

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

KATRINA ROSA, SHERYL)
BISHOP, TAMEY DONNELLY,)
PHILIP ROY AND ANNA)
SILVA,)

Plaintiffs)

vs.)

No. _

THE MONADNOCK)
COMMUNITY HOSPITAL)
(MCH),)

Defendant)

PLAINTIFF'S ORIGINAL COMPLAINT

Plaintiffs Katrina Rosa, Sheryl Bishop, Tamey Donnelly, Philip Roy and Anna Silva, by and through their undersigned counsel, Red Sneaker Law, PLLC, as and for their respective claims against The Monadnock Community Hospital (MCH), hereby allege:

Preliminary Statement

1. This is a civil rights lawsuit brought, primarily, under the Americans with Disabilities Amended Act by three families in order to end more than two decades of discrimination by the only major medical facility in an isolated part of New Hampshire. In short, despite past lawsuits and settlements, Defendant Monadnock Community Hospital has failed, again and again, to provide equal communication access to Deaf and Hard-of-Hearing patients and their families.

JURISDICTION

2. This Court has Federal Question Jurisdiction pursuant to 28 USC § 1331, as this action is based upon two important federal statutes: the Americans with Disabilities Act, Title II, 42 USC § 12131 *et. seq.* and Title III, 42 USC § 12181 *et. seq.* and the Rehabilitation Act, 29 USC §794, Section 504.

3. The Plaintiff requests that this Court exercise supplemental jurisdiction over the State court causes of action named herein as they arise from the common nucleus of operative facts. 28 USC § 1367.

VENUE

4. Venue is proper in the United States District Court for the District of New Hampshire pursuant to 28 USC §1391(b) and (c) as the Defendant's medical facility is based in New Hampshire, Plaintiffs were at all relevant times, and are currently New Hampshire residents and the core nucleus of operative facts occurred within this venue.

JURY TRIAL DEMANDED

5. Plaintiffs demand a trial by jury on each of the causes of action.

PARTIES

6. Defendant The Monadnock Community Hospital (MCH) is a New Hampshire nonprofit corporation, located 452 Old Street Road, Peterborough, County of Hillsborough, State of New Hampshire and is a critical access hospital. Further, MCH is a "public accommodation" as defined in 42 U.S.C. § 1281(7)(F) and its implementing regulation, 28 C.F.R. § 36.104 because it is a private entity that operates a place of public accommodation, specifically, a hospital.

7. Plaintiff Katrina Rosa is the Child of Deaf Adult (CODA) Plaintiff Sheryl Bishop and resided, at all material times, at 1412 Forest Road, Greenfield, NH, 03047.

8. Plaintiff Sheryl Bishop, Plaintiff Katrina Rosa's mother, is profoundly, prelingually deaf and resided, at all material times, at 1412 Forest Road, Greenfield, NH, 03047. Ms. Bishop is an individual with a disability within the meaning of ADA, 42 U.S.C. § 12102(1) and its implementing regulation at 28 C.F.R. Part 36 as Ms. Bishop is prelingually deaf and communicates, primarily, via American Sign Language.

9. Plaintiff Tamey Donnelly, spouse of Plaintiff Philip Roy, is profoundly, prelingually deaf and resided, at all material times, in West Peterborough, New Hampshire. Ms. Donnelly is an individual with a disability within the meaning of ADA, 42 U.S.C. § 12102(1) and its implementing regulation at 28 C.F.R. Part 36 as Ms. Donnelly is prelingually deaf and communicates, primarily, via American Sign Language.

10. Plaintiff Philip Roy, Spouse of Plaintiff Tamey Donnelly, is profoundly, prelingually deaf and resided, at all material times, in West Peterborough, New Hampshire. Mr. Roy is an individual with a disability within the meaning of ADA, 42 U.S.C. § 12102(1) and its implementing regulation at 28 C.F.R. Part 36 as Mr. Roy is prelingually deaf and communicates, primarily, via American Sign Language.

11. Plaintiff Anna Silva is profoundly, prelingually deaf and resided, at all material times, at 172 Exeter River Landing, Exeter, New Hampshire. Ms. Silva is an individual with a disability within the meaning of ADA, 42 U.S.C. § 12102(1) and its implementing regulation at 28 C.F.R. Part 36 as Ms. Silva is prelingually deaf and communicates, primarily, via American Sign Language.

FACTS

MONADNOCK COMMUNITY HOSPITAL'S PREVIOUS SETTLEMENTS

12. Monadnock Community Hospital (“MCH”) is a critical access point hospital and it is also the hospital the Deaf and Hard-of-Hearing Community of New Hampshire try to avoid, at almost, all costs. MCH has a long, and well documented, history of failures in providing communication access to deaf and hard-of-hearing patients and their families. These failures, including the plaintiffs’ stories, stories of three families, all different, but all with the same theme of a hospital that simply doesn’t care, begin more than a decade ago with another lawsuit and another deaf patient denied communication access.

13. In 2010, the United States Department of Justice began investigating the complaints of Amy Dauphinais, a deaf woman who had alleged MCH failed to provide her with appropriate communication access, required her to use inadequate or inappropriate auxiliary aids, and used her minor daughter as an interpreter while she was an MCH patient.

14. In 2013, MCH and the United States Department of Justice settled the Dauphinais case. As part of the settlement, MCH agreed to establish a program to ensure it would provide effective communication to deaf and hard-of-hearing patients in the future. Whatever changes MCH may have implemented to end its quarrel with the Federal Government, it is clear, from the facts below that MCH has failed to continue them.

15. In the Dauphinais settlement agreement, MCH agreed, among other things, to:

- a) appoint two or more Program Administrators to answer questions and provide appropriate assistance regarding immediate access to and proper use of appropriate auxiliary aids and services required by the settlement agreement. These

administrators were to be available 24/7 to provide immediate access to appropriate Auxiliary Aids and Services.

- b) extend all polices regarding communication access to not just patients but those deaf and hard of hearing individuals accompanying a patient.
- c) make no fewer than 5 attempts, no more than 15 minutes apart, to locate an interpreter and provide one within 1 hour at least 80% of the time when an American Sign Language (ASL) interpreter was required.
- d) make a determination of the need for an auxiliary aid or service at “the time the Patient or Companion initially comes in contact with Hospital Personnel.” And this determination was to be documented as part of each initial Patient assessment and made part of the Patient’s medical record.
- e) develop a form to conduct a determination, made by trained personnel in consultation with the deaf patient or companion, as to whether and what auxiliary aid or service (“AAS”) was appropriate that would take into account all the relevant facts and circumstances, including without limitation:
 - i. the nature, length and importance of the communication at issue;
 - ii. the individual’s communication skills and knowledge;
 - iii. the Patient’s health status or changes thereto;
 - iv. the Patient’s and/or Companion’s request for or statement of need for an interpreter or other specific auxiliary aid or service;
 - v. the reasonably foreseeable health care activities of the Patient (e.g. group therapy sessions, medical tests or procedures, rehabilitation services, meetings

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