BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

JANELLE MCDONALD,
Charging Party,

- v -

DEPARTMENT OF ENVIRONMENTAL QUALITY,
Respondent.

Case # 0051011370

ORDER AFFIRMING
AGENCY DECISION

Janelle McDonald (McDonald) filed a complaint of discrimination based on
disability against the Department of Environmental Quality (DEQ) with the Department
of Labor and Industry. The Hearings Bureau (Bureau) held a contested case hearing
pursuant to § 49-2-505, MCA. Following the hearing, the Bureau issued a decision that
determined DEQ discriminated against McDonald. DEQ filed an appeal with the
Montana Human Rights Commission (Commission) and requested oral argument. The
Commission considered the matter on December 14, 2006. Only four of five
Commission members were present for the hearing due to a resignation of one
member. James Madden appeared and argued on behalf of DEQ. Phillip Hohenlohe
appeared and argued on behalf of McDonald.

In its appeal, DEQ asserted the hearing officer erred both in law and in the
findings of fact. DEQ argued that the hearing officer should have found DEQ had no
legal duty to accommodate the specific needs of McDonald’s service dog in an ordinary
office environment. DEQ also asserted the hearing officer improperly found its attempts
to accommodate the animal were insufficient and improperly found McDonald was damaged by its actions. Finally, DEQ argued the damages award was incorrect. McDonald argued the hearing officer’s determination was based on substantial evidence and contained no errors of law. McDonald also asserted the damages award was proper in that it was also based on substantial evidence and correct as a matter of law.

After considering the written and oral arguments of the parties and the record in the case, the Commission vote split two to two on the question of whether DEQ owed McDonald a duty to accommodate the needs of the service animal beyond allowing it in the building. Pursuant to § 2-15-124(8), MCA, although a majority of the membership of the Commission constitutes a quorum to do business, a favorable vote of at least a majority of the members is required to adopt a decision. In this matter, the Commission was unable to reach a majority vote. Therefore, the Commission concludes the prior-level decision of the Bureau stands and is affirmed. The Bureau’s decision is attached and made part of this order by reference.

A person who has exhausted all administrative remedies available within an agency and who is aggrieved by a final agency decision in a contested case is entitled to file a petition for judicial review within 30 days after service of the final agency decision. Mont. Code Ann. § 2-4-702. The petition must be filed in the district where the petitioner resides or has the petitioner’s principal place of business, or where the agency maintains its principal office.

DATED this ____ day of December 2006.

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Chair Ryan Rusche
Human Rights Commission
CERTIFICATE OF SERVICE

The undersigned employee of the Human Rights Bureau certifies that a true copy of the forgoing Human Rights Commission ORDER was served on the following persons by U.S. mail, postage prepaid, on this _____ day of __________, ___.

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Montana Human Rights Bureau