



RICK SCOTT
GOVERNOR

ELIZABETH DUDEK
SECRETARY

August 17, 2016

[REDACTED]
[REDACTED]
[REDACTED]

VIA CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

Re: Letter of Findings in response to ADA Complaint No. 16-003

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, received on June 10, 2016 (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 June 6, 2016, you filed a disability discrimination complaint with the Agency which alleges that on an unspecified date, your home health care provider, [REDACTED] [REDACTED] a provider contracted with Sunshine State Health Plan d/b/a Centene Corporation, began to enforce a policy which required you to provide a second person to assist your [REDACTED] home health nurse with Hoyer lift transfers to and from the bed to wheelchair. The Complaint also alleges that since you were unable to hire or otherwise make arrangements for a

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.



second person to assist with lifts, [REDACTED] required you to sign a release of liability form, should you fall or become injured during a transfer.

2. At all times relevant, you have been enrolled with Sunshine State Health Plan ("Sunshine") as your statewide Medicaid Managed Care Assistance plan.

3. On June 10, 2016, the Complaint was received by the Agency.

4. On July 7, 2016, Sunshine advised the Agency that Sunshine staff, including your case manager, were making a visit to your home to assess your needs.

5. On July 11, 2016, the Agency received an update from Sunshine indicating that during the visit to your home, you requested a second aide to assist the [REDACTED] nurse with transfers twice daily and that the request was currently being reviewed for approval by Utilization Management and Medical Director.

6. On July 20, 2016 Sunshine advised the Agency that on July 12, 2016, the Medical Director approved an additional 28 hours per week (2 hours, 2 times per day, 7 days per week) to provide an aide to assist with Hoyer lift transfers. However, because [REDACTED] was unable to staff the additional aide, Sunshine was experiencing difficulty arranging an alternate provider.

7. On August 5, 2016, Sunshine informed the Agency that they were able to staff the additional aide with the home health care provider [REDACTED]. Sunshine indicated that the approved additional hours began on August 4, 2016, for 2 hours, 2 times per day, 7 days per week to assist the [REDACTED] nurse with Hoyer lift transfers.

8. The resolution process implemented by Sunshine proved successful in that you were provided the additional services required to perform the Hoyer lift transfers to and from the bed to wheelchair.

9. Lastly, the Complaint alleges that since you were unable to provide a second person to assist with lifts, [REDACTED] required you to sign a release of liability form should you fall or become injured during a transfer. I have determined I am unable to conduct an ADA investigation of this [REDACTED] policy because it is beyond the scope of my authority.⁴ However, I referred this matter to the Agency's Division of Health Quality Assurance ("HQA") to investigate whether the facts alleged in your Complaint constitute a violation of current facility regulations. For further questions regarding the status of this investigation, you may contact Kim Smoak in the Bureau of Field Operations at (850) 412-4516.

Conclusions of Law

Public entities and public accommodations are required to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the entity can demonstrate that the modifications would fundamentally alter the nature of the service, program, or activity or cause an undue financial or

⁴ 28 C.F.R. § 35.172.

administrative burden.⁵ The type of modification that is required to ensure equal access is determined on a case-by-case basis depending on the individual and the nature, length, and complexity of the modification requested.

The term “*undue burden*” means significant difficulty or expense. Factors to be considered include:

- (1) The nature and cost of the modification needed;
- (2) The overall financial resources of the site(s) involved in the modification; the number of employees at the site; the effect on expenses and resources; legitimate safety requirements that are necessary for safe operation; or the impact of the modification upon the operation of the site;
- (3) The geographic separateness, and the administrative or fiscal relationship of the site or sites to any parent corporation or entity;
- (4) The overall financial resources and size of any parent corporation or entity; the number, type, and location of its facilities; and
- (5) The type of operation(s) of any parent corporation or entity, including the composition, structure, and functions of the workforce.⁶

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.⁷

In your case, Sunshine initiated a collaborative resolution approach to manage your reasonable modification request. Sunshine staff consulted with you in your home about your request and worked diligently to fulfill that request. Sunshine ultimately approved the additional hours required and was able to staff the aide position using the home health care provider, [REDACTED]

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 Sunshine or its providers failed to accommodate your reasonable modification request for an additional aide 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.⁸

Sincerely,

Rachel Goldstein
ADA Compliance Officer

⁵ 28 C.F.R. § 35.130.

⁶ 28 C.F.R. § 36.104.

⁷ *Reynolds v. Giuliani*, 506 F.3d 183, 196 (2d Cir. 2007).

⁸ 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.