

Gause, John P

From: Gause, John P
Sent: Tuesday, January 19, 2010 2:37 PM
To: Lelli, Barbara
Cc: Ryan, Patricia
Subject: RE: services of a personal nature
 Barb,

I think Respondent cannot rely on the “services of a personal nature” exception here.

The exception in our regulation mirrors the exception in the DOJ Title III regulation, and the interpretive discussion in the Title III regulations lists two scenarios in which services are not “services of a personal nature”: “measures taken as alternatives to barrier removal” and “minimal actions that may be required as modifications in policies, practices, or procedures.” 28 C.F.R. § 36.306, App. Here, lifting Complainant’s legs into the taxi is both an alternative to barrier removal (e.g., if the taxi were a van with a lift, Complainant would not need her legs lifted) and a minimal action (it only takes a moment and is not difficult to do, and it does not seem materially different from what taxi drivers routinely do for other customers, e.g., giving an elderly person a hand).

I could not find any cases directly on point. The one case that seemed the closest was a case in which, without much discussion, the court held that an emergency glucagon injection for a child with Type I Diabetes was not “services of a personal nature” under a similar provision in the DOJ Title II regulations. *See AP ex rel. Peterson v. Anoka-Hennepin Independent School Dist. No. 11*, 538 F.Supp.2d 1125, 1152 (D.Minn. 2008).

John

From: Lelli, Barbara
Sent: Tuesday, January 05, 2010 9:08 AM
To: Gause, John P
Subject: services of a personal nature

Hi John,

I have a case involving a Complainant with Parkinson’s disease and Multiple Sclerosis. Her limitations vary day to day. She uses a cane sometimes, but not always. She can walk to and seat herself in the cab. She needs the cab driver to lift her feet in and out of the vehicle. Is a taxi service required to lift her feet into the cab?

The regulation reads:

Me. Human rights Comm’s Reg. Ch. 7, § 7.20 Personal Devices and Services

This Chapter does not require a public accommodation to provide its customers, clients, or participants with personal devices, such as wheelchairs; individually prescribed

devices, such as prescription eyeglasses or hearing aids; or *services of a personal nature* including assistance in eating, toileting, or dressing. [Emphasis added.]

Complainant states that lifting her legs into the cab is “minor assistance” similar to retrieving items from shelves, or providing curbside service or home delivery, or cutting food into smaller pieces, or filling out a bank slip (examples that are provided in the ADA Title III Technical Assistance Manual). However, none of the examples cited in the ADA Manual involve touching or moving the body of the person with disabilities.

Complainant also states that it is customary for taxi companies to provide some physical assistance to passengers. But if lifting a person’s legs is a service of a personal nature, it doesn’t matter whether some taxis voluntarily agree to do so.

Thanks for your input.

Barbara Lelli
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