



STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO. PP24PD-64142

H.O.,)
)
)
Complainant,)
)
)
v.)
)
)
Morristown Memorial Hospital,)
)
)
Respondent.)

Administrative Action

FINDING OF NO PROBABLE CAUSE

On September 3, 2013, H.O.¹ (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that he was prevented from visiting his mother when she was a patient in the Morristown Memorial Hospital (Respondent) because he was accompanied by his service dog, in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -42. Respondent denied the allegations of discrimination in their entirety. DCR investigated the matter and, for purposes of this disposition only, the Director hereby finds as follows.

Summary of Investigation

Complainant is a California resident who claims that his twelve pound poodle, Emma, is trained to notify him each day at 8 a.m. and 8 p.m., to take his daily medication for a disability and to recognize when he is becoming anxious so that he can take psychotropic medication (prescribed on an "as needed" basis). Complainant stated that he personally trained Emma to perform those tasks.

¹ A pseudonym is used to protect Complainant's privacy because this disposition discusses his medical information.

On July 4, 2013, Complainant was in New Jersey visiting his mother when she began complaining of severe pain. Complainant took his mother to Respondent's emergency room (ER) where, he alleges, the security guard told him that he had to remain in the lobby with the dog. Complainant told DCR that despite those instructions, he walked into the ER, found his mother, and stayed at her bedside where the attending nurse told him that dogs were not allowed. He did not heed the nurse's instruction and remained with his mother. He wrote, "Eventually, two managers came it [sic] the area and to my moms [sic] bedside, Irene, a Nursing Supervisor, and Patricia Russell, a Clinical Supervisor." See Email from Complainant to DCR, Nov. 12, 2013. He told the supervisors that Emma was a "trained service dog and that Federal law permitted her to remain with me." Ibid. He showed Russell an "Assistance Dog Tag" issued by the Animal Care & Control Department of the City and County of San Francisco as evidence that his dog was recognized as a service animal. Ibid. He wrote that Russell asked him questions about his "personal plan," the dog, its health status and credentials, and told Complainant that he needed to obtain a "vet's clearance," but never forced him to leave his mother's bedside where he stayed for what he estimated to be nine hours. Ibid. He wrote that at one point, a "nurse manager named Becky" told him:

that Emma could be I [sic] the hospital and travel freely with me to any public space. This was most likely well into the second or third hour of the ER visit. I remained there with my mom for nine hours. My mom was admitted to the hospital and remained an in-patient for five days. I returned to the hospital with Emma without further incidents in the in-patient ward.

Ibid. As set forth above, Complainant visited his mother in the hospital for the remainder of her five-day stay "without further incidents." Ibid.

Three months after filing the verified complaint, Complainant told DCR that a second incident occurred. He alleged that on December 3, 2013, his mother returned to the same hospital for in-patient surgery. Complainant alleged that after his mother was prepared for the surgical procedure, the receptionist stated that although family members could visit patients in the "pre-op" unit, dogs were not permitted. He wrote that after explaining his situation, he was "escorted into

the unit by a receptionist but told by nurses (in scrubs) that dogs were not permitted.” See Email from Complainant to DCR, Dec. 3, 2013. He wrote that he was “escorted out of the unit and back to the waiting room” where “another staff dressed in scrubs” asked him questions about the dog. Ibid. He wrote that the woman in scrubs disappeared but returned after a few minutes and told him that he could visit with his mother for five minutes. Complainant alleged, “My father and sister had been visiting with my mom approximately 30 minutes by then.” Ibid. Complainant alleged that in both instances, the delay and unwarranted questions about his service dog amounted to disability discrimination.

Respondent denied the allegations of discrimination in their entirety. It produced a copy of its written administrative policy, which states that service animals, as defined by the Americans with Disabilities Act (ADA), are permitted in all areas of the facility “unless a fundamental alteration would result or safe operation would be jeopardized.” In responding to the verified complaint, Respondent did not argue that Complainant’s dog would jeopardize the hospital’s operations in any way. Rather, it argued that because Complainant was ultimately allowed to stay with his mother while accompanied by the dog, he was “not unlawfully denied access.” See Letter from Richard W. Schey, Esq., Nov. 8, 2013.

a. Service Animal

Complainant contends that because he was accompanied by a service dog, Respondent was required to give him full access to its ER on July 4, 2013, and its pre-surgical areas on December 3, 2013. It necessarily follows that the threshold issue is whether Complainant’s poodle qualifies as a service dog. The LAD generally defines “service dog” as “any dog individually trained to the requirements of a person with a disability including, but not limited to minimal protection work, rescue work, pulling a wheelchair retrieving dropped items.” N.J.S.A. 10:5-5dd. The LAD applies more restrictions when discussing access to public facilities. For instance, the dog must be “trained by a recognized training agency or school” and kept in the “immediate custody at all times” of the person whom it is servicing. N.J.S.A. 10:5-29. In particular, the LAD states:

Any person with a disability accompanied by service or guide dog trained by a recognized training agency or school is entitled, with his dog, to the full and equal enjoyment, advantages, facilities and privileges of all public facilities, subject only to the following conditions:

- a. A person with a disability, if accompanied by a service or guide dog, shall keep such dog in his immediate custody at all times;
- b. A person with a disability accompanied by a service or guide dog shall not be charged any extra fee or payment for admission to or use of any public facility;
- c. A person with a disability who has a service or guide dog in his possession shall be liable for any damages done to the premises of a public facility by such dog.

[N.J.S.A. 10:5-29]

There is a corresponding New Jersey regulation that prohibits a place of public accommodation from discriminating against a person with a disability who is accompanied by a service dog. N.J.A.C. 13:13-4.3(c). That regulation states the dog must be “specially trained by a service animal trainer as defined in the LAD.” Ibid. (referencing N.J.S.A. 10:5-5t, which defines “service dog trainer” as a “person who is employed by an organization generally recognized by agencies involved in the rehabilitation of persons with disabilities as reputable and competent to provide dogs with training”).

Here, it is undisputed that Complainant’s dog was not trained by a recognized training agency or school. Complainant maintained during the investigation that Emma was an authorized service dog and, to support that contention, he produced the same dog tag issued by the Animal Care & Control Department of the City and County of San Francisco, which he presented to Respondent. He also produced the accompanying application.

DCR contacted the San Francisco Animal Care & Control Department. A supervisory official told the DCR investigator that the tag was never intended to suggest that its bearer was a service animal within the meaning of the ADA. The official stated that the agency does not require dogs to be trained as a condition of receiving the tag. In fact, the official stated, many of the animals who receive Assistance Dog Tags are actually untrained. The official stated that all

persons who receive the tags are told that the tags do not somehow transform their pets into service animals. In view of the above, the investigation found no merit to Complainant's assertion that his pet qualified as a service dog for purposes of N.J.S.A. 10:5-29, during the relevant time period.

b. Failure to Provide a Reasonable Accommodation

Although not expressly pled in his verified complaint, Complainant stated during the course of this matter that the conduct also amounted to a denial of a reasonable accommodation. See N.J.A.C. 13:13-4.11 (requiring places of public accommodation to make "reasonable modifications in policies, practices, or procedures, as may be required to afford goods, services, facilities, privileges, advantages, or accommodations to a person with a disability" unless making the accommodation would impose an undue burden on its operation). See generally Ellison v. Creative Learning Ctr., 383 N.J. Super. 581 (App. Div. 2006).

That contention is not supported by the investigative findings. Even assuming for the moment that there was credible evidence that the dog assisted Complainant by alerting him when to take his medications, it is undisputed that Respondent granted Complainant's requested accommodation, i.e., direct access to his mother in some very sensitive areas of the hospital while accompanied by his dog. In the July incident, Complainant was initially stopped by the guard in the lobby but nonetheless walked to his mother's bedside with the dog where he was allowed to stay for nine hours that day, and then had full access to her for the remainder of her stay, which he claimed to be five days. In the December incident, Complainant was permitted to take his dog to visit his mother despite the hospital's initial concerns about allowing a dog in the pre-surgical area.

At the conclusion of an investigation, the DCR Director is required to determine whether "probable cause exists to credit a complainant's allegations of the verified complaint." N.J.A.C. 13:4-10.2. For purposes of that determination, "probable cause" is defined as a "reasonable ground for suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person to believe" that the LAD was violated and that the matter should proceed to

hearing. Ibid., Frank v. Ivy Club, 228 N.J. Super. 40, 56 (App. Div.1988), rev'd on other grounds, 120 N.J. 73 (1990), cert. den., 111 S.Ct. 799. If the Director determines that there is probable cause, then the complaint will proceed to a hearing on the merits. N.J.A.C. 13:4-11.1(b). However, if the Director finds there is no probable cause, then that finding is deemed a final agency order subject to review by the Appellate Division. N.J.A.C. 13:4-10.2(e); R. 2:2-3(a)(2).

Here, the premise underlying Complainant's allegation—i.e., that his dog is a service dog for purposes of N.J.S.A. 10:5-29—has not been substantiated. Moreover, Complainant was reasonably accommodated, as he was allowed to visit his mother in the hospital accompanied by his dog. Thus, the investigation could not substantiate Complainant's allegations of disability discrimination under the LAD.²

THEREFORE, it on this 27th day of FEB. 2014, hereby determined and found that no probable cause exists to credit Complainant's allegations of discrimination.



Craig Sashihara, Director
NJ DIVISION ON CIVIL RIGHTS

² DCR does not have jurisdiction to enforce the ADA and thus takes no position as to whether the alleged conduct violates that federal statute. DCR notes that a guidance document published by the U.S. Department of Justice states that a dog whose sole function is to provide comfort or emotional support does not qualify as a service animal under the ADA.