

Hearing-Impaired Family Members: Disability Discrimination Case To Go Forward.

The parents' first encounter with the hospital occurred when they brought their then four-month-old daughter to the hospital's emergency room.

During that first encounter the daughter was diagnosed with a brain tumor. More than three years later there was a separate diagnosis of cancer at the hospital.

The daughter's two separate diagnoses have required numerous chemotherapy and other treatments still continuing at the hospital after a period of eighty months.

Parents Are Hearing Impaired

ASL Primary Means of Communication

The mother is completely deaf and communicates exclusively in American Sign Language (ASL). Her ability to read and write is limited.

The father is completely deaf in one ear and cannot hear well in the other ear. His primary means of communication is ASL. He can read and write in English only with difficulty.

The hospital has been aware of the parameters of the parents' communication status since their first encounter with the hospital.

Evidence of Discrimination

When obtaining care for their daughter on numerous occasions the parents consistently requested an ASL interpreter.

However, in their lawsuit they alleged interpreters were not always provided.

When an interpreter was provided it sometimes took almost a full day for the interpreter to arrive.

The father had his own handwritten notes documenting eighteen separate occasions when he had requested an ASL interpreter and none was provided.

On one occasion he asked a nurse for an ASL interpreter and was told one would be provided only when the doctor showed up. On other occasions he was simply told "No" or was told the boss had said "No."

As to the hospital's video remote interpreting (VRI) equipment, the lawsuit alleged that the equipment did not always work properly, that one nurse did not know how to operate the equipment when the equipment itself apparently was working properly and two other nurses did not even know what the VRI equipment was.

The Americans With Disabilities Act (ADA) states that places of public accommodation, such as hospitals, cannot discriminate on the basis of disability.

However, the ADA does not allow a victim of discrimination to sue a place of public accommodation for monetary damages.

Lawsuits under the ADA against places of public accommodation are limited to suits seeking a court injunction directed at rectifying discriminatory policies, practices or conduct.

Such lawsuits are further limited only to victims who can show they face a real prospect of future discrimination by the same place of public accommodation, a real threat, not one that is only hypothetical. Past discrimination by itself is not enough to be able to sue.

In this case it is entirely possible that these family members with hearing disabilities will face future problems with this hospital.

Their daughter will very likely require future treatment at the hospital.

The hospital's low state of staff training as to disabled persons' rights points to a strong possibility of future violations.

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
August 28, 2015

The hospital's executive vice president for nursing admitted in her testimony in a pre-trial deposition that the hospital's Americans With Disabilities Act (ADA) compliance policy for the hearing impaired was in need of revision.

She was not able to verify that any in-service training sessions had taken place to address the needs of the hearing impaired.

US Rehabilitation Act Requires Proof Of Intentional Discrimination

The US Rehabilitation Act applies to all recipients of Federal funding, including hospitals that receive Medicare or Medicaid reimbursement.

The Act outlaws discrimination on the basis of disability and permits victims of discrimination to sue for monetary compensation. However, the Act limits recovery of monetary compensation to cases where intentional discrimination has occurred, leaving aside cases where a disabled individual was treated differently due only to inadvertence or negligence.

In this case the US Court of Appeals for the Fifth Circuit (Texas) was not persuaded that there was no evidence of intentional discrimination or, as other courts have phrased it, deliberate indifference by the hospital to the legal rights of its hearing impaired patrons.

The hospital's failure to provide a live ASL interpreter or VRI on numerous occasions meant that effective communication with caregivers, comparable to that enjoyed by the non-hearing-impaired, was not made available to these patrons.

ADA Lawsuit to Go Forward

The ADA trumpets the rights of the disabled as to places of public accommodation but at the same time puts legal stumbling blocks in the path of enforcement of those rights in court.

In this case the Court ruled that these hospital patrons, unlike most disabled persons who have been victims only of past discrimination, could rely on the ADA to obtain a court injunction against the hospital. Their daughter still had a real ongoing need for this hospital's services and this hospital's past track record pointed to future violations of their rights. ***Perez v. Doctors***, __ Fed. Appx. __, 2015 WL 5085775 (5th Cir., August 28, 2015).