Appellate Court Rules That Plasma Donation Centers Are Public Accommodations Subject To the Americans with Disabilities Act

On July 12, the U.S. Court of Appeals for The 10th Circuit ruled that Octapharma Plasma, Inc., and other plasma donation centers – like virtually all other commercial establishments open to the public – are public accommodations subject to the non-discrimination requirements of Title III of the Americans with Disabilities Act (ADA). The decision, the first on this issue by a federal appellate court, overturns the holding of a Utah federal trial court and rejects the multi-billion-dollar plasma industry’s position that its members may freely turn away people with disabilities or otherwise discriminate with impunity against its largely indigent donors.

Plasma donation centers draw blood from donors – who typically receive between $25 and $50 in exchange – then separate the plasma component of that blood and sell it to pharmaceutical companies for far greater sums. The plaintiff in this case, Brent Levorsen, depends on payments from donating plasma for a significant portion of his limited income. When he disclosed to Octapharma’s Salt Lake City facility that he has a psychiatric disability, Octapharma refused to serve him, stating that he might rip a needle out of his arm. It maintained this position even after Levorsen’s doctors attested in writing that his condition was successfully controlled with medication and that Octapharma’s fears were unfounded.

With the assistance of the Disability Law Center (DLC) in Salt Lake City, Levorsen sued under the ADA, Title III of which bars “service establishments” and other types of public accommodations from discriminating against customers on the basis of disability. The federal district court in Salt Lake City, while finding Levorsen’s position sympathetic, nonetheless dismissed his lawsuit. It agreed with Octapharma that plasma donation centers are not “service establishments” simply because, rather than being paid for their services, they pay donors.

Levorsen and the DLC retained the well-known Washington D.C. civil rights law firm, Relman, Dane & Colfax for their appeal to the Tenth Circuit. In addition to briefing and arguing the case, the Firm secured an amicus brief from the U.S. Department of Justice (DOJ), which also supported Levorsen at oral argument.

On June 12, 2016, the Tenth Circuit reversed the district court in a well-reasoned opinion by Judge Nancy L. Moritz (http://disabilitylawcenter.org/wp-content/uploads2/2016/07/Brent-Levorsen-v-Octapharma-Plasma-Inc.pdf). Judge Moritz wrote that the distinction between businesses that take payment and those that pay their customers was “superficial” and “irrelevant” and that the definition of “service establishment” adopted by the plasma industry is “unacceptably narrow.” She found that plasma donation centers are clearly “service establishments” within the plain meaning of those two words, and that in any case Title III of the ADA must be construed broadly in light of Congress’s intent to ensure that individuals with disabilities have “access to the same establishments available to those without disabilities.”

Reflecting on the broad importance of the decision, Aaron Kinikini of the Disability Law Center said: "When an industry depends on humans as the source of the raw materials which it transforms into billions of dollars in profits, it should be required to comply with the civil rights laws intended to protect those humans. This decision goes a long way to ensure that the ADA’s protections reach as many people,
in as many places, as congress intended." While binding only on Tenth Circuit states– Colorado, Kansas, New Mexico, Oklahoma, Utah, and Wyoming – the decision is likely to alter the industry’s discriminatory behavior around the country.

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