

## **FINAL CONFERENCE CALL NOTES**

May 8, 2009

Disclaimer from Joan Esnayra: These notes were typed in real-time as the conversation took place on the telephone. Immediately after the conversation was over, I reviewed the notes and corrected any grammatical errors and misspellings. Statements made in this document should not be viewed as precise quotes with 100% accuracy. Nor is this synopsis 'official' in any government sense of the word. Neither the White House nor the U.S. Department of Transportation endorses these notes as official minutes of the meeting, and one government official made a point of saying so after the document was circulated. Conference call participants were offered the opportunity to review the notes and correct any misstatements after the document was generated. Some individuals offered specific comments or corrections and these were incorporated into the document. Others simply did not respond to the request for feedback. One government official clarified that the absence of a response from his office should not be viewed as a defacto endorsement of the fidelity of this recapitulation.

### **Participants:**

Kareem Dale: Special Assistant to the U.S. President for disability policy  
 Bob Ashby: U.S. Department of Transportation (DOT)  
 Kathleen Blankreither: DOT  
 Blane Worky: DOT  
 Joan Esnayra: President of Psychiatric Service Dog Society (PSDS)  
 Andy Imparato: American Association of Persons with Disabilities (AAPD)  
 Jim McNulty: Depression and Bipolar Support Alliance (DBSA)  
 Unnamed Person from National Coalition for People with Mental Health Disabilities:  
 Marilyn Golden: Disability DREDF  
 Paralyzed Veterans of American (PVA)  
 Iraq & Afghanistan Veterans Association (IAVA)  
 Estelle Stamm: private individual  
 Philip Kirschner: private individual  
 Darlene (last name unknown): private individual?  
 Ed Eames: President IAADP  
 Jim Weissman—unspecified Spinal Cord Organization  
 Darlene Sullivan: Assistance Dogs International (ADI)  
 Becky Barnes: Guide Dog Users, Inc.

### **Additional Abbreviations Used In This Document:**

FAQ: frequently asked questions  
 SA: service animal  
 ESA: emotional support animal  
 PSA: psychiatric service animal  
 PSD: psychiatric service dog  
 MI: mental illness

PTSD: post traumatic stress disorder

ADA: Americans with Disabilities Act of 1990

### **Call Begins:**

Kareem Dale: DOT has come up with good solutions & remedies in response to criticisms of the new rules.

Bob Ashby: DOT will take 2 actions in response to the PSDS petition for rulemaking.

1. the draft FAQ that is being circulated now addresses concerns related to medical privacy, advance notice before air travel, the types of mental health providers who are permitted to write a letter on behalf of the passenger.
2. DOT has drafted and will issue a federal register notice seeking public comment on the issues raised by the PSDS petition. After public comment is submitted, DOT will review and either deny the original PSDS petition or accept the petition and propose specific changes to the rules that will go into effect on May 13, 2009.

Kareem Dale: What Bob outlined is a good process.

Andy Imperato: Please send me the draft FAQ.

Bob Ashby: Blane Worky & Kathleen Blankriether at DOT will accept comments on the draft FAQ. Please get your comments to them no later than tomorrow May 9, 2009.

Bob Ashby: DOT staff were responsive to the PSDS petition in the draft FAQ.

- Medical Privacy issue: DOT recommends that airlines do not keep a copy of the passenger's doctor's letter
- The advance notice before air travel issue—DOT says that the airlines have to provide the 'requested accommodation' anyway. That is, even if the PSD handler cannot give 48 hours advance notice the airlines should allow the passenger to travel nonetheless.
- what kind of practitioners are allowed to write a mentally ill passenger's letter? A list of practitioner-types is included in the FAQ now.
- The passenger's doctor's letter does not have to have a diagnosis
- If the passenger does not have medical insurance? Carriers have discretion to accept older documentation in the passenger's possession & some kind of evidence that insurance is no longer active (therefore an updated letter is not available).

Ed Eames: asked, “where did the petition come from?” “What topics are covered?” “Does it open up for discussion the service animal relief areas?” “Are other issues open for discussion?”

Blane Worky: said the intention is not to re-open the entire rulemaking process. The petition we received from PSDS dealt with PSA and ESA specifically. We will issue a notice for public comment. Then DOT needs to make a decision. DOT will do an NPRM very soon.

Phil Kirschner: Stigma. Our concern is that this regulation is pretty disparaging. People with epilepsy are not affected. We need to realize that any final implementation must address the entire disability community. This should be done to all the communities not just the mental health community.

Bob Ashby: The federal register notice that we are preparing does address whether there should be additional procedures (or no procedures) for other service animals. DOT will establish a 90 day public comment period.

Phil Kirschner: asked, “Will the rules still go into effect next Wednesday?”

Bob Ashby: Yes

Phil Kirschner: Can’t they be temporarily suspended?

Kareem Dale: No

Estelle Stamm: What struck me is that there are two assumptions being made in coming up with the rules for PSA.

1. there is a lack of formal training
2. use of PSA opens up the way to fraud and therefore requires documentation

The leading cause of disability in U.S. is mental illness. In fact, 1 in 17 people in the U.S. have MI. The fact that someone has an invisible disability or an unconventional dog can give the impression that one is faking. The real issue here is safety. We have no data on fraudulent service dogs. There are no safety issues involved with PSA so there is no justification for a documentation requirement. Finally, not everyone calls the dog a PSD. Some simply refer to it as a service dog.

Bob Ashby: We never said anything about formal training. We do not distinguish between between ESA and PSA. They are all Service Animals.

Blane Worky: Whatever kind of service animal it is DOT does not require training. We consider ESA to be the same as PSA.

Estelle Stamm: To single out PSD with the comment that they don't have formal training, ...the reason for documentation is what?

Blane Worky: The reason for the documentation requirement for PSA & ESA has to do with fraud.

Estelle Stamm: This is an issue of fairness and disparate treatment!

Becky Barnes: Hi Kareem, I was on a conference call with your brother Yousef last night! I am concerned that the term 'emotional support' causes more confusion than it resolves. There are some PSA that meet the legal definition but emotional support is problematic. DOT should restrict itself to the term 'service animal' and that's it.

Kareem Dale: This is what the comment period is for.

Estelle Stamm: We have a ton of veterans returning with PTSD. Is this the kind of regulation you want to impose on these young men and women after they served their country?

Marilyn Golden (DREDF): Kareem said something like he thought the DOT has made some legitimate points. We did hear from DOT about the specific measures they are taking, namely, the draft FAQ, the public comment period, etc. What I have not heard from DOT are the reasons for making this kind of a distinction in the first place.

Kareem Dalae: I did not say that! I thought DOT had reasonable solutions. I did not necessarily say that the DOT position, itself, is reasonable.

Marilyn Golden: I'm sorry Kareem. I didn't intend to put words in your mouth. I simply misunderstood you.

Kareem Dale: Yes, I know that you did not mean to do that.

Marilyn Golden: As a long time advocate in transportation for people with disabilities, ... I mean, DOT has a history.... What is the basis for having this distinction in the first place?

Blane Worky: The comments we received from the public ranged widely from "ESA/PSA are not legitimate" to "there is a lot of abuse rampant" and "it is easy for people to pretend." We don't see a difference between ESA and PSA or any other SA. What we care about is, "Is it a qualified person with disability? Does the animal assist with the disability?" Is there a reason to treat some SA differently than others? Yes, FRAUD is the reason. So, we tried to create a mechanism so that individuals who are legitimate can still travel with their SA.

Bob Ashby: In government we try to come to a fair balance of competing interests. The Air Carrier Access Act (ACAA) is distinct from Title III of the ADA that involves

shopping malls, etc. People in the airplane have a legitimate interest in being able to enforce rules, that is, to prevent pets from being inside the cabin. Consider the gate agent who is presented with person with dog on leash. How does the agent know if it is a pet, or a SA, or what? There are no survey data on any of this stuff. We are allowed to rely on the complaints we receive. We tried to balance the legitimate interest of the airlines and the legitimacy of SA handlers to have an animal in the cabin. This was our attempt to balance competing interests.

Joan Esnayra: Let's keep in mind the big picture here. We are talking about regulations pursuant to the portion of the Air Carrier Access Act that is devoted to "non-discrimination on the basis of disability in air travel." If DOT tried to balance interests in this situation, then, it has completely failed its job. These rules egregiously discriminate on the basis of disability in air travel. My constituents are very upset about these rules and they have no intentions of complying with or participating in these rules. They simply refuse to do so.

Jim Weissman: Does the petition want to distinguish between ESA and PSA?

Bob Ashby: You mean, "My dog is better than your dog!"

Joan Esnayra: I can address this question. Our petition did not focus on the distinctions between ESA and PSA, but our community does make a distinction between them. ESA are pets and PSA are not pets. This is consistent with DOJ's enforcement of the ADA.

Person from National Coalition for People with Mental Health Disabilities: What is the source of this problem?

Blane Worky: We have for years heard from the airline industry about people with pets who have ESA. The agents are certain these are pets, or show dogs, etc. It's an issue that comes up a lot. With the NPRM in 2004 we received many comments. We issued a guidance doc in 2003. Now we have put into the rule text that we mean ESA & PSA are the same.

Bob Ashby: I suppose if you get enough fraud going you could get to a situation where there might be safety implications. But right now there is no safety issue.

Blane Worky: People think this is a big change but it is merely transferring what was in guidance into rule text.

Kareem Dale: We need to wrap up. I just sent the draft FAQ to Andy & others. From the White House perspective, I am not commenting on the rules themselves. I want DOT to work out a solution with the committee.

Jim McNulty: I am concerned. DOT says it has no data other than a collection of anecdotes. One thing I've seen is that the current administration wants to base their policies on data. I worry about the lack of precision in how these rules are going to be

implemented by gate agents and flight crew. There is no data. There is no reason to do it, ...no compelling reason to change things from the way they are now. Why is this going into effect?

Darlene Sullivan: What is the rationale as a person with an invisible disability for focusing on the mentally ill? Why choose the mental health community to focus on? What about the rest of us who have invisible disabilities? Why are you only focusing on the mentally ill?

Bob Ashby: First, we have not heard about fraud related problems in other areas, that is, other than ESA/PSA. Our guidance amplified in 2003 & 2005. For people who bring an ESA, it is OK for the airlines to request documentation to make the decisions they have to make. As issues with PSA were brought to our attention we began to focus on it. All a person has to do is change the nomenclature to circumvent the pet policies. PSDS says our people can cheat and say their dogs are seizure alert dogs. Having already in place the documentation requirement for ESA, it only made sense to extend the requirement to PSA.

Blane: Something I did not think about previously, this call made me think about the stigmatizing effect of this new rule. The goal for the rule is to ensure that people with legitimate SA can fly. I see from this call the impact this rule will have on the mental health community.

Kathleen Blankriether: The path to resolution lies in focusing on alternative methods for detecting fraud. It is probably better if our fraud detection method does not make distinctions among disabilities.

Kareem Dale: Thanks everyone. The FAQ draft will be circulated. The notice for public comment will ensue. We will continue to think about this issue.

**CALL ENDED**