

Hearing Impaired Patient, No ASL Interpreter: Court Validates Her Right To Sue Hospital.

The patient's lawsuit against the hospital alleged that:

The patient is profoundly deaf and communicates primarily through American Sign Language (ASL).

The patient was denied a qualified ASL interpreter despite her request during two stays at the hospital totaling more than three weeks suffering from severe pain due to injuries from a fall.

As a result of being denied an ASL interpreter the patient was unable to communicate effectively with hospital caregiving personnel, unable to participate in her care and unable to obtain a complete understanding of the treatment she received.

The patient was ignored, humiliated and treated like a non-person, according to her lawsuit.

The patient's lawsuit originally sought damages from the hospital based on the US Rehabilitation Act, the US Americans With Disabilities Act and the Pennsylvania Human Relations Act. However, the patient voluntarily dropped the latter two bases for her suit, leaving only her claims under the US Rehabilitation Act.

Court Sees Legal Basis for Patient's Suit

The US District Court for the Middle District of Pennsylvania denied the hospital's request for dismissal, ruling that the facts alleged in the patient's lawsuit, assuming they can be proven, are a valid basis for a lawsuit against the hospital.

The US Rehabilitation Act applies to any program or facility which receives Federal funding.

A hospital or other healthcare facility that participates in Medicare or Medicaid is subject to the US Rehabilitation Act.

It is not relevant whether the particular patient in question is a Medicare or Medicaid patient, only that the facility receives some Federal funding.

A facility that comes under the US Rehabilitation Act can be sued by a patient if the facility has intentionally discriminated against the patient. Such discrimination is action or inaction going beyond simple oversight or bureaucratic inaction, which occurred with this patient. **Reed v. Schuylkill Health**, 2013 WL 6479127 (M.D. Pa., December 9, 2013).

The US Rehabilitation Act provides that no otherwise qualified individual with a disability shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.

A qualified individual with a disability is one with a physical or mental impairment that substantially limits one or more major life activities of the individual, or one who has a record of such an impairment or one who is regarded as having such an impairment.

The US Rehabilitation Act's definition of disability is taken directly from the US Americans With Disabilities Act, which has a long but not exhaustive list of conditions which expressly qualify as legal disabilities.

The list of legal disabilities includes impairment of the ability to hear.

A hospital must provide appropriate auxiliary aids to persons with impaired sensory, manual or speaking skills where necessary to afford such persons an equal opportunity to benefit from services provided by the hospital.

Appropriate auxiliary aids may include Brailled and taped materials, interpreters and other aids for persons with impaired hearing or vision.

Aids, benefits and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped as for non-handicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit or to reach the same level of achievement in the most integrated setting appropriate to the person's needs.

This patient's lawsuit alleges that the hospital knew of her disability and her need for auxiliary aids, based on her request for an ASL interpreter and knew that without an interpreter her Federally-protected rights would be violated, and the hospital failed to act despite the knowledge of the patient's need.

A patient's suit against a healthcare provider under the US Rehabilitation Act requires intentional discrimination going beyond simple oversight or bureaucratic inaction.

UNITED STATES DISTRICT COURT
PENNSYLVANIA
December 9, 2013