



DEPARTMENT OF HEALTH & HUMAN SERVICES

Voice - (212) 264-3313, (800) 368-1019
TDD - (212) 264-2355, (600) 537-7697
(FAX) - (212) 264-3039
<http://www.hhs.gov/ocr/>

OFFICE OF THE SECRETARY

Office for Civil Rights, Region II
Jacob Javits Federal Building
26 Federal Plaza, Suite 3312
New York, NY 10278

APR - 7 2010

Ms. Marsha Squires
Executive Director
Ramapo Manor Center for Rehabilitation and Nursing
30 Cragmere Road
P.O. Box 248
Suffern, New York 10901

Transaction Number: 09-92337

Dear Ms. Squires:

The Office for Civil Rights (OCR) has completed its investigation of the complaint filed by [REDACTED] (the complainant), alleging that Ramapo Manor Center for Rehabilitation and Nursing ("Ramapo") engaged in unlawful discrimination on the basis of disability. Specifically, the complainant alleges that Ramapo denied her brother [REDACTED] admission because of his disability (deaf).

LEGAL AUTHORITY

Our investigation was conducted under the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 (Section 504), and its implementing regulation, found at 45 C.F.R. Part 84, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance. As a recipient of Federal financial assistance through its participation in Title XIX of the Social Security Act (Medicare and Medicaid), Ramapo is obliged to comply with Section 504 and 45 C.F.R. Part 84.

The purpose of this investigation was to determine whether Ramapo discriminated against [REDACTED] by denying him admission into Ramapo because of his disability (deaf). Based on the results of our investigation, we conclude that Ramapo violated Section 504 and 45 C.F.R Part 84. A summary of our findings and basis for our conclusion are below.

FACTUAL BACKGROUND

██████████ is a 54 year old incomplete quadriplegic¹ male who is deaf. He uses American Sign Language (ASL) as his primary means of communication and does not effectively communicate through other means.

Ramapo is a 203-bed nursing facility that cares for long-term chronically ill patients as well as short-term post acute rehabilitative patients. The services provided by Ramapo include physical, occupational and speech therapies, complex medical care, cardiac rehabilitation, pain management, short term rehabilitation, stroke rehabilitation and total joint replacement rehabilitation.

On ██████████ 2008, ██████████ was admitted to Nyack Hospital (“Nyack”) for treatment of injuries he sustained from a fall. The following day, after being deemed eligible by Nyack for discharge, he was referred by his assigned Nyack case manager to Ramapo for in-patient rehabilitation services.

According to the complainant, on ██████████ 2008, after Nyack referred ██████████ to Ramapo, Ramapo’s Admissions Director telephoned her and informed her that ██████████ was accepted for admission. The complainant states that during the call, she informed Ramapo that ██████████ was deaf and requested that Ramapo ensure that an ASL interpreter be present on the date of his scheduled arrival, ██████████, 2008, for the purpose of facilitating communication with him. The complainant states that after informing the Admissions Director of this, she was told that Ramapo could not provide an interpreter and that it would be the family’s responsibility to provide or pay for an interpreter. She states that upon her insistence that Ramapo provide the interpreter, she was told that a bed was no longer available for ██████████

Ramapo’s representatives assert that on ██████████, 2008, a Nyack case manager called Ramapo’s Admissions Director and requested admission for ██████████. In connection with the request, the case manager provided Ramapo ██████████ medical documentation, including his patient review instrument and nursing notes. The Admissions Director asserts that thereafter, she and Ramapo’s Nursing Director reviewed the documentation and determined that Ramapo could satisfy ██████████ medical needs. The Admissions Director states that she subsequently contacted the case manager and the complainant to inform them that Ramapo was accepting ██████████ for admission.

¹ A person with incomplete quadriplegia may be able to move one limb more than another. “Common Questions about Spinal Cord Injury”, <http://www.spinalcord.org> (collected 11/30/09)

The Admissions Director acknowledges that during the [REDACTED], 2008 telephone call, the complainant informed her that [REDACTED] required a sign language interpreter for communication. She states that prior to the conversation with the complainant, she was unaware that Ramapo would be required to provide an interpreter because, she believed, based on documentation provided by Nyack, that the complainant would provide interpretation assistance. She also states that she thought that [REDACTED] could communicate through writing. The Admissions Director admits that after being informed that the complainant would not provide interpretation assistance, she informed the complainant that there was no longer a bed available for [REDACTED]. She claims that Ramapo could not provide [REDACTED] with an interpreter because it did not have a sign language interpreter on staff and it would have required one to two week's notice to obtain an interpreter from an outside source.

Ramapo's policy on auxiliary aids and services for persons with disabilities, a copy of which was provided to OCR, requires that staff take appropriate steps to ensure that persons with disabilities, including persons who are deaf and/or hard of hearing, have an equal opportunity to participate in Ramapo's services, activities, programs and other benefits. Among other things, the policy requires that when "an individual self-identifies as a person with a disability that affects the ability to communicate or to access or manipulate written materials or requests an auxiliary aid or service, staff will consult with the individual to determine what aids or services are necessary to provide effective communication in particular situations." The policy also states that Ramapo will provide aids and services "to achieve effective communication with persons with disabilities." The policy further outlines the procedure Ramapo staff must follow to secure aids and services for persons with disabilities.

LEGAL STANDARD AND ANALYSIS

The Section 504 implementing regulation provides that "[n]o qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance." 45 C.F.R. § 84.4(a). The regulation further provides:

A recipient, in providing any aid, benefit, or service, may not, ... on the basis of handicap: ... (ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;....

45 C.F.R. § 84.4(b)(1)(ii). Elsewhere, the Section 504 regulation states:

In providing health, welfare, or other social services or benefits, a recipient may not, on the basis of handicap: ... (2) Afford a qualified handicapped person an opportunity to receive benefits or services that is not equal to that offered non-handicapped persons.

45 C.F.R. § 84.52(a)(2). The regulation further provides:

A recipient to which this subject applies that employs fifteen or more persons shall provide appropriate auxiliary aids to persons with impaired sensory, manual, or speaking skills, where necessary to afford such persons an equal opportunity to benefit from the service in question.

45 C.F.R. ' 84.52(d)(1). Finally, the regulation provides that such “auxiliary aids may include ... interpreters ... and other aids for persons with impaired hearing” 45 C.F.R. § 84.52(d)(3).

The Section 504 regulation defines a person who has a disability as any person who:

(i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

45 C.F.R. §84.3(j)(1)(i)-(iii). A qualified person with a disability, with respect to the provision of health, welfare, and social services, is a person “who meets the essential eligibility requirements for the receipt of such services.” 45 C.F.R. §84.3(k)(4).

As a participant in Medicare and Medicaid, Ramapo is obliged to comply with the non-discrimination requirements of Section 504 and 45 C.F.R. Part 84. We find that [REDACTED] meets the definition of a person with a disability and the definition of a qualified person with a disability. Therefore, the remaining question is whether Ramapo discriminated against the complainant in violation of Section 504 and 45 C.F.R. Part 84.

Based on the evidence and the accounts of the parties, OCR finds that Ramapo violated Section 504 and its implementing regulation.

OCR finds that the parties' accounts of the events are consistent. The complainant claimed, and Ramapo acknowledged, that she was contacted by Ramapo and told [REDACTED] was being accepted for admission to Ramapo for rehabilitative services. Ramapo admitted, as alleged by the complainant, that it revoked the offer of admission to [REDACTED] after it was advised that the complainant would not provide interpretation services and that Ramapo would be responsible for providing him a qualified sign language interpreter.

OCR finds no merit to Ramapo's explanations for revoking [REDACTED] admission. When asked during interviews the reason [REDACTED] was denied admission, Ramapo's Admissions Director told OCR that [REDACTED] was not admitted because Ramapo could not provide him with an interpreter in a timely manner. Even if this was true, this would not justify Ramapo's revocation of [REDACTED] admission. Moreover, Ramapo acknowledged that it was advised of the need to provide [REDACTED] an interpreter on [REDACTED], 2008. OCR investigation revealed that, if admitted, [REDACTED] would not have arrived at Ramapo before [REDACTED], 2008. OCR finds that this two-day period is more than sufficient to schedule and provide [REDACTED] a sign language interpreter. Indeed, OCR contacted sign language interpreter organizations in Ramapo's service area and found that these organizations would be able to provide ASL interpreters within this timeframe. In addition, Ramapo's Admissions Director admitted to OCR that Ramapo made no attempt to contact interpreter organizations and obtain a sign language interpreter for [REDACTED]. Absent such an effort, Ramapo cannot credibly claim that it was unable to provide the interpreter in a timely fashion.

OCR also finds unmeritorious Ramapo's claim that [REDACTED] did not require a sign language interpreter because he had the ability to communicate through other means. During interviews, Ramapo's Admissions Director told OCR that she believed, based on her review of Nyack's nursing notes, that [REDACTED] had the ability to communicate through reading and writing notes. Ramapo's Administrator further claimed that she believed that [REDACTED] did not require an interpreter because he had the ability to communicate through lip reading and writing. Even assuming this was true, this would not justify Ramapo's revocation of [REDACTED] admission. Moreover, OCR contacted the complainant and confirmed that [REDACTED] cannot communicate through lip reading and that his ability to communicate via writing is extremely limited.² Additionally, OCR's review of the documents provided to Ramapo by Nyack, including Nyack's nursing notes, found no indication that [REDACTED] had the ability to communicate through any of the means specified by Ramapo.

OCR notes that irrespective of whether it "believed" [REDACTED] had the ability to communicate through other means, after he requested an auxiliary aid or service, Ramapo had an obligation to engage [REDACTED] to confirm his primary means of communication. To comply with Section 504, Ramapo was required to engage in an interactive process to assess the nature of [REDACTED] disability, determine whether

² OCR notes that even if the complainant had an ability to engage in note exchange for communication such methods would likely not have provided [REDACTED] with effective communication. Generally, the practice of exchanging hand-written notes between a health care provider and a deaf or hard of hearing individual will likely be effective only for brief and relatively simple face-to-face conversations. For more complicated and interactive communications, such as discussion of symptoms or treatment options with patients and/or family members, it may be necessary to provide a qualified sign language interpreter. In addition, the processes of writing back and forth can be arduous and time-consuming for both the provider and the patient. As a result, such messages may be abbreviated, resulting in incomplete communication. See U.S. Department of Justice, *ADA Business BRIEF: Communicating with People Who Are Deaf or Hard of Hearing in Hospital Settings* (Oct. 2003).

an auxiliary aid was necessary for communication and determine the appropriate auxiliary aid. Ramapo's unconfirmed belief of the communication methods utilized by [REDACTED] is not sufficient.

OCR further notes that Ramapo was mistaken in its apparent belief that the complainant had the responsibility to provide interpreter services for [REDACTED]. Pursuant to Section 504, when a covered entity knows or determines that a person requires a sign language interpreter for effective communication it is incumbent on the covered entity to make arrangements for and provide interpreter assistance.

OCR finds that Ramapo's decision to revoke [REDACTED] admission served to deny [REDACTED] with an equal opportunity to participate in or benefit from programs and services offered by Ramapo in violation of 45 C.F.R. §§ 84.4(a) and (b)(1)(ii) and 84.52(a)(2). OCR further finds that, by denying the complainant's request for a sign language interpreter for [REDACTED], Ramapo discriminated against [REDACTED] in violation of 45 C.F.R. § 84.52 (d)(1). In addition, OCR finds that the covered entity violated its own policies for the provision of auxiliary aids and services to persons with disabilities because, contrary to its policy, Ramapo made no effort to consult with [REDACTED] to determine his communication needs or secure interpretation assistance.

Ramapo has **thirty (30) calendar days** from the date of this letter to respond and **sixty (60) calendar days** from the date of this letter to negotiate a Settlement Agreement with OCR. To that end, we have enclosed a proposed Settlement Agreement for your consideration. If compliance has not been secured by the end of the sixty day negotiation period, OCR may initiate formal enforcement action by commencing administrative proceedings, or by other means authorized by law. These proceedings could result in the termination of Federal financial assistance to the recipient.

ADVISEMENTS

We wish to advise you that this determination is not intended, nor should it be construed, to cover any other issues regarding civil rights compliance which may exist but were not specifically addressed during our investigation.

The filing of an administrative complaint with OCR may not fully address the complainant's personal rights or the rights of persons on whose behalf the complaint is filed. Under OCR procedures, the complainant is not a party to the investigation, or any subsequent enforcement proceedings. The complainant may have a right to file a civil action to remedy discrimination by a recipient of Federal financial assistance or other covered entity.

The complainant may wish to consult an attorney about his/her right to pursue a private cause of action, any applicable statute of limitations, and other relevant considerations.

The complainant has the right not to be intimidated, threatened, or coerced by a recipient or other covered entity or other person because he or she has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing held in connection with a complaint.

We wish to advise you that, under the Freedom of Information Act, it may be necessary to release this document and related records in response to any inquiry. In the event we receive such a request, we will make every effort to protect information which identifies individuals or that, if released, would constitute an unwarranted invasion of privacy.

If you have any questions, please do not hesitate to contact Linda C. Colon, Deputy Regional Manager, at (212) 264-4136. We appreciate your cooperation regarding this matter.

Sincerely,

Michael R. Carter
Regional Manager

Enclosure: Settlement Agreement

cc: Complainant (w/o enclosure)