ADA suit over city shelters gets OK

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Franklin U. Valderrama

The city of Chicago can't evade a disability-discrimination suit brought by a woman who alleges emergency shelters are not accessible, a federal judge held Wednesday.

In a written opinion, U.S. District Judge Franklin U. Valderrama declined to throw out Gloria Carter's lawsuit accusing the city of violating the Americans with Disabilities Act and the Rehabilitation Act.

The city operates an emergency shelter program for people facing homelessness. To get a bed through the program, a person may either call 311 or go to a hospital or police station and have the staff place the call.

The person seeking shelter then remains in place until an agency delegated by the city arrives and takes him or her to a facility.

Carter became homeless about three years ago. She has osteoarthritis, which limits her mobility and requires her to use a walker.

Garden Mission shelter in the South Loop.

Carter alleges she waited for the van from 3 p.m. until it showed up between 1:30 a.m. and 2 a.m. the next day.

The driver helped her put her walker in the van, but would not help her get into the vehicle, Carter alleges.

She alleges the driver said he would have to leave her behind if she could not get in the van without any help. The driver also told her Catholic Charities did not have an accessible van and that she would have to climb about 13 steps to get into Pacific Gardens, Carter alleges.

The driver left without her, Carter says.

A couple days later, she says, she got a bed at Sarah's Circle, an accessible shelter in Uptown she found on her own.

Carter filed her suit in February 2020.

The suit seeks a declaration that the way the city operates its emergency shelter program runs afoul of the ADA and Rehabilitation Act by not making the program accessible to people with mobility disabilities.

The suit also asks for an injunction requiring the city to make the program accessible and to provide funds to organizations that will help reach that goal.

The city filed a motion in June 2020 asking Valderrama to dismiss Carter's suit.

In his opinion, Valderrama rejected the city's argument that Carter lacks standing under Article III of the U.S. Constitution to seek declaratory or injunctive relief.

Parties have standing if they suffered "an actual or imminent, concrete and particularized injury-in-fact" and show there is a "causal connection" between the injury and the defendant's actions, Valderrama wrote, quoting *Bryant v. Compass Group USA Inc.*, 958 F.3d 617 (7th Cir. 2020), as amended on denial of reh'g and reh'g en banc (June 30, 2020).

Also, he wrote, quoting *Bryant*, "there must be a likelihood that this injury will be redressed by a favorable decision."

And plaintiffs who are seeking declaratory or prospective injunctive relief must demonstrate they face a "real and immediate threat of injury" and not just a threat that is "conjectural" or "hypothetical," Valderrama wrote, quoting *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983).

Carter, he wrote, maintains she faced an immediate threat of homelessness when she filed her suit.

Carter says Sarah's Place allows residents to stay only six months and that her six months were up the day after she filed her suit against the city, Valderrama wrote.

"In order to recovery compensatory damages under the ADA or Rehabilitation Act, a plaintiff must allege intentional discrimination, which can be established by a showing of deliberate indifference," Valderrama wrote, quoting *Lacy v. Cook County*, 897 F.3d. 847 (7th Cir. 2005).

Plaintiffs can establish deliberate indifference, he wrote, by showing the defendant "knew that a harm to a federally protected right was substantially likely" and "failed to act on that likelihood."

Plaintiffs pursing an action under the ADA or Rehabilitation Act entity can establish the public entity's knowledge by showing they told the entity they needed an accommodation or showing that "the need for accommodation is obvious or required by statute or regulation," Valderrama wrote, quoting *Reyes v. Dart*, 2019 WL 1897096 (N.D. Ill. Apr. 29, 2019).

He wrote Carter did not make that showing.

"Carter does not allege that at the time the call was placed on her behalf to the [c]ity, the [c]ity was alerted that it needed to dispatch an accessible van," Valderrama wrote.

He dismissed Carter's claim for compensatory damages without prejudice, clearing the way for her to replead it.

The case is *Gloria Carter v. City of Chicago*, No. 20 C 1083.

The lead attorneys for Carter are Robert N. Hermes and Samuel Gamer, both of Porter, Wright, Morris & Arthur LLP.

"Ms. Carter is pleased with the decision and looks forward to continuing her efforts to make the City of Chicago's emergency shelter program accessible to individuals with disabilities," Hermes said in a statement.

The lead attorney for the city is Assistant Corporation Counsel Andrew S. Mine.

"The court reviewed various threshold issues and made preliminary determinations in the city's favor," Law Department spokesman Isaac Reichman said in a statement.

He declined to comment further because the case is in litigation.