

Disability Discrimination: Deaf Patient And Family Not Accommodated At Critical Points In Patient's Care.

The Superior Court of New Jersey, Appellate Division, started by pointing out there was no issue of professional malpractice in the case or even a suggestion that the deaf patient received care of lesser quality than the care a hearing patient would have received.

The issue was equal access to healthcare. Specifically, the Rehabilitation Act of 1973 requires any recipient of Federal funding, such as a hospital that participates in Medicare or Medicaid, to provide equal access to disabled persons.

For hearing impaired patients the law says healthcare providers must provide auxiliary aids and services to ensure effective two-way communication between a patient and family members and the patient's healthcare providers.

However, that does not mean sign language interpreters are required at all times for all patients, the court pointed out.

Routine Care versus Critical Situations

When a patient is receiving routine care, like being weighed or having vitals taken, a sign language interpreter is probably not necessary.

But at critical points in the patient's healthcare experience a sign language interpreter is needed, the court believed.

An example of a critical point in a patient's healthcare experience is giving a medical history to a physician or nurse. At this point a sign language interpreter is needed, the court ruled. The court could see no other way for the patient to communicate an accurate health history, an accurate health history being absolutely critical to quality health care.

When medical interventions are being explained and informed consent is being sought, an interpreter is essential. Leaflets and printed forms are not good enough at this critical juncture, the court ruled. **Borgesser v. Jersey Shore Medical Center**, 774 A. 2d 615 (N.J. App., 2001).

In order to provide equal access to disabled persons, a healthcare facility must provide appropriate auxiliary aids and services to ensure effective communication between a hearing impaired patient and the patient's healthcare providers.

The law draws a distinction between routine health care tasks and more critical points in the patient's healthcare experience.

For example, while a patient is being weighed and having vital signs checked by a nurse, hand gestures and handwritten notes are most likely going to be sufficient to provide effective two-way communication.

However, when a patient is having a cardiac catheterization procedure explained and is being asked to provide informed consent, a sign language interpreter is needed to ensure that information is being communicated effectively to the patient and that the patient is effectively conveying her thoughts and opinions to the medical staff.

SUPERIOR COURT OF NEW JERSEY,
APPELLATE DIVISION, 2001.

Disability Law: Inability To Drive To Work Not A Disability, Court Rules.

A county health department utilization review nurse had a seizure and was diagnosed with epilepsy. Her physician put her on anti-seizure medication and told her not to drive until she had successfully gone six months on the medication without a seizure.

During that six month period her employer agreed she did not have to drive between county offices. However, she was not allowed to stay home and work on her home computer without coming to work at all. She sued for disability discrimination. Her case was thrown out of court.

A disability is a physical or mental impairment that substantially limits one or more major life activities such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

It would not be completely farfetched to argue that driving is a major life activity in the US, but the court is not going to go that far.

UNITED STATES COURT OF APPEALS,
ELEVENTH CIRCUIT, 2001.

The US Circuit Court of Appeals for the Eleventh Circuit ruled that she did not have a disability as the courts define disability for purposes of disability discrimination law. Driving, the court decided, is not a major life activity, so inability to drive is not a legal disability. Without a disability as defined by law the nurse could not sue for disability discrimination. **Chenoweth v. Hillsborough County Florida**, 250 F. 3d 1328 (11th Cir., 2001).