

A photograph of a three-story brick building with a fire escape and a balcony. The building has a light brown brick facade and several windows. A black metal fire escape is attached to the side of the building, leading up to a balcony on the second floor. The balcony has a decorative metal railing. The building is surrounded by trees with yellow blossoms in the foreground.

# How State and Local Service Animal Law May Be Different Than the Federal Law

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## **How State and Local Service Animal Law May Be Different Than the Federal Law**

Generally speaking, Fair Housing Administration (FHAA) doesn't define what constitutes an "assistance animal" (i.e., a "support animal" or "service animal").

The U.S. Department of Justice (DOJ) and HUD (the agency charged with administering the FHA) reference the Americans with Disabilities Act of 1990 (the "ADA") definition of a "service animal." DOJ and HUD generally state that the ADA's definition of a service animal doesn't apply to animals required to be permitted within a particular type of rental unit. On 3/15/11 the US Atty General entered **final regulations limiting the definition of a "service animal" to a dog:**

[A]ny dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition 28 C.F.R. § 36.104.

Under 28 C.F.R. § 35.136(i), there is a miniature horse exception as service animals in certain situations.

ADA's definition of a service animal states that "the provision of emotional support, well-being, comfort, or companionship" by an animal isn't working or tasks under the ADA definition.

There are ADA memos that recognize animals other than dogs and animals not specifically trained as assistance animals.

There is “room for flexibility” in allowing people who have a “disability-related need for an assistance animal of “different types and colors.”

When people “go to court” over animals, much turns on the medical documentation for the animal and the reasonableness of using the type of animal for assistance.

*Concettina Petrella v. Arlen House Condominium Ass'n*, Case 16-2034 (DOAH, Aug. 31, 2016). In *Concettina*, the court rejected a unit owner’s emotional support animal in spite of 2 physician letters and noted that “just because” the owner wanted such an accommodation is not the standard. *Hawn v Shoreline Towers Phase 1 Condominium Ass'n, Inc.*, 347 F.App'x 464, 468 (11th Cir. 2009). Additionally the *Hawn* court didn’t like the “form” used to support the animal which was just a “check off the box” and didn’t engage in a meaningful analysis.

*Id.* at 466; see 42 U.S.C. § 3604(f)(3)(B). Compare *Bone v. Village Club, Inc.*, 223 F.Supp.3d 1203 (M.D. Fla. 2016). So from a simple standpoint, the tenant/requester must demonstrate the disability AND how the animal effectively “lightens the load” with the specific type of support.

## **LOOK AT A COUPLE OF CASES:**

**Tiffany B. v. Kijakazi**, 2022 WL 224817 (S.D. IN 2022)

Tiffany alleged disability resulting from post-traumatic stress disorder (PTSD), heart attack with stent placement (s/p mi with stent placement), anxiety and depression, asthma, coronary artery disease (CAD), chronic migraine headaches, chronic pain, hypertension (HTN), obesity, and Wolff-Parkinson-White syndrome.

Tiffany argues that although the ALJ accepted her treating provider's opinion in favor of her receiving a companion animal due to her mental impairments, the ALJ failed to address this need in her RFC assessment. (Dkt. 17 at 12). The Commissioner counters two reasons for how the ALJ appropriately assessed Plaintiff's need for a service dog in the disability determination. (Dkt. 21 at 6-7). First, the Commissioner argues that under the new regulation redefining medical opinions, 20 C.F.R. § 416.920c, Ms. Owens's letter is not a medical opinion because it lacks statements regarding what Tiffany can do despite her impairments, and thus fails to satisfy the definition of a medical opinion. (Dkt. 21 at 6). Even if the Court would deem it a medical opinion, the Commissioner maintains that Ms. Owens's letter failed to support a finding that Tiffany needed a dog to work, given the context in which the letter was provided. (Id. at 6-7). Instead, Defendant claims that Ms. Owens drafted the letter of support in response to Tiffany's request for documentation to support her keeping her dog because her landlord would not otherwise allow her to keep a pit bull on the premises. (Id. at 6 (citing Dkt. 13-8 at p. 195-96; R. 847-48)). In reply, Plaintiff contends that Ms. Owens's letter is a medical opinion that the ALJ weighed as a medical opinion, found to be



supported by the record, and thus was required to explain her rejection of the opinion or seek clarification from Ms. Owens. (Dkt. 24 at 1-3).

On February 18, 2019, Family Nurse Practitioner Lisa Owens prepared a letter in support of Tiffany's need for a service dog. (Dkt. 13-8 at 183, R. 835). Ms. Owens noted that Tiffany struggles with anxiety and emotional instability, and was on multiple medications for depression, anxiety, and PTSD. (Dkt. 13-8 at 183, R. 835). Ms. Owens also stated that after consulting with Tiffany's behavioral therapist and gaining insight into Tiffany's past and chronicity of her mental health issues, she was "in favor of a service dog for Tiffany to provide emotional comfort and support due to PTSD, depression, and panic disorder." (Id.).

At the hearing, Tiffany testified that she has had her current emotional support dog for approximately one year. (Dkt. 13-2 at 42-43, R. 41-42).<sup>7</sup> Tiffany attested that during this time, the dog has undergone six hours of professional training through Special O.P.S. K-9 in North Webster, Indiana. (Id. at 43-44, R. 42-43). Tiffany also asserted that she trains the dog herself at home, in accordance with the trainer's directions. (Id.). Tiffany maintained that her health care professionals felt she needed a support animal to help her with her mental impairments. (Id. at 44, R. 43). Tiffany testified that the dog had helped with her anxiety and depression. (Id. at 44, 52-53, R. 43, 51-52). In addition,

Tiffany represented that her support animal had positively affected the frequency of her nightmares. (Dkt. 13-2 at 50, 52, R. 49, 51). Tiffany declared that her emotional support dog has also made it easier for her to go to the grocery store. (Id. at 52, R. 51). Tiffany further testified that her dog alerts her to her heart issues but did not indicate what training her dog has had to alert her to her heart issues. (Id. at 55, R. 54).

Based on Tiffany's representations at the hearing, the ALJ found that the evidence did not support that Tiffany had received a trained service dog, but rather utilized an emotional support animal. (Dkt. 13-2 at 52-55; R. 51-54). In her disability determination, the ALJ discussed the fact that Ms. Owens, claimant's primary care provider, supported Tiffany receiving a companion animal for "emotional comfort and support due to her PTSD, depression and panic disorder." (Dkt. 13-2 at 28, R. 27). The ALJ also noted that Ms. Owens's letter failed to provide an "explicit statement on the amount of time the claimant needs to spend with the service dog." (Id.) Without further analysis, the ALJ did not include limitations for Tiffany's use of an emotional support animal in her RFC or hypothetical questions posed to the vocational expert.

*Arsuaga-Garrido v. Mayorkas*, 2022 WL 889875 (D.P.R. 2022)

Arsuaga was hired as a temporary and intermittent employee.<sup>3</sup> Her appointment was for less than two years, and the position had a "not-to-exceed date" of March 31, 2018. Louis Pérez ("Pérez") made the decision to hire Arsuaga. He was the FEMA

Manager in the DHS Virginia Human Resources Operations Division Office. Pérez was Arsuaga's supervisor at all relevant times of her employment. Pérez never met Arsuaga in person, as they were always stationed in different locations, and their conversations were mostly electronic (via email).

Arsuaga's position required her to travel to different sites, known here as deployments, to assist in FEMA relief efforts. Arsuaga's major duties required her to remain on call for deployments into various areas of the United States and Puerto Rico when a disaster was declared to fulfill the job duties of a Certified Human Resources Specialist. Arsuaga's starting salary was \$12.42 per hour.

On July 11, 2016, Arsuaga was deployed to Anniston, Alabama, to attend an initial orientation. According to Arsuaga, before attending the orientation and training program, she called the Equal Employment Opportunity Specialist in Alabama to request permission to attend the training program with her ten-pound Maltese breed dog as an emotional support dog. The dog's name is "Hanna." Shortly thereafter, Arsuaga was deployed to Bluemont, Virginia, to attend another training program. On July 25, 2016, Arsuaga submitted a formal request for an accommodation because she allegedly suffered from an emotional condition. The accommodation consisted of allowing her emotional support dog to attend the classroom with her during training sessions and allowing the dog to sit on the floor



next to her chair, or underneath the table, and accommodate a dog carrier where the dog could sit.

The next day, on December 30, 2016, Arsuaga emailed Pérez and Foudiya Henri ("Henri"), FEMA's Disability Employment Program Manager, regarding her travel request for a job post, saying that she would be traveling with her emotional support dog. A few days later, on January 3, 2017, Henri responded to Arsuaga and told her that *all* FEMA employees were required to have an approved accommodation in order to have a service or emotional support animal in the workplace. Henri stressed the fact that Arsuaga did *not* have such an approved accommodation and further clarified that the accommodation that had been requested and approved for her was an *interim* or temporary accommodation that had been granted to her when she was deployed for her initial trainings only. Henri urged Arsuaga to carefully review the temporary approval of her accommodation, granted back on July 25, 2016. Henri repeated to Arsuaga that if she wanted the *continued* use of a service or emotional support animal in the workplace and on her deployment locations, Arsuaga had to request such accommodation and work with Pérez towards that end.

**\*5** Arsuaga responded to Henri by asserting that her "treating physician will not provide the information being requested by Louis Pérez because it is against federal law to request such confidential medical information on any person/employee." Notwithstanding Arsuaga's continued objections to provide the

required medical information, she finally sent it to Pérez and made a formal accommodation request to be allowed to travel with her emotional support dog for her deployments and have the dog with her at the workplace. On that same day, January 3, 2017, Pérez granted Arsuaga's request as an *interim accommodation*. In approving such request, Pérez noted that based on the documentation provided, the temporary accommodation that had been granted on July 25, 2016, was being *extended* for one (1) year from the date of its approval. As such, Arsuaga was granted an interim accommodation to have her emotional support in the workplace and during her deployments. The accommodation was set to expire on January 3, 2018. Pérez told Arsuaga that if she wanted to extend the accommodation beyond January 3, 2018, she had to request it directly through him prior to that date, and provide specific information, including information on the animal's updated [vaccinations](#) and trainings. Pérez also instructed Arsuaga to please contact him if she had any problems implementing her approved interim accommodation so that he could be "given an opportunity to resolve any issues."

Pérez sent another email to Arsuaga where he stated that he was concerned over the numerous complaints he had received regarding the behavior of Arsuaga's dog during each of her deployments. Pérez noted that he would discuss his concerns with OER and made a point of telling Arsuaga that he wanted her to know of the complaints because he wanted to give her an opportunity to explain the incidents and discuss how she planned to mitigate these types of incidents in the future. At 5:03PM,



Arsuaga responded to Pérez by reiterating that she would not be reporting to her work site (at that time, the JFO) without her emotional support dog. Arsuaga then sent another email to Pérez where she stated: “[a]dditional note. Please put in writing to me each of the complaints ... Your behavior is more than abusive.”

On January 12, 2018, at 1:48PM, Froelich reported to Pérez that on December 5, 2017, Arsuaga’s dog bit her hand.

That same day, at 3:07PM, Pérez sent Henri a summary of the complaints he had received regarding Arsuaga’s dog. The summary included complaints from Arsuaga’s deployments to five different sites. The alleged complaints included: the dog biting Froelich’s hand, the dog dragging its butt across the carpet, the dog barking at people, the dog becoming aggressive with FEMA employees, the dog being unleashed and almost biting FEMA employees, the dog being disruptive in the workplace, Arsuaga lacking sufficient control over the dog, and Arsuaga being demobilized early from a deployment due to issues with her dog. According to Pérez, the complaints dated back to October 2016, February 2017, June 2017, December 2017, and January 2018. According to Pérez, he also had a conversation with Henri regarding Arsuaga’s accommodation for her emotional support dog. Arsuaga denies any incident with her dog.







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