



October 6, 2015

[REDACTED]

VIA CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

Re: Letter of Findings in response to ADA Complaint No. 15-006

Dear [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], Esq., on your behalf on January 22, 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/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 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 January 22, 2015, [REDACTED], Esquire, filed a disability discrimination complaint on your behalf. The Complaint alleges that on an unspecified date, in an unspecified location, an unspecified doctor refused to provide a sign language interpreter.

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.



2. At all times relevant, you were enrolled in Humana Medical Plan, Inc. ("Humana") as your statewide Medicaid Managed Care Assistance plan.

3. Upon receipt of the Complaint on January 22, 2015, Agency representatives requested additional information in order to identify the provider. The provider was subsequently identified as Dr. [REDACTED].

4. On January 23, 2015, the Agency requested Humana contact Dr. [REDACTED] for additional information regarding the allegations. Humana contacted Dr. [REDACTED] and spoke with [REDACTED], Senior Care Coordinator, who confirmed that you had an appointment on [REDACTED], 2015 and that Dr. [REDACTED] communicated with you using American Sign Language ("ASL"). [REDACTED] indicated you had no questions or concerns before leaving the office.

5. Thereafter, Humana placed a telephone call to you with an interpreter via Sorenson Video Relay Service. You confirmed Dr. [REDACTED] did use ASL but you felt that she was not fluent enough to effectively communicate. You requested that an ASL interpreter be present with you at future appointments. Humana advised you they would assign a case manager to assist you with interpreter services.

6. On January 26, 2015, the Agency placed a telephone call to you via an interpreter to confirm you were satisfied with Humana's resolution. There was no answer and a message was left requesting a return call.

7. On January 27, 2015, the Agency placed a second telephone call via an interpreter with no answer. A message was left requesting a return call.

8. On January 28, 2015, the Agency placed a third telephone call via an interpreter with no answer. A message was left requesting a return call. To date, you have not returned the Agency's phone calls.

9. On March 9, 2015, your complaint was forwarded to Humana's ADA Director, Dr. Michelle M. Griffin, PhD in the Language Assistance & Alternative Formats Service Department. Dr. Griffin contacted you in order to provide information about Deaf Interpreter Services, Inc.⁴ ("Deaf Interpreter") and to assist you with the arrangement of interpreter services. During this call, you were unable to schedule interpreters because you were unable to provide the dates of your upcoming appointments.

10. On [REDACTED], 2015, you contacted Dr. Griffin from your podiatrist appointment with Dr. [REDACTED] because an interpreter was not scheduled. Dr. Griffin called Deaf Interpreter via a conference call with you, a Video Relay interpreter, and a Deaf Interpreter representative. Deaf Interpreter informed you the interpreter was never scheduled because you did not return the confirmation call. You indicated you understood and your doctor's appointment and interpreter were rescheduled for [REDACTED], 2015. During this call,

⁴ Deaf Interpreter provides nationwide professional, nationally-certified sign language and oral interpreters, video remote interpreting (VRI), and caption/CART services. Deaf interpreter is Humana's designated Sign Language interpretation service provider.

effective communication.⁹ For example, the exchange of notes is considered effective in situations that do not involve substantial conversation like during an appointment for routine blood work or allergy shots.¹⁰

When an interpreter is required for effective communication, the public entity or public accommodation should provide a qualified interpreter. A qualified interpreter does not require certification in order to have the skills necessary to facilitate communication.¹¹ Public entities and public accommodations are entitled to rely on an adult accompanying a disabled person, where the disabled individual specifically requests that the accompanying adult interpret or facilitate communication.¹²

Where a violation has occurred and a public entity takes affirmative steps to investigate and correct non-compliance by contractors/subcontractors, the public entity has provided adequate supervision and, thus, cannot be found to have violated the ADA.¹³

Auxiliary aids and services must be provided by public entities and public accommodations when necessary to disabled individuals, unless they can demonstrate it would fundamentally alter the nature of the goods, services, programs, activities, facilities, advantages, privileges or accommodations being offered or would result in an undue burden.¹⁴ Auxiliary aids and services include the provision of an interpreter depending on the “context in which the communication is taking place, the number of people involved, and the importance of the communication.”¹⁵

You had an appointment with Dr. [REDACTED] on [REDACTED], 2015. Although your Complaint alleges your request for interpretation services was denied, Dr. [REDACTED] has no record of your request. Her office reported that during the appointment she communicated with you in ASL and at no time did you request another interpreter to translate. Further, there is no indication that you were not satisfied with Dr. [REDACTED] ASL fluency.

To demonstrate “deliberate indifference” a plaintiff must show that the provider knew there was a substantial likelihood that he/she would be unable to communicate effectively with the plaintiff “absent an interpreter but still made a ‘deliberate choice’ not to provide one.”¹⁶ During your appointment, you did not indicate you found Dr. [REDACTED] ASL fluency insufficient for effective communication and at no time did you request an alternative interpreter.

⁹ 56 Fed. Reg. 35694-01 (July 26, 1991).

¹⁰ 28 C.F.R. § 35, Appendix A.

¹¹ ADA Technical Assistance Publications, *Revised ADA Requirements: Effective Communication*, U.S. Department of Justice, January 2014; ADA Technical Assistance Publications, *ADA Title III Technical Assistance Manual: Covering Public Accommodations and Commercial Facilities: III-4.3200 Effective Communication*, 1993.

¹² 28 C.F.R. § 35.160 (c)(2)(iii); 28 C.F.R. § 36.303 (c)(3)(ii).

¹³ *Reynolds v. Guiliani*, 506 F.3d 183, 196 (2d Cir. 2007).

¹⁴ 28 C.F.R. § 35.160(b)(1); 28 C.F.R. § 35.164; 28 C.F.R. § 36.303 (a).

¹⁵ ADA Title II Technical Assistance Manual, section II-7.1200; ADA Title III Technical Assistance Manual, section III-4.3200.

¹⁶ *McCullum v. Orlando Regional Healthcare System*, 768 F.3d 1135, 1147-48 (11th Cir. 2014).

Once Humana became aware that you were unsatisfied with the ASL interpretation provided by Dr. [REDACTED], the plan and their providers collaboratively provided a swift response to your request and worked diligently with you to arrange for an interpreter at all of your subsequent doctor's appointments. Humana assigned you a case manager to assist you in arranging for an interpreter when needed for future doctor's visits.

Conclusion

Based on the foregoing, there is no evidence to suggest that you were excluded from or denied the benefit of medical services based on a disability, or that Humana or its providers 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.¹⁷

Sincerely,

Rachel Goldstein
ADA Compliance Officer

¹⁷ 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 to 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.