



By First Class Mail & Fax: (620) 793-1885

April 18, 2014

Sheriff Brian J. Bellendir
Barton County Sheriff's Office
1416 Kansas Ave
Great Bend, KS 67530

Re: Failure to Accommodate Inmate with a Disability
Our File No.: 14-6465

Dear Sheriff Bellendir:

I am writing on behalf of Suzanne Witten. Ms. Witten has been incarcerated in the Barton County Jail since July 2013. She has post-polio syndrome, one of the symptoms of which is increased muscular weakness. As a result, Ms. Witten must wear a leg brace in order to stand and walk without falling. The purpose of her brace is to prevent foot-drop. If her brace is broken, it does not function properly, and Ms. Witten tends to trip when she walks.

One of the leg braces Ms. Witten brought with her to the jail tore about seven months ago. Although a hospital nurse tried to fix the tear with duct tape, the brace does not provide Ms. Witten with adequate support and stability. In fact, since October 2013, Ms. Witten has fallen at least several times. Some of those falls occurred in the shower, and at least three of those falls were so severe that the jail transported Ms. Witten to the emergency room for X-rays and CT scans.

Ms. Witten has requested that the jail provide her with several reasonable accommodations so that she can participate in normal jail life despite her disability. First, she has asked the jail to allow her to fill her prescription for a new brace at the Hanger Orthotics in Hutchinson, Kansas, but jail staff have refused to transport Ms. Witten to Hutchinson to have her fitted for a new brace. Second, Ms. Witten also requested a shower chair and non-slip shower mat. The jail initially granted that request but then took the shower chair away about a week later because another inmate needed it. Third, Ms. Witten has requested that she be allowed to use a wheelchair. The jail provided Ms. Witten with a wheelchair for a few days, but the jail then gave the wheelchair to another inmate who is an amputee. Ms. Witten has exhausted the jail's grievance procedures with respect to at least some of her requests for reasonable accommodations.

Title II of the Americans with Disabilities Act (ADA) applies to state prisons and county jails. *See Pennsylvania Department of Corrections v. Yeskey*, 118 S. Ct. 1952 (1998) (prisons); *Robertson v. Las Animas County Sheriff's Dept.*, 500 F.3d 1185, 1193 (10th Cir. 2007) (county jails). With respect to an individual, the ADA defines "disability" as "a physical or mental impairment that substantially limits one or more of the major life activities." 42 U.S.C. § 12102(2)(A). "The ADA requires more than physical access to public entities: it requires

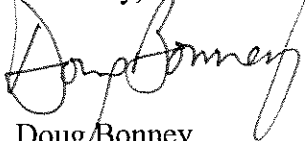
public entities to provide ‘meaningful access’ to their programs and services.” *Robertson*, 500 F.3d at 1196. *See also Alexander v. Choate*, 469 U.S. 287, 301 (1985) (Rehabilitation Act of 1973 also requires “meaningful access”). “To state a claim under Title II [of the ADA], the plaintiff must allege that (1) he is a qualified individual with a disability, (2) who was excluded from participation in or denied the benefits of a public entity’s services, programs, or activities, and (3) such exclusion, denial of benefits, or discrimination was by reason of a disability.” *Id.* at 1193. Exclusion can be established by showing disparate treatment, disparate impact, or a failure to make reasonable accommodation.

First, there is no question that Ms. Witten has a disability within the meaning of the federal disability statutes since her post-polio syndrome substantially limits her ability to walk. *See Lowe v. Indep. Sch. Dist. No. 1*, 363 Fed. Appx. 548, 2010 U.S. App. LEXIS 1570, 22 Am. Disabilities Cas. (BNA) 1634 (10th Cir. Okla. 2010) (post-polio syndrome concededly a disability). *See also Soc. Sec. Rul. 03-1p*, 68 Fed. Reg. 39,611 (2003) (post-polio syndrome is a disability for purposes of Social Security benefits). Second, it is clear that, by denying Ms. Witten’s requests for a shower chair, shower mat, wheelchair, and replacement leg brace, the jail is violating her right to a reasonable accommodation of her disability. Third, denying Ms. Witten such reasonable accommodations is denying her meaningful access to the programs in the jail, including – among other things – the ability to safely take showers. *See Casarez v. County of San Benito*, 2006 U.S. Dist. LEXIS 2581 (N.D. Cal. Jan. 12, 2006) (disabled plaintiff with prosthetic leg alleged triable issue as to whether prison authorities offered adequate accommodations in shower facilities). Specifically, Ms. Witten is still using a broken, duct-taped leg brace that does not provide her with adequate support to allow her to walk without falling. In fact, because of the jail’s failure to accommodate her disability, she has suffered numerous falls and trips to the emergency room while she has been in the jail.

The jail should immediately allow Ms. Witten to obtain new braces and should provide her with a shower chair, a non-slip shower mat, and a wheelchair. The ADA and Section 504 of the Rehabilitation Act of 1973 require the jail to provide these reasonable accommodations for Ms. Witten’s disability. If Ms. Witten has not received these devices within ten days of the date of this letter, we will consider filing suit against Barton County seeking all available remedies including but not limited to a preliminary injunction, a permanent injunction, monetary damages, and attorney fees.

Feel free to contact me if you have any questions about these requests.

Sincerely,



Doug Bonney
Legal Director
Direct Dial: (816) 994-3311

cc: Suzanne Witten