

# STATE OF ALASKA

DEPARTMENT OF CORRECTIONS  
*Commissioner's Office*

FRANK H. MURKOWSKI, GOVERNOR

PO Box 112000  
Juneau, AK 99811-2000  
PHONE: (907) 465-4652  
FAX: (907) 465-3390

April 3, 2006

Anthony Brown  
#6555  
Florence Correctional Center  
PO Box 6200  
Florence, AZ 85232

Dear Mr. Brown,

This letter follows our telephone discussion on 3/23/06 regarding a review of the Americans with Disabilities Act of 1990 (ADA) Request for Accommodation you filed on 12/5/05. You specifically requested 1) a darkened cell in order to sleep; 2) cellmates who don't snore, and 3) a low calorie/low cholesterol diet supplemented with milk. As stated, the purpose of our discussion was to try to reach a resolution to the request you filed.

## **Request**

Records indicate that you are being treated for Hepatitis C. Treatment began in July 2005 with the antiviral medications Peg-Intron and Ribavirin and is scheduled to continue into June 2006. As a result of this treatment you filed the Request for Accommodation. I see that your request focuses on two areas: 1) sleeping and 2) your diet. Each of these areas will be considered in light of the ADA.

### Sleep

1. In the documentation you submitted, you report that, as a result of this treatment, you have experienced numerous side effects with difficulty sleeping being one of the problems.
2. While you are receiving treatment for many of these symptoms, you requested accommodation for sleeping problems.
3. You requested to block the window in your cell and to not have roommates who snore to minimize mental and physical exhaustion so that you can participate in institutional programs, services, and activities.
4. During our telephone conversation on 3/23/06, you said that the sleeping issues of darkened shades and cellmates have been addressed by talking with your unit manager.

### Diet

1. In the documentation you submitted, you requested to be given a low calorie, low cholesterol diet supplemented by 2% milk.

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2. During our telephone conversation on 3/23/06, you clarified that you were previously on a low fat, low cholesterol diet.
3. You reported that you wanted the addition of milk to your evening meal to increase the uptake (i.e., absorption) and consequently the effectiveness of antiviral medication you are taking. 2% milk is already on the breakfast menu of the institutional diets.
4. You also told me that you have not been attending breakfast to avail yourself to the 2% milk on that menu.
5. You also reported that when you requested the addition of the 2% milk, you were removed from the low-fat diet and placed on a regular diet.

#### **ADA Criteria**

1. Under the ADA, a person with a disability is
  - a. "An individual with a physical or mental impairment that substantially limits one or more major life activities". A person has a disability if his/her limitations result from an impairment that substantially limits or restricts one or more major life activities beyond what the average person in the general population can perform with little or no difficulty. This involves consideration of the nature and severity of the impairment, its duration, and long-term impact of the impairment.
  - b. "An individual with a record of a substantially limiting impairment".
  - c. "An individual who is perceived to have such an impairment".
2. Under the ADA, no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity.
3. Under the ADA, an individual may be considered disabled when the impairment from the medical condition, its treatment, or side effects result in a sustained, substantial limitation of one or more life activities.

#### **Findings**

##### Sleep

1. In your request, you initially reported impairment in the area of sleeping resulting from the treatment of the medical condition Hepatitis C.
2. You also documented what you believed to be the impact of this impairment on your ability to participate in the institution's programs, activities, and services.
3. However, since you had indicated that at the time of our meeting that this issue has been satisfactorily addressed, a full review of your PTSD claims, the impact of the impairment due to sleep problems, and the plausibility of other accommodations has not been completed.
4. If the current sleeping accommodations becomes unsatisfactory, you will need to re-initiate the ADA accommodation process at the institutional level. I would not become involved again until later in the process according to Alaska Policy and Procedure #808.16.

Diet

1. In your request, you have documented the medical benefits for supplementing your diet with milk for the increased retention and performance of the antiviral medication.
2. However, in light of the ADA criteria, I do not find that this request for accommodation falls within the domain for consideration under the ADA. I render no determination on this issue.
3. Nonetheless, on 3/23/06 I discussed your dietary request with Dr. Stapler at the institution.
4. Dr. Stapler informed me that she would allow you to have the diet you want (i.e., return to a low-fat, low cholesterol diet).
5. Dr. Stapler also informed me that since you have no viral load and the virus is currently undetected, she feels the current treatment is working so that she is reluctant to modify your diet by supplementing it with the additional milk at dinner.

You will probably want to request in writing a return to the low-fat, low cholesterol diet. You may also choose to discuss the supplemental milk decision with Dr. Stapler again.

This decision is the final action by the department in this matter. You may request an additional review by the state ADA coordinator. As stated in Policy and Procedure #808.16, you must request this review within 10 days of the time you received this notification.

Sincerely,



Timothy F. Lyden  
DOC ADA Coordinator

cc: Commissioner Antrim  
State ADA Coordinator Brandon  
Institutional ADA Coordinator Wilson  
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