## UNITED STATES OF AMERICA EQUAL EMPLOYMENT OPPORTUNITY COMMISSION MILWAUKEE AREA OFFICE

SYLVIA AVILES,		)	
v.	Complainant,	) EEOC Docket No.:	43-10-00150X
		) Agency No.: (RS-09)	-0613F
	THNER, SECRETARY,		
	Agency.		

## ORDER

On or about November 24, 2010 the Agency filed a motion to compel. As of the date of this Order, Complainant has not filed a response. After careful consideration of the submitted materials, IT IS ORDERED:

That the Agency's motion to compel discovery is **GRANTED**, with partial limitations as follows:

Interrogatory Nos. 6, 7, 8, & 9: In these discovery requests, the Agency is requesting medical and mental health information for the past five years. To the extent Complainant is claiming compensatory damages, and that she sought medical treatment of any kind as a result of the alleged discrimination, the Agency is entitled to all medical information regarding the treatment sought, and Complainant is instructed to provide it. In addition, because Complainant is claiming discrimination based on her disability, the Agency has the right to medical information regarding the disability. As such, I will permit the Agency access to all medical and mental health information that is related to the Complainant's claimed disability. Finally, to the

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extent Complainant claims she suffered physical problems as a result of the alleged discrimination, any treatment she sought for similar physical problems in the two years preceding the alleged discrimination must be produced. In other words, if the Complainant claims she suffered from sleeplessness as a result of the alleged discrimination, and she sought medical treatment for sleeplessness at any time two years prior to the alleged discrimination, the Agency has a right to that information. The Complainant should be absolutely sure what, if any, physical problems she claims were a result of the alleged discrimination and reveal them to the agency immediately, along with any medical treatment she sought. I will not permit the Complainant at hearing to allege any symptoms she has not revealed prior to the hearing.

However, the fact that Complainant is claiming compensatory damages and that she sought medical treatment as a result of the discrimination, does not give the Agency *cart blanch* authority to review all of Complainant's medical information for the last five years. There are federal laws in place, such as HIPPA, to protect medical information due to its highly sensitive and private nature. Just because an employee chooses to file an action for discrimination does not mean that she automatically gives up her privacy right in all her medical information. I fail to see how such a sweeping request is relevant or is likely to lead to the discovery of relevant information. Whether Complainant had a sore throat is not relevant as to whether she suffered emotional distress as a result of discrimination. To allow such an invasion of privacy would do nothing more than chill future claimants from exercising their federal rights. When this concern is weighed against the probative value and remoteness in time of the information sought, production cannot be justified.

On the other hand, a balance has to be struck between the Complainant's right to privacy and the Agency's right to defend its case, and I do recognize that some medical and mental

Accordingly, as to general healthcare information not related to Complainant's disability or treatment sought and/or symptoms experienced as a result of the alleged discrimination, the Agency will be permitted access to medical and mental health treatment information for two (2)

health treatment that was sought close in time to the discriminatory act may be relevant.

years prior to the alleged act of discrimination, and until such time as Complainant states the

emotional distress has ceased. If the emotional distress is ongoing and continues to this day, then

the agency is entitled to medical and mental health information up to the current time. This

general medical information is further narrowed to include only individual (as opposed to family

or marital) mental health treatment, and with regard to medical treatment, the production will be

limited to the type of medical treatment that would cause a reasonable person to experience

emotional distress, which includes any surgery or major medical procedures. Routine medical

visits are not to be included.

January 21, 2011. All other deadlines remain the same.

The Complainant is instructed to provide complete responses to the Agency's discovery requests, as limited herein, on or before January 7, 2011. Because the information is being produced beyond the deadline for discovery, the summary judgment deadline is extended to

For the Commission:

It is so ORDERED.

December 17, 2010

Date

Administrative Judge

## UNITED STATES OF AMERICA EQUAL EMPLOYMENT OPPORTUNITY COMMISSION MILWAUKEE AREA OFFICE

SYLVIA AVILES.  Complainant  vs.	) ) EEOC DOCKET No: 443-10-00150X ) ) Agency No: (RS-09-0613F)			
TIMOTHY F. GEITHNER, SECRETARY. DEPARTMENT OF THE TRESURY.  Agency				
CERTIFICATE OF SERVICE				
I, Anne-Louise Samson, hereby certify that of the following:  1. Order  by United States Postal Service to the following:	on December 17, 2010, I sent the following:			
Ms. Sylvia Aviles P.O. Box 0456 South Milwaukee, WI 53172				
Mr. Chungsoo J. Lee Federal Employment Discrimination EEO 21, 148 E. Street Suite 321 Feasterville, PA 19053	on Specialist			
Ms. Eileen R. Jimenez Senior Attorney Internal Revenue Service Office of Chief Counsel (CLS)				

/s/Anne-Louise Samson

Anne-Louise Samson
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