



May 13, 2015

RICK SCOTT
GOVERNOR

ELIZABETH DUDEK
SECRETARY

VIA CERTIFIED MAIL (RETURN RECEIPT REQUESTED) [REDACTED]

Re: Letter of Findings in Response to ADA Complaint No. 15-001

Dear Mr. [REDACTED]:

The Agency for Health Care Administration (the "Agency") hereby provides this Letter of Findings in response to your Americans with Disabilities Act Discrimination ("ADA") Complaint, as submitted by [REDACTED] on your behalf on February 11, 2015 (the "Complaint"). A copy of the Complaint is attached as **Exhibit A**.

Pursuant to state and federal law and the Agency's Americans with Disabilities Act Grievance Policy (the "ADA Grievance Policy"),¹ a disabled person (or his/her authorized representative) who believes that he or she was subjected to discrimination by the Agency or a Medicaid managed care plan on the basis of his/her disability may file a complaint with the Agency.²

I have been appointed by the Agency's Secretary as the Agency's ADA Compliance Officer. In that capacity, I reviewed the facts and circumstances of your Complaint and conducted an investigation of this matter. As discussed in detail below, I have determined that neither the Agency nor its contractors violated your rights under the ADA.³

Factual Findings

1. On February 11, 2015, [REDACTED] filed a disability discrimination complaint on your behalf. According to [REDACTED], he was authorized by you to file your Complaint with the Agency on your behalf. The Complaint alleges that when you attempted to contact your dentist's office (on an unspecified date) to schedule an appointment, you requested that an American Sign

¹ The Agency's ADA Grievance Policy is posted on the Agency's website at: <http://ahca.myflorida.com/docs/ADAGrievancePolicy.pdf>.

² The Agency's optional ADA Complaint Form is posted on the Agency's website at: <http://ahca.myflorida.com/docs/ADAComplaintForm.pdf>.

³ In addition to the ADA, your right to file a disability discrimination complaint with the Agency arises pursuant to Section 504 of the Rehabilitation Act of 1973, Section 508 of the Rehabilitation Act of 1973, and all implementing federal regulations.



Language ("ASL") interpreter be present during your visit, and that your dental provider denied your request for an ASL interpreter. According to the Complaint, because you were in pain you decided to attend your dental appointment on [REDACTED] 2015, without an ASL interpreter present.

2. At all times relevant, you have been enrolled with Coventry Health Care of Florida, Inc. ("Coventry") as your statewide Medicaid Managed Medical Assistance plan.

3. On [REDACTED] 2015, you contacted Coventry to obtain information about dental providers and were given the phone-number of Coventry's dental plan, Managed Care of North America, Inc. ("MCNA")⁴.

4. On [REDACTED] 2015, you contacted MCNA to select a dentist.

5. Although your Complaint alleges that you went to [REDACTED] Dental on [REDACTED] 2015, [REDACTED] Dental reports that your emergency appointment for tooth pain was actually on [REDACTED] 2015. Upon scheduling that appointment, [REDACTED] Dental informed you that a same day appointment was not sufficient advance notice for them to arrange for an ASL interpreter to be present.

6. On [REDACTED] 2015, in response to your Complaint, the Agency placed telephone calls to you via an interpreter with Sorenson Relay Service. Both times, there was no answer and messages were left for you to return the Agency's call. To date, you have not responded to the Agency's phone calls.

7. On [REDACTED] 2015, [REDACTED] called MCNA on your behalf to locate a dentist that could provide an interpreter.

8. The Agency also asked Coventry to contact you concerning your Complaint. On [REDACTED] 2015, Coventry contacted you to let you know there were three dentists in your area that could provide dental services with an interpreter present. You informed Coventry that you would make your own appointments with a dentist and would then contact MCNA to arrange for an interpreter.

9. On [REDACTED] 2015, you were treated by a dentist with an interpreter present. In addition, a representative from MCNA was present to ensure your satisfaction with the service.

10. On [REDACTED] 2015, MCNA assigned you a designated case manager to assist you with obtaining ASL interpretation services for future dental appointments.

11. MCNA's policy is that it can provide for an ASL interpreter to be present for a dental appointment if they receive seventy-two hours advance notice.

12. The process implemented by MCNA proved successful in that you had dental care visits on [REDACTED] 2015 and [REDACTED] 2015, with an ASL interpreter present.

⁴ Both Coventry and MCNA used Video Link interpreter services to communicate with persons with hearing related disabilities.

Conclusions of Law

Through the use of auxiliary aids and services, public entities are required to “take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are effective as communications with others.”⁵ The type of auxiliary aid to be provided is determined on a case-by-case basis depending on: the method of communication used by the individual; the nature, length, and complexity of the communication involved; and, the context in which the communication is taking place.⁶

The term “auxiliary aids and services” includes:

Qualified interpreters on-site or through video remote interpreting (VRI) services; notetakers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing.⁷

Healthcare providers need not supply auxiliary aids and services just because they are demanded or desired, but only where necessary in order to enable effective communication.⁸ There is no requirement that public entities use the newest or most advanced technologies; the selected auxiliary aid or service will be sufficient if it provides effective communication.⁹ For example, the exchange of notes is effective in situations that do not involve substantial conversation such as those which occur during an appointment for routine blood work or allergy shots.¹⁰

Where a violation has occurred and a public entity takes affirmative steps to investigate and correct non-compliance by its contractors, the public entity has provided adequate supervision and, thus, cannot be found to have violated the ADA.¹¹

You contacted Coventry’s dental provider MCNA on [REDACTED] 2015 to select a dentist. For reasons unknown, you waited to make an appointment with [REDACTED] Dental until over a week later. By that time, you needed a same-day emergency appointment because you were experiencing severe tooth pain. The provider explained that it would not be able to offer an interpreter for that appointment on such short notice. Although your Complaint alleges that you

⁵ 28 C.F.R. § 35.160(a)(1).

⁶ 28 C.F.R. § 35.160(b)(2).

⁷ 28 C.F.R. § 36.303.

⁸ *McCullum v. Orlando Regional Healthcare System*, 768 F.3d 1146, 1147 (11th Cir. 2014).

⁹ 56 Fed. Reg. 35697 (July 26, 1991).

¹⁰ 28 C.F.R. § 35, Appendix A.

¹¹ *Reynolds v. Guiliani*, 506 F.3d 183, 196 (2d Cir. 2007).

were denied interpretation services, MCNA's policy is that it can provide for an ASL interpreter to be present for an appointment, but would prefer seventy-two hours advance notice to find an available interpreter.

Your request for a same-day appointment did not give MCNA enough notice to provide an interpreter. While plans and providers are required to provide interpretation services where they are necessary for communication, federal regulations entitle them to require advance notice from patients requesting aids or services.¹² Thus, it was not unreasonable for MCNA to require advance notice sufficient to arrange for the provision of interpretation services.

MCNA accommodated your request for an interpreter at all of your subsequent dental appointments. In addition to an interpreter, an MCNA representative was present at your [REDACTED] appointment to ensure your satisfaction with the interpretive services provided. MCNA and Coventry collaboratively provided a swift response to your request and worked diligently with you to arrange for an interpreter at your dental appointments. MCNA assigned you a case manager to assist you in arranging for an interpreter when needed for future dental care visits.

Conclusion

Based on the foregoing, there is no evidence to suggest that you were excluded from or denied the benefit of dental services based on a disability, or that MCNA or Coventry failed to accommodate your request for ASL interpretation services in violation of federal law. The Agency, therefore, will be taking no further action and will close the Complaint as of the date of this Letter.¹³

Sincerely,

Rachel Goldstein
ADA Compliance Officer

cc: [REDACTED]

¹² ADA Technical Assistance Publications, *Revised ADA Requirements: Effective Communication*, U.S. Department of Justice, January 2014.

¹³ This Letter, while administratively final, does not prevent you from pursuing this matter privately in court.

RIGHT TO AN APPEAL

If you believe that this Letter of Findings does not satisfactorily address the issue(s) asserted in your Complaint due to a factual error or omission, you or your authorized representative may request an appeal this Letter of Findings, in writing to the Agency's designated ADA Compliance Officer. Your appeal must be received by the Agency's ADA Compliance Officer no later than 21 calendar days after your receipt of this Letter of Findings. The mailing address of the Agency's ADA Compliance Officer is:

Rachel Goldstein
ADA Compliance Officer
Agency for Healthcare Administration
2727 Mahan Dr., Mail Stop #3
Tallahassee, Florida 32308

To be considered, your written appeal must specify, in detail, the asserted factual error(s) or omission(s) that were included in this Letter of Findings.

Within 30 business days after receipt of your appeal, the ADA Compliance Officer, or her delegate, will issue a final resolution in writing.