



August 27, 2007

John Wodatch  
Chief, Disability Rights Section  
Civil Rights Division  
Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

Dear Mr. Wodatch:

We write to express our concerns about a proposal presented to the Justice Department to adopt a regulatory change to the definition of a service animal. This proposal would eliminate needed protections under the ADA for many individuals with psychiatric disabilities who depend on service animals to assist them with daily needs. We urge you not to adopt such a proposal.

As you know, the current DOJ regulatory definition of “service animal” is as follows:

Service animal means any guide dog, signal dog or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability including, but not limited to guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, minimal protection or rescue work, pulling a wheelchair or fetching dropped items.

28 C.F.R. 36.104. We understand that the Coalition of Assistance Dog Organizations (CADO) has proposed that the Department replace the current definition with this definition:

Service animal means an assistance dog, and may include other animals specifically trained to perform physical tasks to mitigate the effects of an

individual's disability. Assistance dogs include guide dogs that guide individuals who are legally blind; hearing dogs that alert individuals who are deaf or hard of hearing to specific sounds; and, service dogs for individuals other than blindness or deafness. **Service dogs are trained to perform a variety of physical tasks** including but not limited to pulling a wheelchair, lending balance support, picking up dropped objects or providing assistance in a medical crisis. **The presence of an animal for comfort, protection or personal defense does not qualify as training to mitigate the effects of an individual's disability and therefore does not qualify said animal as a service animal.**

<http://www.iaadp.org/CADO2007.html> (accessed Aug. 17, 2007).

This new definition would remove ADA protection from many individuals with disabilities whose service animals enable them to live normal lives. Service animals perform a variety of essential functions that accommodate the needs of many individuals with psychiatric disabilities, including functions that can be characterized as physical tasks, functions that can be characterized as non-physical tasks, and functions that do not necessarily fall within the rubric of "tasks."

For example, service animals may alleviate symptoms of post traumatic stress disorder, anxiety disorders and panic disorders by calming the handler and reducing physical and mental effects such as anxiety, fear, flashbacks, hypervigilance, hallucinations, intrusive imagery, nightmares, muscle tension, trembling, nausea, and memory loss. Some of these symptoms are alleviated by the animal staying with and focusing on the handler, some are alleviated by the animal leading the handler to a safe place, some are alleviated by the handler's ability to distinguish between hallucinations and reality or recognize unwarranted fears by gauging the animal's reaction to the environment, and some are alleviated simply by the animal's presence.<sup>1</sup> All of these are critical accommodations that enable many people to

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<sup>1</sup> Among the types of "non-task" service dog assistance most commonly identified by respondents to a survey conducted by the Psychiatric Service Dog Society were: providing a constant calming presence or companionship (21 respondents), making individual feel safer (18 respondents), providing comfort or emotional support (14 respondents), providing structure (10 respondents), helping individual get out of the house (8 respondents), alleviating symptoms by providing unconditional love (8 respondents), providing meaningful distraction (7 respondents), facilitating social interaction (6 respondents), helping individual exercise (5 respondents), and suicide prevention (4 respondents). Respondents also identified many additional non-task forms of assistance that they use.

Indeed, non-task forms of assistance are often the most significant to psychiatric service animal users. The above-noted survey demonstrated that a large number of psychiatric service dog users consider non-task forms of assistance more important than tasks performed by the dogs. When asked to rate the relative importance of tasks versus non-task forms of assistance, five percent (5%) of respondents reported that the performance of disability-related tasks is most important. Thirty-one percent (31%) stated that non-task

participate successfully in everyday activities, and whether the animal accomplishes these accommodations through physical tasks should not matter for purposes of whether they are covered by the ADA.

Moreover, there is no basis in the ADA for a regulation limiting the types of assistance that service animals may provide to physical tasks. The ADA requires the provision of reasonable accommodations or modifications necessary to assist a person with a disability, and there is nothing in the law that would support limiting such accommodations or modifications for an individual with a psychiatric disability to help with physical tasks. Just as the ADA covers non-physical accommodations such as explaining instructions in simpler language to an employee with an intellectual disability, the ADA covers non-physical accommodations provided by a service animal to a person with a psychiatric disability. Thus, the proposed regulatory change offered by CADO would be an unreasonable and impermissible construction of the statute. *Chevron v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843-44 (1984).

Indeed, if the current regulatory definition of service animal is changed, it should not be to eliminate needed protections, but rather to clarify that (1) the “training” requirement should be interpreted broadly, and (2) an animal that is not specifically “trained to perform tasks or do work” may be a covered accommodation if it serves a purpose of accommodating the effects of a disability and is otherwise reasonable.

We recognize that the concept of training is intended to distinguish service animals from pets. Some animals that serve critical accommodation functions, however, do not receive formalized training to perform those functions. In many cases, service animals are trained not through a formal training program but rather through experience with the handler. For example, dogs are astute observers of their environment and a psychiatric service dog partnered with a human being becomes an expert in the range of behaviors, attitudes and dispositions of its human partner. The service animal regulation should clarify that the concept of training is broad enough to encompass this type of training. For example, “training” might be defined as “any shaping of behavior through positive or negative reinforcement.”

Additionally, some animals provide needed assistance without undergoing any type of training, apart from basic obedience training. For example, a cat may alleviate symptoms of an owner’s major depression – such as suicidal thoughts -- without undergoing any particular type of training. In many cases, training is not appropriate because the precise mechanism by which the animal alleviates symptoms

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forms of assistance are most important. Sixty-two percent (62%) indicated that both tasks and non-task forms of assistance are equally important. The remaining two percent (2%) of respondents were uncertain.

is unclear, though the documented results are clear. One handler said of her dog, “I don’t know how to explain it. When I am with her, I feel safer. I don’t want to cut or burn myself so much, because I have to be here for her sake. She gives me something to live for.”<sup>2</sup> The service animal regulation should clarify that even if an animal is not “trained to perform tasks or do work,”<sup>3</sup> permitting a person to use the animal may still be a required accommodation. An animal that does not meet the definition of a service animal because it has not received training, but accommodates the effects of a disability and is reasonable under the particular circumstances, is a reasonable accommodation under the ADA. Such animals are often referred to as “emotional support animals.” There is no basis in the ADA for excluding coverage for such animals that provide needed accommodations.

We understand that there are legitimate concerns about individuals without disabilities invoking the ADA’s protections to justify the presence of animals that are, in fact, pets. The solution to this problem, however, is to provide clarification that the ADA does not protect such individuals rather than to eliminate protection for individuals with psychiatric disabilities who use animals to provide critically important functions that accommodate the effects of their disabilities. If the Department wishes to provide guidance to ensure appropriate limits on the use of service animals, it might clarify that:

- A service animal would not be a required accommodation under the ADA if it were unreasonable – for example, if it destroyed others’ property or created undue disruptions.
- A service animal would not be a required accommodation under the ADA if it were used by an individual who does not have a disability.
- A service animal would not be required under the ADA if it served no purpose to accommodate an individual’s disability.

By contrast, the limitations proposed by CADO are inappropriate and would constitute an unreasonable interpretation of the ADA. Additionally, they would deny needed protections to many individuals who use psychiatric service animals and emotional support animals, would provide lesser protections for people with psychiatric disabilities than people with physical disabilities, and would destroy many lives.

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<sup>2</sup> Telephone interview of C.S. with Joan Esnayra (Aug. 15, 2006).

<sup>3</sup> We believe that the vast majority of ways in which animals provide assistance to alleviate symptoms of psychiatric disabilities constitute “doing work.” Nonetheless, there is a lack of clarity about this and many individuals who use psychiatric service animals have been told that, based on current regulatory language, their animals are not covered by the ADA because they are not trained to perform tasks or do work.

We appreciate your consideration of our concerns in your process of making regulatory changes.<sup>4</sup> We would welcome an opportunity to discuss these concerns further with you as you proceed with your regulatory review.

Very truly yours,

\_\_\_\_\_ *Signed* \_\_\_\_\_

Jennifer Mathis  
Deputy Legal Director  
Judge David L. Bazelon Center  
for Mental Health Law

\_\_\_\_\_ *Signed* \_\_\_\_\_

Ralph Ibson  
Vice President for Government Affairs  
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\_\_\_\_\_ *Signed* \_\_\_\_\_

Ron Honberg  
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National Alliance on Mental Illness

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Joan Esnayra, Ph.D.  
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<sup>4</sup> Additionally, we assume that any information that the Department puts out on the subject of service animals, including information communicated in DOJ Business Briefs and through the ADA Information Telephone Support Line, will be consistent with the regulatory definition of “service animal” and any clarifications of that definition.