical community. The standard plan contract, between WPS and GIB provides, in part:

> Except as otherwise specifically provided in this CONTRACT, BENEFITS of this CONTRACT... shall not include:
>
> * * *
>
> P. Services, care, drugs and supplies, etc., that are not medically recognized in the treatment of an illness, or are considered experimental in nature, or are not consistent with and necessary for the admission, diagnosis, and treatment of the illness or injury, all as determined by WPS.

15. The Group Insurance Board also establishes guidelines covering the various insured plans which serve as alternatives to the standard plan. The insured plans include health maintenance organizations and preferred provider organizations. While the GIB guidelines set the minimum levels of coverage for the insured plans, the plans themselves determine, in large part, the benefits they will provide. None of the insured plans provide for payment for treatments administered by Christian Science practitioners. Even if an insured plan sought to provide payment for Christian Science practitioners, it is unlikely that the GIB, which determines whether a plan falls within the guidelines, would approve the plan.

16. During the latter part of 1988, the Group Insurance Board met for the purpose of considering a request for revision in the standard plan contract language so that the contract would, for the purposes of determining health care expenses:

a. consider Christian Science practitioners listed in the current issue of the Christian Science Journal to be physicians;

b. consider "absent treatment" to be treatment by a physician.

17. Information regarding this proposal was communicated to Thomas C. Korpady of the Wisconsin Department of Employe Trust Funds by letter from Norman L. Jones, of the actuarial and consultant firm of Gabriel, Roeder, Smith and Company. Mr. Jones served as the consulting actuary for DETF. The letter stated in part:

> A number of major health insurers as well as Part A of Medicare recognize Christian Science treatment - at least to some degree. Some of them have incorporated all of the provisions of the proposal in their standard contracts. Most have some restrictions, including one or more of the following:
>
> 1. Limit coverage to care in sanitoriums and nursing homes (e.g. Medicare Part A covers certain costs while in a sanitorium). Adoption of this restriction would dramatically reduce exposure - there is currently only one relatively small facility in Wisconsin (Clearview Sanitorium in Delafield).
>
> 2. Reserve the right to require physical and diagnostic examinations.
>
> 3. No coverage for passive confinement (e.g. for rest and study).
>
> 4. Exclude any parallel medical care.
>
> 5. Require that treatment must be for a sickness or injury that would require treatment by a physician for a patient who is not a Christian Scientist.
>
> Unknowns concerning this proposal include:
>
> - Number of plan participants who are Christian Scientists and the present coverage of those persons.
>
> - Potential charges for "absent treatment".
>
> - Experience of other health care plans with this type of coverage.
>
> - Whether or not inclusion of Christian Science treatment generally leads to similar requests from other groups.
>
> Approval of the proposal would result in additional claims under the plan (as opposed to the substitution of one type of treatment for another). Based on the limited information available, we estimate that claims would increase by less than 0.1% and that no near-term premium adjustment would be required. Therefore, consideration of the proposal revolves around good benefit design and proper public policy rather than expected near-term financial consequences.

18. Mr. Jeffrey provided to the Group Insurance Board a list of approximately 40 insurance companies which:

> are among those which customarily offer benefits [for] Christian Science treatment and care in their group health and accident insurance plans when asked to do so by employers. Available benefits may cover treatment by a Christian Science practitioner, confinement [in] a Christian Science sanatorium, and/or care by a graduate Christian Science nurse, and must be spelled out in a rider or policy statement issued by the company. Underwriting rules may vary with smaller group plans.

19. Effective September 1, 1988, the complainant had enrolled in the group health insurance plan in hopes that coverage would be extended to treatment by Christian Science practitioners.

20. At its December 15, 1988, regular meeting, the Group Insurance Board addressed an agenda item entitled "Consideration of Requests for Inclusion of Christian Science Coverage in Standard Health Plan" after which the Board voted to continue the present practice of not including the coverage of Christian Science practitioners as provided under the Standard Plan. The minutes of the Board meeting reflect the following exchanges between the members of the Board and George Jeffrey of the Christian Science Committee on Publication for Wisconsin:

> Mr. Frankel questioned whether or not inclusion of Christian Science treatment generally leads to similar requests from other groups. Mr. Jeffrey replied that he did not know.
>
> Mr. Frankel also questioned how many plan participants are Christian Scientists and the present coverage of those persons. Mr. Jeffrey replied that approximately 30 state employes are Christian Scientists and they are, to his knowledge, currently covered by the Standard Plan.
>
> In response to a question by Mr. Saylor regarding the problems that might be associated with Board approval of this group and other similar group requests, Mr. Korpady [Director, Health & Disability Benefits for DETF] stated that although absent treatment is unique to Christian Scientists, priests, rabbis, and ministers often provide counseling and that if similar services were provided by a psychiatrist, they would be reimbursable. Mr. Korpady noted that Mr. Jones also raised this issue on page two of his memorandum, and questioned if these groups might be encouraged to seek insurance reimbursement for their counseling activities.
>
> Mr. Frankel asked if there were plans in other states, that offer coverage for Christian Science care to state employes. Mr. Jeffrey said there were not.
>
> Mr. Merkel asked if insurance companies carry insurance for Christian Science practioners [sic] for private individuals. Mr. Jeffrey replied that

> just like any other provision in private insurance, if you pay the additional premium the insurance is available. At the present time the 30 state employes enrolled in the Standard Plan pay into the Standard Plan and receive part of the benefits of this plan through Christian Science Sanitoriums and Christian Science Nursing Homes but they are not covered for reimbursement of the services of Christian Science Practioners.
>
> Mr. Frankel clarified that the Standard Plan allows two of the three provisions and that Mr. Jeffrey is requesting the coverage for Christian Science Practioners. Mr. Frankel also clarified that private insurance companies offer this coverage, but that no other state plans do. Mr. Jeffrey agreed.
>
> * * *
>
> Mr. Beil questioned whether Christian Scientist Practioners are regulated in the State of Wisconsin. Mr. Jeffrey replied that they are not.

21. If the Group Insurance Board had adopted Mr. Jeffrey's proposal to extend coverage to include treatment by Christian Science practitioners under the standard plan, all participants in the standard plan would have been eligible for such reimbursement, regardless of their religious beliefs.

22. When the the complainant learned of the Group Insurance Board action to continue to exclude Christian Science practitioners from the definition of "physician," she terminated her coverage in the group health insurance plan, effective February 1, 1989.

23. Complainant subsequently purchased major medical insurance from a private insurer for a 90-day period for which she paid a premium of $129.50. Upon the expiration of that policy, the complainant purchased insurance from a second private insurer. For the approximate time period of November 1, 1989 through December 31, 1990, the complainant paid a total premium of $544.23. Both policies had riders which specifically authorized payment for treatment provided by Christian Science practitioners.

24. Complainant re-enrolled in the Standard Plan and since December of 1990 has paid a monthly premium of $141.00, even though the plan still does not provide coverage for treatment by Christian Science practitioners. During this period, the complainant adopted a child, obtained "family coverage" under the plan and has been reimbursed for "well baby checks" provided for her child by a physician.

25. In Wisconsin, the daily charge for treatment by Christian Science practitioners ranges from $5.00 to $12.00 per day, with the average such charge being $8.50 and the most common such charge being $10.00.

26. Since April 3, 1989, complainant has received Christian Science treatment from Kristin K. Fiuty, C.S.B., of Milwaukee, who charges $10.00 for each treatment, in the total amount of $1,900.00, for which the complainant has made full payments. The

complainant made one payment each month in the amount of $100.00 for the 19 months beginning in April of 1989 and ending in October of 1990.

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §230.45(1)(b), Stats.

2. The complainant has the burden of proof to establish discrimination based on creed except that the respondent has the burden to establish that it is unable to reasonably accommodate the complainant's religious beliefs without undue hardship.

3. The respondent has not sustained its burden.

4. The respondent discriminated against the complainant based on her creed.

OPINION

Pursuant to §111.321, Stats., the State of Wisconsin, as an employer, is prohibited from discriminating against its employes based upon their creed. The term "creed" is defined in §111.32(3m) as:

> a system of religious beliefs, including moral or ethical beliefs about right and wrong, that are sincerely held with the strength of traditional religious views.

In addition to the general prohibition against discrimination based on creed, the Fair Employment Act also requires accommodation of an employe's religious beliefs. Pursuant to §111.337(1):

> Employment discrimination because of creed includes, but is not limited to, refusing to reasonably accommodate an employe or prospective employe's religious observance or practice unless the employer can demonstrate that the accommodation would pose an undue hardship on the employer's program, enterprise or business.

The provisions of Wisconsin's Fair Employment Act correspond to similar protections found under federal law in Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e-2(a) and §2000e-(j).

Scope of protection

Christian Scientists are not required by their religion to, in all instances, obtain medical treatment from a Christian Science practitioner. As noted in finding of fact 2, cer-

tain traditional medical procedures, performed by a physician, are acceptable. Christian Scientists may decide to obtain medical treatment from a physician without fear of any repercussions from their Church. Christian Science practitioners make their services available to all persons, without regard to their religious beliefs. The complainant clearly has chosen to obtain medical treatment from Christian Science practitioners. That decision is consistent with Christian Science beliefs summarized in findings of fact 2 and 3.

While the complainant is an adherent of the Christian Science faith and there is no contention that the FEA definition of creed does not include the Christian Science religion, the Commission also concludes that the specific conduct in question here, relating to medical treatment by a Christian Science practitioner, is a religious belief, observance or practice which is entitled to protection.

In Redmond v. GAF Corp., 574 F.2d 897, 17 FEP Cases 208 (7th Cir., 1978), the court addressed the scope of the protection offered by Title VII. The employe in that case had been appointed by the elders of the Jehovah's Witnesses to be in charge of a Bible study class. For 15 years, the class met on Tuesday evenings but the elders changed it to Saturday morning which conflicted with the employe's work schedule. Redmond was ultimately terminated for failing to work as scheduled on Saturday. The court found the employe's religious conduct to be protected:

> Most of the reported cases discussion "religious discrimination" under Title VII involve situations where either Sabbatarianism[1] or a practice specifically mandated or prohibited by a tenet of the plaintiff's religion is involved. However, despite support which can be cited for both positions, we do not feel the protection of Title VII is limited to these categories.
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> * * *
>
> We are thus unable to agree with the suggestion made by GAF on appeal, that because Saturday work *per se* is not prohibited by plaintiff's religion, that the practices in question are outside the protection of Title VII. There is no dispute that Redmond was sincere in his religious belief, having been an active participating member of the church for over 16 years. The evidence establishes that he was appointed to be a lifetime leader of the Bible study class, and had done so for many years prior to this case. The evidence showed that the time of the meeting was arranged by the elders, and that following the meeting the group, of which Redmond was the leader, did field missionary work. Redmond testified that he felt his participation in the Saturday activities was at the dictate of his elders and that they were a "religious obligation." We conclude that the practices in question are within the protection offered by §2000e(j) to "all aspects of religious observance and practice". [footnote added]

[1] A Sabbatarian is someone who observes the Sabbath on Saturday.

This reasoning[2] is consistent with the conclusion that the complainant's belief in the appropriateness and efficacy of medical treatment via prayer by a Christian Science practitioner is entitled to protection under the FEA.

In a caption in its posthearing brief, the respondent states that "Prayer is not a medical treatment and consequently it is not covered as a medical benefit under the States' group health insurance plans." The complainant correctly notes that the respondent is asserting a fact not in evidence. The only testimony on this general topic was by William Kox, Assistant Director for Health and Disability Benefits for the Department of Employe Trust Funds. He testified:

> A I'm not sure what you mean. How do I know that WPS has not paid any Christian Science practitioners?
>
> Q (Mr. McQuillen) Yes.
>
> A I have asked... I have asked the claims manager who is responsible for the State of Wisconsin claims, oversees claims payment.
>
> Q Who is that?
>
> A Her name is Judy Wanless....
>
> Q Did she say why?
>
> A It is not a payable provider and it is not a medically recognized treatment that is consistent with the diagnosis and treatment of a participant. There may be other reasons but I did not ask every specific reason why it is not payable, why a practitioner is not payable.

To the extent the respondent is asserting that prayer by a Christian Science practitioner is not generally recognized as medical treatment so as not to constitute a condition of em-

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[2]Compare Muslim v. Congressional Quarterly, Inc., 18 EPD ¶8938 (Dist. of Col. D.C., 1979), upholding the dismissal of a Black Muslim employe who left work for an indefinite period after explaining to his employer only that he had received a call asking him to come to the mosque immediately. The employer informed the employe that his job would be in jeopardy if he left and discharged him when he did not return to work that day or the next day. The employe failed to produce any evidence that his religion required its adherents to respond to any request from the mosque.

Also, in Wessling v. Kroger Co., 554 F. Supp. 548, 30 FEP Cases 1222 (E D. Mich., 1982), the court held that the employer was not obligated to permit an employe to leave work early on Christmas Eve in order to allow her to serve as a volunteer helper in a children's play put on by her church The employe's participation at her church was voluntary, it did not constitute an obligation of her faith and she could have rescheduled her help time at the church in order to accommodate her work schedule. The court specifically held that the employe's request for leave "to appear at the church hall to set up for the church play, receive the children, and decorate, was not a religious observance protected by Title VII " 30 FEP Cases 1222, 1225.

In both Muslim and Wessling there was an insufficient evidentiary basis on which to connect the conduct in question to the employe's religious beliefs, In contrast, the basis for both Ms. Lazarus' beliefs and for the request to modify the coverage provided under the standard plan is clearly set forth in findings of fact 2 and 3.

ployment requiring an accommodation, there was no expert testimony that Christian Science treatment is not generally recognized as medical treatment. Mr. Kox's testimony is merely hearsay and no basis was established for Ms. Wanless' alleged conclusion. Given the record before it, the Commission cannot conclude that Christian Science treatment is not generally recognized as medical treatment.[3]

Discrimination *per se* versus accommodation

In her dissent in American Motors Corp. v. DILHR, 101 Wis. 2d 337, 370-73, 305 N.W. 2d 62, Justice Abrahamson addressed the distinction between the discrimination and accommodation aspects of a claim based on creed:

> This case does not involve the issue of accommodation. As the majority explains, an accommodation case is one in which the court is to determine "an employer's obligation where arguably there is a conflict between an employee's religious practices and the employer's personnel and management procedures."
>
> In this case there is no conflict between Bartell's religious practices and AMC's personnel and management procedures. Bartell requested days off so that he could observe certain holy days of his religion. AMC's personnel and management procedure was to provide days off on principal Christian holy days, such as Christmas and Good Friday, and to provide days off to Jews and others on their obligatory holy days. Thus Bartell's interest in the free exercise of his religion is within the terms of AMC's established employment policies designed for the efficient operation of the business. When AMC refused to provide time off to Bartell AMC failed to follow its own established personnel and management procedures.
>
> By comparison, the employee in an accommodation case is seeking an exception to the employer's uniformly applied personnel and management procedures; the employee is asking for approval of a request not within the uniform policies to which other employees are subject in order to enable the employee to be a faithful adherent and remain employed. Bartell made no such request; he asked only that AMC treat him as it treats employees of other religious persuasions in similar jobs in AMC. Bartell asked AMC to apply its uniform policy to him.
>
> .... The first step in an accommodation case is to determine the general personnel policy of the employer. The second step is to determine whether this general personnel policy was applied to the employee in question. If the general policy was applied uniformly and thus without overt discrimination, the court reaches the question of [accommodation]. [citation and footnotes omitted]

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[3]This conclusion is supported by the numerous references in the Wisconsin Statutes to Christian Science treatment and Christian Science practitioners, including §§341.14(1a), (1m), 343.51 and 448 03(6), Stats.

In the instant case, the general "personnel policy" is, as reflected in finding of fact 14, to provide for payment for services which are 1) medically necessary; 2) consistent with the diagnosis and treatment of an illness; and 3) provided by or under the supervision of a physician. In addition, procedures determined by the medical community to be investigative or experimental in nature and treatments that are not generally recognized by the medical community are not covered. This policy is neutral on its face as to the religious beliefs of the claimant-employe. However, as the policy is applied, it does not include Christian Science practitioners within the definition of physician. In response to a specific request that the definition be modified so as to provide coverage for services rendered by Christian Science practitioners, the Group Insurance Board declined to make the change, thereby placing the matter before the Commission as a question of accommodation.

While the Commission will proceed to consider this matter as an accommodation issue, there are also arguments supporting analysis as a discrimination per se case. The initial determination explained the distinction and its significance as follows:

> There are two ways to look at the instant case. One characterization is that respondent has a uniformly applied policy of providing its employes with insurance coverage for traditional medical care and treatment -- e.g., treatment by a physician, usage of prescription drugs, etc. This coverage is available to all eligible employes regardless of creed. Complainant is seeking an exception to this policy in the form of coverage for a form of treatment that is non-medical in nature and is mandated by her religious principles. Therefore, respondent is being asked to provide a religious accommodation.
>
> Another characterization is that respondent has broad statutory authority to provide health insurance coverage to its employes. It has chosen to provide coverage for only traditional forms of medical treatment, to the exclusion of treatment by Christian Science practitioners, notwithstanding that this has the [practical] effect of providing a fringe benefit (coverage of treatment for illness and injury) to one group of employes (non-Christian Scientists) but not to another (Christian Scientists). Arguably then, this case can also be characterized as a case of direct discrimination.
>
> As noted above, the practical significance of whether or not this is a case of religious accommodation is that in such a case, the duty imposed on the employer is lighter than in a direct discrimination case. Pursuant to §111.337(1), Stats., accommodation is not required if the employer can demonstrate that accommodation "would pose an *undue hardship* on the employee's program, enterprise or business." (emphasis added) Title VII contains the same test of "undue hardship," 42 USC §2000e(j), and the U.S. Supreme Court has held that an undue hardship is created if the particular accommodation requires the employer "to bear more than a de minimis cost...," Trans World Airlines v. Hardison, 432 U.S. 63, 84, 53 L.Ed. 2d 113, 131, 97 S. Ct. 2264 (1977).

The problem with characterizing this matter as a case of direct discrimination is that it fails to recognize that Christian Scientists are not required to obtain treatment from a Christian Science practitioner but may choose to receive medical treatment from a physician. In addition, Christian Science practitioners are not restricted to treating Christian Scientists. Therefore, the standard plan cannot be said to provide coverage of treatment for illness and injury only to non-Christian Scientists but not to Christian Scientists.

Was an accommodation provided?

One of the defenses raised by the respondent is that it had already accommodated the complainant by providing coverage under the standard plan for confinements in Christian Science sanatoriums. This contention is related to the facts before the Supreme Court in Ansonia Board of Education v. Philbrook, 107 S.Ct. 367 (1986). There the Court held that an employer met its obligation under section 701(j) of the Civil Rights Act of 1964, when it demonstrated that it had offered *a* reasonable accommodation to the employe and that the law did not require the employer to accept the accommodation preferred by the employe.

There are several problems with the respondent's contention. First, there is no indication in this record that the practice under the "standard plan" of providing reimbursement for services provided at a Christian Science sanatorium is inconsistent with the general policy of providing payment for services which are 1) medically necessary; 2) consistent with the diagnosis and treatment of an illness, and 3) provided by or under the supervision of a physician. To the contrary, finding 13 indicates that payment for the cost of such confinement is to payable "under conditions set forth in the standard plan."

The second problem with the respondent's contention, that it already provided reasonable accommodation through the payment for confinement in a Christian Science sanatorium, is that the complainant was not seeking coverage for such services. The complainant sought reimbursement for services from a distinct group of health care providers, Christian Science practitioners. Even if one could conclude that the respondent had provided an accommodation, it could not be considered a "reasonable" accommodation in light of this distinction.

Undue Hardship

The Commission must next decide whether the "employer can demonstrate that the [proposed] accommodation would pose an undue hardship on the employer's program, enterprise or business," thereby providing an adequate legal justification for the GIB decision not to add coverage under the standard plan for treatment by Christian Science practi-

tioners. As noted above, the *de minimis* cost standard for determining undue hardship was developed by the Supreme Court in Trans World Airlines, Inc. v. Hardison, 432 U.S. 63, 53 L.Ed 2d 113, 97 S.Ct 2264 (1977). The employe in that case, a Sabbatarian, was discharged after he had transferred from one position to another with the same employer. The transfer meant that he no longer had the seniority to bid for Saturdays off. The employer permitted the union to seek a change in work assignments but the union refused to violate the seniority system to give him the days off. The employer also rejected other possible accommodations before discharging the employe for refusing to work on Saturdays:

> A proposal that Hardison work only four days a week was rejected by the company. Hardison's job was essential, and on weekends he was the only available person on this shift to perform it. To leave the position empty would have impaired supply shop functions, which were critical to airline operations; to fill Hardison's position with a supervisor or an employee from another area would simply have undermanned another operation; and to employ someone not regularly assigned to work Saturdays would have required TWA to pay premium wages. 53 L.Ed 2d 113, 121

After concluding that Title VII did not "take precedence over both the collective-bargaining contract and the seniority rights of TWA's other employees," the Court held:

> The Court of Appeals also suggested that TWA could have permitted Hardison to work a four-day week if necessary in order to avoid working on his Sabbath. Recognizing that this might have left TWA shorthanded on the one shift each week that Hardison did not work, the court still concluded that TWA would suffer no undue hardship if it were required to replace Hardison either with supervisory personnel or with qualified personnel from other departments. Alternatively, the Court of Appeals suggested that TWA could have replaced Hardison on his Saturday shift with other available employees through the payment of premium wages. Both of these alternatives would involve costs to TWA, either in the form of lost efficiency in other jobs or higher wages.
>
> To require TWA to bear more than a de minimis cost in order to give Hardison Saturdays off is an undue hardship. Like abandonment of the seniority system, to require TWA to bear additional costs when no such costs are incurred to give other employees the days off that they want would involve unequal treatment of employees on the basis of their religion. By suggesting that TWA should incur certain costs in order to give Hardison Saturdays off the Court of Appeals would in effect require TWA to finance an additional Saturday off and then to choose the employee who will enjoy it on the basis of his religious beliefs. While incurring extra costs to secure a replacement for Hardison might remove the necessity of compelling another employee to work involuntarily in Hardison's place, it would not change the fact that the privilege of having Saturdays off would be allocated according to religious beliefs. 53 L.Ed 2d 113, 131

The Hardison decision has been interpreted as eliminating "any accommodations that require virtually any additional expenses in either money or lost operating efficiency." Ingram and Domph, *An Employer's Duty to Accommodate the Religious Beliefs and Practices of an Employee*, 87 Dickinson L. Rev. 21, 49 (1982).

The primary document of record which relates to the questions of undue hardship and *de minimis* cost in the instant case is the letter to the Board from its consulting actuary, Norman Jones. The relevant portion of that letter, set forth in finding 17, reads:

> Approval of the proposal would result in additional claims under the plan (as opposed to the substitution of one type of treatment for another). Based on the limited information available, we estimate that *claims would increase by less than 0.1% and that no near-term premium adjustment would be required.* Therefore, consideration of the proposal revolves around good benefit design and proper public policy rather than expected near-term financial consequences.

In its brief,[4] the respondent has identified several "factors" which, it suggests, support a conclusion that the costs associated with the proposal were more than *de minimis*: 1) Mr. Jones' letter was prepared without the knowledge that the complainant incurred treatment costs of $100 per month, and from this additional fact "it can be inferred that there may be many more additional claims than previously thought and the absolute number of increased claims could be significant;" 2) the services of the Christian Science practitioners would be available to all state employes under the Standard Plan, rather than just the 30 or so who are Christian Scientists; and 3) the state "risks paying double reimbursement" for a single illness whenever a patient obtains services from a Christian Science practitioner.

There can be little question based on the record that if the proposed accommodation is provided, the standard plan would pay approximately $100 per month to the complainant's Christian Science practitioner. Other Christian Scientists enrolled in the standard plan as well as non-Christian Scientists could also obtain treatment from Christian Science practitioners who would then be paid for the services rendered. While it is clear that the *plan* would incur certain costs as a consequence of the accommodation, the key issue is the monetary effect on the employer, rather than on the plan. The standard plan is self-insured and receives premiums from both employe participants and the employer. Only if it can be said that the complainant's employer would have to increase its premiums into the plan would the respondent meet its burden of establishing *de minimis* cost and undue hardship.

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[4]The minutes of the GIB meeting, set forth in finding of fact 20, suggest that the members of the board relied on a variety of reasons for their individual votes to deny the additional coverage. In this proceeding, the Commission is not restricted to basing its analysis on the reasons which were unanimously relied upon by those who voted at the GIB meeting.

As noted above, the GIB consulting actuary, Norman Jones, concluded that as a consequence of the accommodation, "no near-term premium adjustment would be required." The actuary failed to specify any conclusion as to the long-term effects on premiums. Thomas Korpady, who as Director of Health and Disability Benefits for the Department of Employe Trust Funds also serves as primary staff to the GIB, testified that information learned subsequent to Mr. Jones' written opinion, raised cost "concerns:"

> Q If it eventually becomes necessary, if you were required to add coverage [for] Christian Science practitioners under the standard plan, what concerns if any do you have.
>
> A I would have some concern as to the price. In my... in the past when this was considered before the Board, I felt that there was a very marginal cost because of the limited number of people who maybe would obtain coverage and yet, based on some of the things I have seen in the last few days and heard here today, I feel that the concern of price would now again come up... or cost rather, would now come up because others may take advantage of that service.
>
> Q When you say "some of the things recently," what do you mean?
>
> A The booklet that was just entered as...
>
> Hearing Examiner: Respondent's exhibit 4 is what the witness is referring to.
>
> A Yes. And a bill I saw for services just yesterday, where there was a request for payment in Ms. Lazarus' case, which far exceeds anything that we were aware. And I guess it was our own ignorance at the time.
>
> Q What do you mean by... when you say, "we"?
>
> A Norm Jones who is the Board's actuary. When we discussed this, our own ignorance of the subject perhaps was that we thought of it in the mind-set of medical treatment so that if you had a problem you might get in to see a physician once, you'd pay for that physician visit and that would be it. Both Norm and I did not realize at the time how this treatment was administered and to that degree we did not have the concerns of cost at that time and when I reported to the Board, I did not have the concerns. Now seeing some of these things, I do have those concerns. (Transcription from tape recording of hearing.)

Mr. Korpady also predicted an increase in the frequency of use and price of Christian Science practitioner services if accommodation would be provided:

> Q (Ms. Dulski) Now, in your experience, when coverage is extended to a provider, a provider that hasn't previously received reimbursement un-

> der the group policy, would you care to make any observations on effect on use and cost of a particular service when that happens?
>
> A (Mr. Korpady) Yes. My belief that services that obtain coverage under a insurance plan tend to increase both in frequency and potentially in price. Once the financial disincentive is removed for services, the financial disincentive to the patient and perhaps the provider, that usage increases. Medical care in particular is often provider driven in that the patient has very little control over the actual provision of services. Those who utilize physicians go to a physician and do not prescribe for that physician a course of treatment. They listen to what the provider says so that the provider controls the demand. The provider also controls the price and when an insurance coverage is in effect, the traditional disincentive of price controlling supply and demand like your normal economic model is removed because the person receiving the services no longer has a reason not to obtain the services.

While this testimony generally relates to the number and size of anticipated claims under the proposed accommodation, there is no testimony which would link the anticipated claims to a reversal of Mr. Jones' opinion that "no near-term premium adjustment would be required."

The bottom line is that the respondent has failed to sustain its burden of showing that the employer would incur "additional costs" as a consequence of providing the accommodation. Mere "concern" about claims does not equate to additional cost to the employer.[5]

This result is not altered by noting that the services of Christian Science practitioners will, under the proposed accommodation, be made available to all state employes under the standard plan, and not just to the Christian Scientists. There was no showing that this information was not known to Mr. Jones, nor is there any evidence directly tying this information to "additional costs" to be borne by the employer. Finally, as to the third factor identified by the respondent, there was no evidence that "double reimbursement" would occur as a consequence of the proposed accommodation. Even if there was such evidence, the record does not link double reimbursement to additional cost to the employer.

Therefore, the Commission concludes that 1) the respondent has failed to meet its burden of proof in this matter and 2) the failure to provide reimbursement for Christian

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[5]The Commission suspects that specific cost information for providing Christian Science practitioner coverage could be obtained from some of those insurers which provide such coverage under group policies. Testimony from Mr Jeffrey established that the Wisconsin Education Council Insurance Trust used to provide coverage for treatment by a Christian Science practitioner. The complainant also supplied a list of 42 other insurers which "customarily offer benefits of Christian Science treatment and care in their group health and accident insurance plans when asked to do so by employers." (Stipulation of facts, Exhibit A) The respondent did not supply any cost information from these other sources That information might have made a decision in this matter much clearer

Science practitioner treatment under the standard plan constituted discrimination under the Wisconsin Fair Employment Act.

Constitutional Issues

The respondent contends that the proposed accommodation "tailored... to apply specifically to the Christian Science religion, violate[s] the Establishment Clause of the United States Constitution and Article I, Section 18 of the Wisconsin Constitution, and consequently, may not be legally incorporated into state health plans involving state funds." The complainant raises a question as to whether the Commission has the authority to consider whether certain relief would be unconstitutional. However, based upon the way in which the issue was framed in this matter, it is unnecessary for the Commission to address this isue. Having concluded that the respondent discriminated against the complainant based on creed with respect to the failure to accommodate, the Commission rmerely directs the respondent to provide coverage to the complainant for treatment by Christian Science practitioners. The Commission does not need to set forth precise language or procedure to be used by the respondent in obtaining this result and, therefore, does not reach the question of whether particular conduct by the respondent to effectuate relief would violate the Establishment Clause.

ORDER

The respondent shall cease and desist from discriminating against the complainant and shall provide her with coverage for treatment by Christian Science practitioners. The Commision will establish a schedule for complainant to file any request for the recovery of attorneys fees and costs associated with this matter.

Dated:_____, 1992 STATE PERSONNEL COMMISSION

_____
LAURIE R. MCCALLUM, Chairperson

KMS:kms

_____
DONALD R. MURPHY, Commissioner

_____
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