



U.S. Department of Justice

United States Attorney

Eastern District of Pennsylvania

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November 1, 2022

Via Regular Mail

Delaware County, Pennsylvania
201 West Front Street
Media, PA 19063

Carlton Johnson, Esq.
Tanneika A. Minott, Esq.
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Three Logan Square
1717 Arch Street, Suite 3500
Philadelphia, PA 19103

RE: The United States' Findings and Conclusions Based on its
Investigation of the George W. Hill Correctional Facility under
Title II of the Americans with Disabilities Act, DJ # 202-62-241

Dear Counsel:

The United States Department of Justice (the "Department") has completed its investigation of the George W. Hill Correctional Facility (the "GWH Facility") under Title II of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12131–12134, and its implementing regulation, 28 C.F.R. Part 35. The Department opened this investigation in response to a complaint from a former inmate (the "Complainant") alleging that the GWH Facility excluded him from working in the facility's kitchen because he has the human immunodeficiency virus ("HIV"). This exclusion deprived the Complainant of benefits, including but not limited to monetary compensation, special housing, extra privileges, and eligibility for sentence reduction.

The GWH Facility is a medium-security prison located in Thornton, Delaware County, Pennsylvania. The GWH Facility incarcerates pre-trial detainees and persons serving a county sentence of less than two years or a state sentence less than five years. The GWH Facility is owned by Delaware County, although until recently the day-to-day operations of the facility were managed by contractors.

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Under Title II of 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 the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity. 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a). The ADA applies to Delaware County because it is a “public entity” as defined by the statute. 42 U.S.C. § 12131(1); 28 C.F.R. § 35.104. A public entity like Delaware County is liable for violations of Title II of the ADA even where those violations were carried out by contractors. 28 CFR § 35.130(b) (barring discrimination by public entity “directly or through contractual, licensing, or other arrangements”). Title II authorizes the United States to initiate investigations, make findings of fact and conclusions of law, and attempt to secure voluntary compliance when it finds violations, and to bring lawsuits when it is unable to secure voluntary compliance. 42 U.S.C. § 12133; 28 C.F.R. pt. 35, subpt. F.

After carefully reviewing the evidence, we have determined that Delaware County violated Title II of the ADA by excluding the Complainant from working in the kitchen because he has HIV. Exclusion of an inmate from the program on the basis of HIV status is medically unnecessary and causes stigma. Leading public health and correctional authorities, including the Centers for Disease Control and Prevention and the National Commission on Correctional Health Care, support giving people living with HIV, who otherwise meet eligibility criteria for special correctional programs, the same consideration as other inmates. This letter sets forth the Department’s findings of fact and conclusions of law and the minimum steps the Delaware County must take to meet its legal obligations and remedy the violation the Department has identified.

The Department’s investigation included interviews with the Complainant and a review of documents provided to the Department. That request for documents was directed to then-warden [REDACTED]. The Complaint alleged, and our investigation concluded, that Delaware County indeed denied the Complainant the opportunity to participate in or benefit from its aids, benefits, services, or programs, in violation of the ADA. *See* 28 C.F.R. § 35.130(b)(1)(i). The investigation further suggested that Delaware County employees were consulted about the denial and the Complainant’s efforts to challenge this denial.

The Complainant entered the GWH Facility on February 17, 2020. Soon thereafter, he applied for a job in the kitchen. The Complainant complied with all facility requests for medical review and assessment. Although there was no medical basis to deny him the position, he was nonetheless denied. When he asked in

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writing why he was denied, he received the following written response: "You were not cleared to work in the kitchen because you have HIV." (emphasis in original).

GC INMATE NAME: [REDACTED] UNIT/POD/CELL 411 102
GWVCF Inmate No. 20001101
100 5th Street, Ste. 100
Greenville, PA 17033

INMATE REQUEST FOR INFORMATION
(Date not printed/checked)

DATE: 4-9-20

TO: (Check the person to whom this request is being directed)

Warden Deputy Warden, Operations Deputy Warden, Security
 Business Manager Chief of Security Shift Commander
 Captain Case Manager Health Services Admin.
 Commissary Officer Case Counselor

CHECK OFF OR WRITE REQUEST BELOW:

AA/MJ Registration Bible Protestant Church Catholic Mass Teleministry
 Ramadan

Other: I'm writing to follow up on my worker application to be a black worker and kitchen worker I spoke to the supervisor working second shift and only when being a black worker and Deborah the nurse said she is following up with her supervisor Kristen to get this information and medical clear for the case with the doctor

Inmate Signature: [REDACTED]

ACTION TAKING:

You were not cleared to work in the kitchen because you have HIV.

I do not handle black jobs the first shift they handle all black jobs

I asked out to Johnson

STAFF SIGNATURE: [REDACTED] DATE 4/16/20

After pressing the issue, Complainant received other pretextual explanations for the denial, even though his medical records demonstrate that the reason for the denial was, indeed, his HIV status.

Encounter		06-23-2020 Tue 02:15 PM	
	PCP# [REDACTED]	Gender: Male	DOB [REDACTED]
Dictation:	KITCHEN AND BARBERSHOP CLEARANCE: Patient assessed by ID RN and cleared for inmate worker duties in any other department EXCEPT for the kitchen or Barber Shop. No visible ectoparasites, open sores or lesions upon exam. Patient denies any thought to harm self. Patient does have active infectious disease of HIV +, level are wnl. Clearance form entered into patient health record. Inmate Worker Training and Biohazard training completed 06/23/2020.		
	Electronic Signature: Electronically Approved by [REDACTED] on 06-23-2020 02:37:15 PM.		

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The Complainant filed formal grievances and otherwise challenged the denial of the kitchen job for five months. Outside of the grievance process, the Complainant diligently raised his discrimination allegations through correspondence to numerous individuals in leadership at the GWH Facility, including: Nurse [REDACTED], Nurse [REDACTED], Nurse [REDACTED], Social Worker [REDACTED], Case Manager [REDACTED], and Psychologist [REDACTED]. He also raised concerns to Counselor Advocates [REDACTED] and [REDACTED]. When he asked to communicate with the warden about his issues, the facility's compliance administrator denied the request. The GWH Facility Administrator [REDACTED] ultimately denied the Complainant's grievances on May 28, 2020:



Despite his continued efforts to resolve the issue, the GWH Facility never permitted the Complainant to work in the kitchen during his five months of incarceration. He was released on July 20, 2020.

As a result of the above, Delaware County discriminated against or excluded a qualified individual with a disability from participation in, or denied the Complainant the benefit of, the services, programs, or activities, on the basis of the inmate's disability, 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a) and denied the

Complainant the opportunity to participate in or benefit from aids, benefits, or services, 42 U.S.C. § 12132; 28 C.F.R. § 35.130(b)(1)(i). *See also* 28 C.F.R. § 35.130(b)(3). People living with HIV, who otherwise meet eligibility criteria for special correctional programs, should receive the same consideration as other inmates. 28 C.F.R. § 35.130(a) and § 35.130(b)(1)(i). In response to Complainant's clear allegations that the denial was discriminatory, the GWH Facility leadership merely repeated the discriminatory decision. Delaware County employees were consulted and did nothing to reverse the decision.

Delaware County should promptly implement measures to remedy this violation and protect the civil rights of inmates with HIV. These should include:

1. Adopting an explicit written policy that the GWH Facility does not exclude qualified inmates from participation in or deny them the benefits of the GWH Facility's services, programs, or activities, including, but not limited to, working in the kitchen, on the basis of an inmate's HIV status.
2. Identifying a County ADA Coordinator, responsible for overseeing investigations and resolutions of ADA complaints or grievances.
3. Designating an ADA Coordinator at the GWH Facility to coordinate Delaware County's efforts to comply with and carry out its responsibilities under Title II of the ADA, as well as the investigation of inmate ADA grievances or complaints communicated to the GWH Facility alleging noncompliance with, or conduct prohibited by, Title II of the ADA.
4. Modifying the GWH Facility's Inmate Grievance Program Directive, to promptly route inmates' ADA grievances to the ADA Coordinator and to ensure that they are thoroughly, appropriately, and timely resolved.
5. Appropriately training and educating all GWH Facility staff regarding HIV and the nondiscrimination requirements of Title II of the ADA with regard to individuals with HIV.
6. Paying compensatory damages to the Complainant for injuries he sustained.
7. Providing the United States with written status reports delineating all steps taken to comply with these requirements, including the date(s) on which each step was taken, and, where applicable, information sufficient to demonstrate compliance.

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We presented to you on this matter on March 15, 2022. Rather than working toward a resolution of this matter, Delaware County has taken the unfounded position, in direct contravention of the applicable regulation, 28 CFR § 35.130(b), that it is not responsible for the facility, because the day-to-day operations at the facility were being run by a contractor. Despite this position, we hope to work cooperatively with you to resolve the Department's findings in this matter. We are obligated to inform you, however, that if Delaware County declines to enter into voluntary compliance negotiations or if our negotiations are unsuccessful, the United States may take appropriate action, including initiating a lawsuit, to obtain redress for outstanding concerns. We will also share a copy of this letter with the Complainant's counsel.

Please contact me within five days of receipt of this letter if Delaware County is interested in working with the United States to reach an appropriate resolution along the lines described above. If you have any questions as you review this letter, please feel free to contact us.

Sincerely,

JACQUELINE C. ROMERO
United States Attorney



Veronica J. Finkelstein
Assistant United States Attorney