

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. _____

COLORADO CROSS-DISABILITY COALITION, a Colorado non-profit Corporation, and
DAISY MIDTHUN,

Plaintiffs,

v.

HCA - HEALTHONE LLC d/b/a SWEDISH MEDICAL CENTER.

Defendant.

COMPLAINT

Plaintiffs, Colorado Cross-Disability Coalition and Daisy Midthun, by and through their attorneys, Kevin W. Williams of the Colorado Cross-Disability Coalition Legal Program, hereby submit this Complaint for violations of Title III of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12181 *et seq.*, the Colorado Civil Rights Act (“CCRA”), Colo. Rev. Stat. § 24-34-601 *et seq.*, and Section 504 of the Rehabilitation Act (“Section 504”).

INTRODUCTION

1. Almost twenty years after the passage of the ADA, Defendant, HCA-Healthone LLC, which does business as Swedish Medical Center in Englewood, Colorado (“SMC”), refused to provide one of its patients, Daisy Midthun, who is deaf, with a sign language interpreter during her stay at SMC, denying her effective communication.

2. The federal Americans with Disabilities Act (“ADA”) was enacted in 1990, “[t]o establish a clear and comprehensive prohibition of discrimination on the basis of disability.”

3. The ADA, Section 504 and the CCRA prohibit health care providers from discriminating on the basis of disability.

4. Specifically, health care providers must provide individuals who are deaf with auxiliary aids and service, such as sign language interpreters, that provide “effective communication.”

5. Defendant failed to provide Plaintiff with qualified sign language interpreters during times when she needed important health care information communicated, denying her effective communication.

6. Plaintiff Midthun and Plaintiff Colorado Cross-Disability Coalition (“CCDC”) seek an injunction ordering Defendant to provide qualified sign language interpreters, damages as permitted by law, and the recovery of their reasonable attorneys’ fees and costs.

JURISDICTION

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343 and pursuant to its pendent jurisdiction over claims brought under the laws of the State of Colorado.

8. Venue is proper within this District pursuant to 28 U.S.C. § 1391.

PARTIES

9. Colorado Cross-Disability Coalition (“CCDC”) is a Colorado non-profit corporation whose members are persons with disabilities and their non-disabled allies.

10. Daisy Midthun is deaf and, therefore, is substantially limited in the major life activity of hearing. Ms. Midthun is a CCDC member.

11. Defendant HCA-Healthone LLC is a limited liability company with its principal place of business in Colorado located at 4900 South Monaco Street, Suite 380, Denver , CO 80237. Defendant's min offices are located at 2501 Park Plaza, Nashville, Tennessee 37203. Defendant conducts business as Swedish Medical Center ("SMC"), the name of a hospital and medical facilities, located at 501 East Hampden Avenue, Englewood, CO 80113.

GENERAL ALLEGATIONS

12. On September 5, 2009, Ms. Midthun was admitted to the SMC emergency room as the result of injuries sustained during an automobile accident.

13. Prior to her arrival at SMC, Ms. Midthun requested that the emergency responders contact SMC and request a qualified sign language interpreter be available upon her arrival.

14. Upon arrival at the emergency room, Defendant did not provide Ms. Midthun with a qualified sign language interpreter.

15. When no qualified sign language interpreter was provided, Ms. Midthun requested that Defendant provide a qualified sign language interpreter.

16. Defendant's staff were aware Ms. Midthun is deaf.

17. Defendant's staff were aware of Ms. Midthun's request for a qualified sign language interpreter.

18. Defendant's staff relied on a West Metro Denver Fire Department employee to interpret when Ms. Midthun arrived at SMC.

19. The West Metro Denver Fire Department employee was not qualified to provide effective communication for Ms. Midthun.

20. Defendant's staff refused to provide a qualified sign language interpreter.

21. Defendant's staff denied Ms. Midthun effective communication.

22. Ms. Midthun was admitted to SMC overnight.

23. During her stay, SMC conducted several medical procedures.

24. At no time did SMC provide Ms. Midthun with a qualified sign language interpreter or effective communication.

25. Defendant claims it has policies in place regarding the provision of qualified sign language interpreters.

26. Defendant claims it has contracts with sign language interpreting agencies to contact when a deaf patient arrives at SMC.

27. Defendant's staff did not contact a sign language interpreting agency to request an interpreter for Ms. Midthun.

28. CCDC is a membership organization having members who have disabilities, including members who are deaf, throughout the state of Colorado.

29. The interests at stake in this litigation are germane to CCDC's mission and purpose -- eradicating discrimination against individuals with disabilities.

30. The participation of individual CCDC members in the lawsuit is not required either to resolve the claims at issue or to formulate relief.

31. Defendant engages in policies, practices and procedures that do not provide effective communication for patients who are deaf.

FIRST CLAIM FOR RELIEF
(Violations of the Americans with Disabilities Act)

32. Plaintiffs reallege and reincorporate by reference the remainder of the allegations

set forth in this Complaint as if fully set forth herein.

33. Defendant owns and operates SMC.

34. SMC is a public accommodation under 42 U.S.C. § 12181(7)(F).

35. Defendant is required to provide its patients with auxiliary aids and services, which includes qualified sign language interpreters, for individuals who are deaf. 28 C.F.R. § 36.303.

36. A “qualified interpreter” means an interpreter who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary. 28 C.F.R. § 36.104. This definition focuses on the actual ability of the interpreter in a particular interpreting context to facilitate effective communication between the public accommodation and the individual with disabilities. 28 C.F.R., pt. 36, app A.

37. Defendant is required to take steps to ensure that communication with its deaf patients is effective. 28 C.F.R. § 36.303(d).

38. Defendant failed to furnish appropriate auxiliary aids and services to ensure communication with Ms. Midthun was effective.

39. Defendant will fail to furnish appropriate auxiliary aids and services in the future to ensure communication with Ms. Midthun was effective.

40. Defendant will not provide appropriate auxiliary aids and services to patients who are deaf in the future unless this Court orders Defendant to provide qualified sign language interpreters to patients who are deaf.

41. Plaintiffs have been harmed and, in the future, will be harmed in the absence of the relief requested.

SECOND CLAIM FOR RELIEF

(Violation of the Colorado Civil Rights Act “CCRA,” Colo. Rev. Stat. § 24-34-601, *et seq.*)

42. Plaintiffs reallege and reincorporate by reference the remainder of the allegations set forth in this Complaint as if fully set forth herein.

43. Under the CCRA,

It is a discriminatory practice and unlawful for a person, directly or indirectly, to refuse, withhold from, or deny to an individual or a group, because of disability . . . , the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation[.]

Colo. Rev. Stat. § 24-34-601(1).

44. SMC is a “place of public accommodation” under the CCRA. Colo. Rev. Stat. § 24-34-601(1).

45. Any person who violates the CCRA “shall forfeit and pay a sum of not less than fifty dollars nor more than five hundred dollars to the person aggrieved thereby” Colo. Rev. Stat. § 24-34-602(1). “Upon finding a violation, the court shall order the defendant to pay the fine to the aggrieved party.” Colo. Rev. Stat. § 24-34-602(1).

46. Defendant owns and operates SMC and employs the individuals about whose actions Plaintiffs complain in this lawsuit.

47. Defendant is liable for the failures to comply with the CCRA.

48. The CCRA is to be construed consistently with the ADA and other federal civil rights statutes. 3 Colo. Code. Reg. 708.60.1(c).

49. As set forth in this Complaint, Defendant has violated the CCRA by failing to provide Ms. Midthun with effective communication and is likely to deny her and other patients who are deaf effective communication.

50. Defendant's violations of the CCRA have harmed Plaintiffs and will continue to harm Plaintiffs unless the Court orders Defendant to comply.

51. Plaintiffs have been damaged and will continue to be damaged by Defendant's violations of the CCRA.

THIRD CLAIM FOR RELIEF

(Violation of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 *et seq.*)

52. Plaintiffs reallege and reincorporate by reference the remainder of the allegations set forth in this Complaint as if fully set forth herein.

53. Section 504 prohibits discrimination against individuals with disabilities by entities that receive federal financial assistance. 29 U.S.C. § 794(a).

54. Defendant receives federal financial assistance.

55. For the reasons set forth in this Complaint, Defendant discriminated against Plaintiffs and will continue to discriminate against Plaintiffs unless the relief granted is requested.

56. Plaintiffs have been harmed and will continue to be harmed by Defendant's actions unless this Court orders Defendant to comply.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully pray:

1. That this Court assume jurisdiction;
2. that this Court issue an injunction ordering Defendants to comply with the ADA, the CCRA and Section 504;
3. that this Court award monetary damages to Plaintiffs to the maximum extent permitted;

4. that this Court award reasonable attorneys' fees and costs; and
5. that this Court award such additional or alternative relief as may be just, proper and equitable.

JURY DEMAND: Plaintiffs demand a jury on all issues which can be heard by a jury.

Dated: July 12, 2010

Respectfully submitted,

/s Kevin W. Williams
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