IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Joseph Keeling,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	No. 23-cv-3442
	)	
Sheriff of Lake County and Lake County, Illinois,	)	*(Judge Seeger)*
	)	
	)	
Defendants.	)	

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Defendants disregard two elemental rules of summary judgment practice: Defendants are unable to produce admissible evidence to support several assertions material to their motion and fail to view the record in the light most favorable to plaintiff. The Court should therefore deny defendants' motion for summary judgment.

I. Facts Viewed in the Light Most Favorable to Plaintiff

The plaintiff Joseph Keeling has a history of recurrent hypertensive crisis associated with tachycardia, frequent fainting and falls during hypertensive crisis. (Plaintiff's Statement of Additional Facts, ¶ 1.) This blood-pressure condition substantially impairs the major life activity of circulatory function and is a disability under the ADA, 42 U.S.C. § 12102(1). (Plaintiffs' Statement of Additional Facts, ¶ 2.)

Plaintiff entered the Lake County Jail on June 8, 2023, as a pre-trial detainee. (Defendants' Statement of Material Facts, ¶ 1.) Plaintiff received a medical screening as part of the Jail's intake procedure. (Defendants' Statement of Material Facts, ¶ 4[a].) The nurse who performed the screening measured plaintiff's blood pressure and recorded plaintiff's medical history. (Plaintiff's Additional Facts, ¶ 3.) The nurse noted on jail records that plaintiff had a "history of recurrent hypertensive crisis" and signed the "treatment/accommodation/housing order," which required that plaintiff be assigned a lower bunk on a lower tier. (Plaintiff's Additional Facts, ¶ 4.)

Plaintiff remained in the holding cell after the medical interview and waited to see a judge the next morning. (Plaintiff's Additional Facts, ¶ 5.) Following his video appearance before the judge, plaintiff returned to a holding cell to await transfer to McHenry County for an appearance in a child support matter. (Plaintiff's Additional Facts, ¶ 6.)

Thereafter, a correctional officer escorted plaintiff from the holding cell to the "cell block," where a different officer assigned plaintiff to the upper bunk in a cell. (Plaintiff's Additional Facts, ¶ 7.) Plaintiff told the officer that he required a lower bunk because of his medical history; the officer responded that "this is not a hotel." (Plaintiff's Additional Facts, ¶ 8.) Plaintiff followed

the officer's orders, entered the cell and got onto the top bunk. (Plaintiff's Additional Facts, ¶ 8.)

At 4:43 P.M. on June 9, 2022, after he had climbed to the upper bunk, plaintiff had a seizure which caused him to incur personal injuries from biting his tongue and experiencing pain in "like every bone all of the left side of my face," and feeling "like my head was going to explode." (Plaintiff's Additional Facts, ¶ 10.) Plaintiff was promptly evacuated by ambulance to the Vista Medical Center East, where he arrived at 5:33 p.m. (Plaintiff's Additional Facts, ¶ 11.)

The jail personnel who accompanied plaintiff to the Vista Medical Center informed the center that plaintiff had a history of tachycardia and that the seizure had lasted three to five minutes, during which plaintiff had turned blue. (Plaintiff's Additional Facts, ¶ 12.) The Medical Center discharged plaintiff at 8:07 p.m. on June 9, 2022, after physicians reviewed blood tests, x-rays, and a CT Brain/Head scan. (Plaintiff's Additional Facts, ¶ 13.)

II. Plaintiff's Theory of the Case

Plaintiff brings a single claim under Title II of the Americans with Disability Act, 42 U.S.C. § 12132. Unlike 42 U.S.C. § 1983, the ADA incorporates common law principles of respondeat superior. *Smith v. Metro. Sch. Dist. Perry Twp.*, 128 F.3d 1014, 1024 (7th Cir. 1997). Thus, plaintiff need not sue any employee of the Sheriff of Lake County who was personally involved in

the alleged ADA violations. Nor could plaintiff bring his Title II claim against individuals: "Only public entities are subject to Title II." *City & County of San Francisco v. Sheehan*, 575 U.S. 600, 610 (2015).

To establish his prima facie case, "plaintiff must show: (1) that he is a qualified individual with a disability; (2) that he was denied the benefits of the services, programs or activities of a public entity or otherwise subjected to discrimination by such an entity, and (3) that the denial or discrimination was by reason of his disability." *Lacy v. Cook County*, 897 F.3d 847, 853 (7th Cir. 2018) (cleaned up).

Defendants agree that "Plaintiff is a qualified individual with a disability." (ECF No. 41 at 5.) This concession is required by the decision of the Seventh Circuit in *Gogos v. AMS Mechanical Systems, Inc.*, 737 F.3d 1170 (7th Cir. 2013), holding that tachycardia is a blood-pressure condition that substantially impairs the major life activity of circulatory function and is a disability under the ADA, 42 U.S.C. § 12102(1).

Plaintiff establishes the second and third elements with evidence that a correctional officer refused to follow the order by the intake nurse to assign plaintiff to a lower bunk on a lower tier (Plaintiff's Additional Facts, ¶ 4) and that plaintiff had a seizure immediately thereafter. (Plaintiff's Additional Facts, ¶ 10.)

The ADA does not require plaintiff to show discriminatory intent on the part of the correctional officer who refused to follow the order for a lower bunk because "discriminatory intent is not an element of an ADA failure-to-accommodate claim." *Kinsella v. Baker Hughes Oilfield Operations, LLC*, 66 F.4th 1099, 1103 (7th Cir. 2023). To recover compensatory damages, however, plaintiff must show that the Sheriff (through his agents or employees) was deliberately indifferent to plaintiff's need for an accommodation. *Hildreth v. Butler*, 960 F.3d 420, 431 (7th Cir. 2018). Plaintiff intends to make this showing through the framework set out in paragraphs 3-5 of Seventh Circuit Pattern Civil Instruction 4.04 (2017):

> 3. Defendant was aware or should have been aware that Plaintiff needed an accommodation.
>
> 4. Defendant was aware or should have been aware of Plaintiff's disability at the time of Plaintiff's request or when Plaintiff's need for accommodation was obvious; and
>
> 5. Defendant failed to provide Plaintiff with a reasonable accommodation.

The record, viewed in the light most favorable to plaintiff, *Kailin v. Village of Gurnee*, 77 F.4th 476, 478 (7th Cir. 2023), establishes each of these elements because the nurse's order that plaintiff be housed in a lower bunk placed the Sheriff's employees on notice and made it obvious that plaintiff required the accommodation and an employee of the Sheriff failed to provide plaintiff with that accommodation.

This case is similar to *McDaniel v. Syed*, 115 F.4th 805 (7th Cir. 2024), where the Court of Appeals reversed a grant of summary judgment in an ADA case arising at a prison. There, the prisoner had been denied placement in a "no-stairs unit." *Id.* at 823. The summary judgment record established that the prisoner "needed to make his way up and down stairs to participate in various prison programs and activities." *Id.* at 824. Here, because he was assigned to a top bunk, plaintiff was required to climb to sleep in a bed. A reasonable jury could find that plaintiff did not have "meaningful access," *Alexander v. Choate*, 469 U.S. 287, 301 (1985), to a bed.

Plaintiff responds below to the meritless arguments defendants raise in their motion for summary judgment.

III. The Mere Order for a Lower Bunk Was Not an Accommodation

There is no merit in defendants' argument that "Plaintiff *was* accommodated in his intake screening [when] a Wellpath nurse at the Jail indicated that he should be assigned a 'lower tier' and a 'lower bunk.'" (ECF No. 41 at 5-6.) Defendants argue that the order for a lower tier and a lower bunk was a recommendation that the Court should view as an "accommodation" under the ADA. (ECF No. 41 at 6.)

Defendants are unable to cite any authority for this contrived argument. An "accommodation" must "give meaningful access." *McDaniel v.*

Syed, 115 F.4th 805, 824 (7th Cir. 2024) (cleaned up). The ADA requires the Sheriff "to make reasonable modifications," when a disabled detainee requires an accommodation to engage in ordinary life activities. *Shaw v. Kemper*, 52 F.4th 331, 334 (7th Cir. 2022).. The nurse's order for a lower tier and lower bunk did not accommodate plaintiff's disability where a correctional officer failed to implement that order. The Court should therefore reject defendants' argument that an unimplemented order for a lower bunk is an "accommodation" under the ADA.

IV. The Court Should Reject Defendants' Factual Assertions about a Second "Identification of Special Needs Form"

Defendants hinge their motion for summary judgment on factual assertion about a second "Identification of Special Needs Form," reproduced at ECF No. 42 at 55. Defendants admit that this form was prepared by a now deceased nurse "[f]or reasons that are unknown from the record adduced in discovery." (ECF No. 41 at 2.) The second form states that plaintiff does not have any "condition/disability" and does not require any accommodation. (ECF No. 42 at 55.) The Court should decline to consider this exhibit on defendants' motion for summary judgment.

Establishing that a document is admissible as a business record requires evidence about the "procedure used to create and maintain the document." *United States v. Reese*, 666 F.2d 1007, 1017 (7th Cir. 2012). Defendants

seek to make this showing with the affidavit of Richard Clouse, the Chief of the Lake County Jail. (ECF No. 42 at 87-93.) The affidavit falls short for at least two reasons.

First, defendants failed to identify Clouse in their Rule 26 disclosures. (Plaintiff's Additional Facts, ¶ 15.) As appears in Plaintiff's Exhibit 2 (attached), defendants did not identify any witness who has personal knowledge of the how the "identification of special needs" forms are prepared. The Court should therefore exclude testimony from Clouse pursuant to Rule 37(c)(1). *Morris v. BNSF Railway Co.*, 969 F.3d 753, 764-66 (7th Cir. 2020).

Second, nothing in Clouse's affidavit speaks to preparation of two "identification of special needs" forms. Clouse avers that a "contracted medical provider" provides medical care at the Lake County Jail and that the medical records belong to the Jail. (ECF No. 42 at 88, Clouse Affidavit, ¶¶ 16, 17.) Then, in conclusory fashion, Clouse states that he is "familiar" with the Jail's method of documenting medical care, that the records are maintained in a system called "CorEMR", that the records are made "at or near the time they are providing care to an inmate," are made "by people with personal knowledge of what is being recorded or documents," and are kept "in the ordinary course of the jail's business." (*Id.* at 88-89, ¶¶18-22.) Clouse then provides the following cryptic sentence:

> 23. Is it a regular practice for the jail's medical staff to make such records.

(ECF No. 42 at 89.)

Clouse's vague statements about medical records leaves unanswered whether the "identification of special needs" form is completed as part of providing medical care. Nor does Clouse explain how he acquired his knowledge of the way in which medical records are prepared at the Jail, or whether he has personal knowledge of the way in which medical care was provided, and records created, on June 8, 2022, when plaintiff entered the Jail.

The medical records from Vista Medical Center, where plaintiff was taken after he had the seizure, show that the jail personnel who accompanied plaintiff to the hospital knew that plaintiff had a history of tachycardia (Plaintiff's Additional Facts, ¶ 12.) This is strong evidence that the officers knew about the "special needs form," which documents plaintiff's disability, and ordered that he be assigned a lower bunk.

Finally, the only admissible evidence in the record shows that preparing a second "identification of special needs" form is *not* part of the standard operating procedure. Deputy Chief Kalfas explained the intake procedure as follows:

> [O]nce somebody comes into custody, they will be booked in by one of the booking information, enter it into the Jail Management System. They will do fingerprints and pictures, and within four hours of coming into custody, a medical and mental intake

> will be completed by one of our contracted medical staff members. At this time, Well Path, where they will do a detailed medical and mental health evaluation of them, and if there is anything that's special that needs to be considered in where they are housed, that information will then be passed onto the class officers.
>
> Once they are remanded to our custody after court, they will be moved to One East, which is a classification pod. They will spend a few days down there while the classification officers do their interviews, assemble all of the information, and then based upon all of that information, they will find them a more permanent housing location somewhere in the facility.

(Plaintiff's Additional Facts, ¶ 14.)

That there is only one medical intake screening is consistent with plaintiff's testimony about his activities following admission to the Jail: Plaintiff met with a nurse, who measured his blood pressure and recorded his medical history; plaintiff was then placed in a holding cell while he waited to see a judge the next morning. (Plaintiff's Additional Facts, ¶¶ 3, 5.) Following his video appearance, plaintiff returned to a holding cell where he remained until he was taken to his assigned cell. (Plaintiff's Additional Facts, ¶¶ 6-8.) Plaintiff's description of his activities is inconsistent with a second intake screen by a health care provider.

Defendants state that that "[w]e have learned in discovery that there were two *Identification of Special Needs* forms in Plaintiff's records." (ECF No. 41 at 6.) For the purposes of defendants' motion for summary judgment, the record viewed in the light most favorable to plaintiff is that the second

form was inserted into the medical records after plaintiff had his seizure, as part of a corrupt scheme to avoid liability.

V. Plaintiff Need Not Identify any Individual Wrongdoer

Defendants argue that plaintiff has a duty to identify the employees and medical providers who caused him to be placed in the upper bunk. (ECF No. 41 at 6-7.) The Court should reject this argument because respondeat superior is fully applicable to plaintiff's ADA claim. *Equal Employment Opportunity Commission v. AIC Security Investigations, Limited*, 55 F.3d 1276, 1281 (7th Cir. 1995); *Smith v. Metro. Sch. Dist. Perry Twp.*, 128 F.3d 1014, 1024 (7th Cir. 1997). In addition, there is no individual liability in a Title II ADA claim: The proper defendant is the entity responsible for the alleged denial of federal rights because "[o]nly public entities are subject to Title II." *City & County of San Francisco v. Sheehan*, 575 U.S. 600, 610 (2015).

VI. Defendants' "Blame the Victim" Argument Is Frivolous

Defendants assert that they are entitled to summary judgment because plaintiff followed the correctional officer's order to climb to the top bunk; defendants argue that plaintiff should have spent the night sleeping in a chair. (ECF No. 41 at 7.) Defendants are unable to support this silly argument with any authority and it should be rejected as frivolous.

VII. Causation Is a Damages Question for the Jury

Defendants devote several pages of the summary judgment motion to arguing that they are entitled to summary judgment because the evidence of record is not enough to show that plaintiff suffered any injury from the seizure. (ECF No. 41 at 7-9.) This is not a ground for summary judgment and is not an accurate reading of the record.

The plaintiff Joseph Keeling has a history of recurrent hypertensive crisis associated with tachycardia such as frequent fainting and falls during hypertensive crisis. (Plaintiff's Additional Facts, ¶ 1.) Plaintiff experienced a seizure after being denied the required accommodation for his disability. (Plaintiff's Additional Facts, ¶ 10.) Witnesses to the seizure told medical personnel that the seizure lasted three to five minutes while plaintiff turned blue. (Plaintiff's Additional Facts, ¶ 12.) Plaintiff bit his tongue while having the seizure and felt pain in "every bone all of the left side of my face," which he described as feeling "like my head was going to explode." (Plaintiff's Additional Facts, ¶ 10.)

A jury would be entitled to award plaintiff damages for these injuries. The Court should reject this argument.

VIII. Conclusion

The Court should therefore deny defendants' motion for summary judgment.

Respectfully submitted,

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