

#270937 Nancy Gingery
vs. Skydive Hastings, Inc.

Order
Nanette L. Reynolds, Director



**STATE OF MICHIGAN
CIVIL RIGHTS COMMISSION
110 West Michigan Avenue
Lansing, MI 48933**

MICHIGAN DEPARTMENT OF CIVIL RIGHTS
ex. rel. NANCY GINGERY,
Claimant,

Case No. 270937

v.

SKYDIVE HASTINGS, INC.,
Respondent.

ORDER

At a meeting of the Michigan Civil Rights Commission
held in Lansing, Michigan on the
10th day of September 2003

In accordance with the Rules of the Michigan Civil Rights Commission, a Hearing Referee heard proofs and arguments and made proposed findings of fact and recommendations regarding the issues involved in this case. Commissioner Margaret VanHouten, has issued an Opinion, adopted by a unanimous vote of the Commission. That Opinion shall be made a part of this Order. The Commission therefore makes the following Findings of Fact and Conclusions of Law:

**STATE OF MICHIGAN
CIVIL RIGHTS COMMISSION**

MICHIGAN DEPARTMENT OF CIVIL RIGHTS
ex. rel. NANCY GINGERY,
Claimant,

Case No. 270937

v.

SKYDIVE HASTINGS, INC.,
Respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT

1. Claimant is a resident of Michigan.
2. Respondent operates a for-profit sky dive instruction and activity corporation in Michigan.
3. The claimant is a deaf person who desired to sky dive for the first time.
4. Claimant contacted the respondent in summer 1999 to participate in a tandem parachute jump. The claimant requested that the respondent provide her with an American Sign Language ("ASL") interpreter. The respondent offered to instruct the claimant by use of a written lesson plan. The claimant decided not to participate in the jump at that time.
5. Claimant contacted the respondent in 2000 and again requested an ASL interpreter. Claimant was told by the respondent that the respondent would provide

written instruction or that the claimant could bring her own interpreter, but the respondent would not pay for the cost of the claimant's interpreter.

6. The claimant jumped on August 20, 2000 in tandem with an instructor from the respondent. The claimant provided her own interpreters who volunteered their services at no cost to the claimant. One of the interpreters participated in the jump and paid the jump fee. The other interpreter did not jump and was allowed to accompany the claimant in the plane free of charge.
7. The respondent at no time denied the claimant the opportunity to participate in a parachute jump. Respondent proposed reasonable alternative accommodations to the claimant by offering either written instructions or allowing the claimant to provide her own interpreter and have such interpreter accompany the claimant without additional charge.
8. The respondent has previously successfully accommodated other deaf skydivers through the use of written instructions. In addition, the respondent has successfully accommodated people with other disabilities, including paraplegics and quadriplegics.
9. Tandem skydiving requires only that the participant know the correct way to arch their back during the jump. All other activity is controlled solely by the instructor.
10. Claimant has not sustained any out-of-pocket costs as a result of the alleged discrimination.
11. Claimant did not experience such emotional distress that she felt it necessary to counsel with a mental health professional or take medication to deal with her

feelings. In fact, claimant arranged for a group of deaf individuals to sky dive with the respondent in 2001.

12. The cost of the claimant's first jump tandem sky dive was \$189.00, which included expenses to the respondent of approximately \$140.00, resulting in a profit of approximately \$49.
13. Two interpreters would be necessary because of the length of time involved in completing the instruction and the jump. The cost to the respondent of providing two interpreters as requested by the claimant would be approximately \$366.
14. The respondent would be entitled to a 50% federal tax credit pursuant to 26 U.S.C. §44 for the expenses of the interpreters in excess of \$250.
15. The respondent's taxable income for 1998 was \$19,989 and for 1999 was \$4,963. The respondent's business substantially declined after September 11, 2001.

CONCLUSIONS OF LAW

1. The claimant meets the definition of a person with a disability as established under the Michigan Persons With Disabilities Civil Rights Act, MCL §37.1103(h).
2. The respondent meets the definition of a place of public accommodation as established under the Michigan Persons With Disabilities Civil Rights Act, MCL §37.1301(a).
3. The respondent offered an accommodation in the form of written instructions and the availability to answer questions via handwritten notes. This accommodation had proven successful in jumps by other deaf skydivers.

4. The claimant chose to end the interactive accommodation process when she refused to even try the respondent's offered accommodation.
5. The respondent also offered an accommodation by allowing the claimant's interpreter to accompany her on the plane free of charge, which reduced the number of jumpers the respondent could have on that plane.
6. For the reasons stated above, there was no violation by the respondent of the Michigan Persons With Disabilities Civil Rights Act.

WHEREFORE, IT IS HEREBY ORDERED that Claimant's complaint under the Michigan Persons With Disabilities Civil Rights Act is dismissed.

MICHIGAN CIVIL RIGHTS COMMISSION

Dated: _____

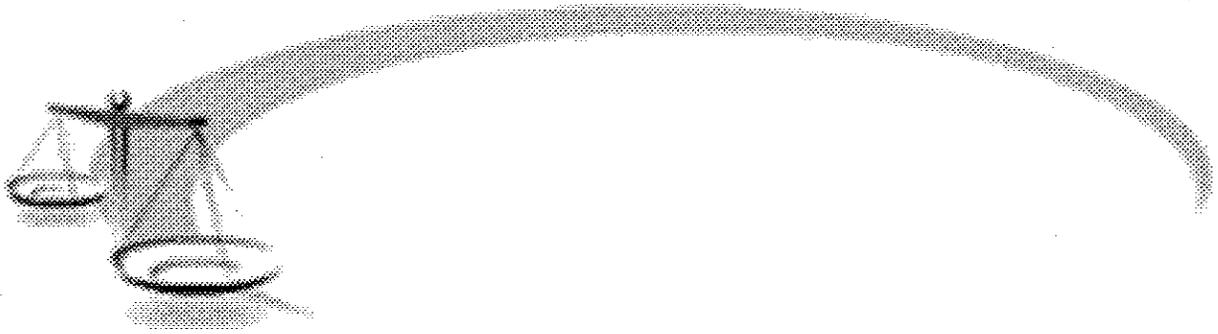
9.22.03



Nanette Lee Reynolds, Ed. D., Director

NOTICE OF RIGHT TO APPEAL

You are hereby notified of your right to appeal within thirty (30) days to the Circuit Court of the State of Michigan having jurisdiction as provided by law. MCLA 37.2606



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Opinion
Margaret M. VanHouten, Commissioner



STATE OF MICHIGAN
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MICHIGAN DEPARTMENT OF CIVIL RIGHTS

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OPINION

The claimant, a deaf woman, claims that the respondent, a business that is subject to the public accommodation section of the Michigan Persons With Disabilities Civil Rights Act, MCL §37.1301, *et seq.*, failed to provide the claimant with a reasonable accommodation. The respondent operates a skydiving company and the claimant contacted the respondent to parachute jump from an airplane.

The respondent offers first time jumpers like the claimant a tandem jump with a qualified instructor for \$189. At all times during the skydive, the instructor has complete control over the parachute apparatus. Basically, the jumper is just along for the ride until it is time to land. Therefore, what might be thought of as a complex activity because of its dangerous nature is in reality quite simple.

The fact that the act of jumping itself does not require a lot of participation by the claimant is not meant to minimize the potential danger of the activity. In fact, participants must read and sign a waiver of liability which states in large, bold face print on the first page:

W A R N I N G !

SKYDIVING, PARACHUTING, AND ALL ITS RELATED ACTIVITIES CAN BE DANGEROUS AND THERE ARE RISKS INVOLVED IN YOUR PARTICIPATION. YOU CAN BE SERIOUSLY INJURED OR EVEN KILLED AS A RESULT OF YOUR PARTICIPATING IN SKYDIVING OR ITS RELATED ACTIVITIES.

Certainly, the risks involved in skydiving limit the number of people who are willing to participate in this voluntary recreational activity. Participation is also limited by the costly nature of skydiving.

Despite charging \$189 for a tandem jump, the respondent's taxable income after expenses was \$19,989 in 1998 and \$4,963 in 1999. In addition, the respondent testified as to a substantial downturn in business after September 11, 2001 and major repair costs to an airplane that the respondent did not have sufficient funding to have completed.

The issue before the Commission is whether the respondent's offer to provide the claimant with written instructions before she participated in a tandem skydive jump or to allow the claimant to be accompanied by her own interpreters was a reasonable accommodation or whether the respondent was required to provide and pay for the cost of American Sign Language ("ASL") Interpreters for the claimant.

The U.S. Department of Justice, ADA Title III, Technical Assistance Manual, Section 4-3200 states that, "Public accommodations should consult with individuals with disabilities whenever possible to determine what type of auxiliary aid is needed to ensure effective communication. In many cases, more than one type of auxiliary aid or service may make effective communication possible. While consultation is strongly encouraged, the ultimate decision as to what measures to take to ensure effective communication rests in the hands of the public accommodation, provided that the method chosen results in effective communication."

Neither claimant nor respondent has been able to provide any direct case law for guidance. Both parties refer to *Mayberry v. VonValtier*, 843 F Supp. 1160 (ED Mich. 1994), in which the court denied the defendant's motion for summary judgement in a case involving a deaf patient's claim against her doctor for refusing to provide an interpreter. It should be noted that *Mayberry*, as well as recent similar cases such as *Majocho v. Turner*, 166 F Supp. 2d 316 (W.D. Pa. 2001), involve decisions regarding motions for summary judgement arising in the context of doctors providing interpreters for medical patients during examinations.

In *Mayberry*, the doctor, after paying for an interpreter for his deaf patient on one occasion, sent a letter to the interpreter and carbon copied his patient indicating that the doctor would no longer be able to pay for the interpreter in the future and really couldn't afford to take care of the deaf patient either. The court ruled that the doctor's letter refusing to pay for an interpreter during medical examinations and essentially dismissing his deaf patient because of her disability created a question of fact for the jury to decide and therefore denied the summary judgement motion. There is no indication in the

Mayberry decision as to the ultimate outcome of the case. Nor was there a definitive statement of what accommodation is required by a doctor treating a deaf patient let alone what accommodation is required by a place of public accommodation offering a voluntary recreational activity. It should also be noted that in *Mayberry* the amount of interpreter fees in question was \$28 compared to \$366 in this case.

There are three facts that stand out in this case and lead to the conclusion that respondent has not violated the public accommodation section of the Michigan Persons With Disabilities Civil Rights Act. First, the cost of providing ASL interpreters would result in the respondent incurring a loss on the jump. For that reason the respondent is proposing other forms of accommodation, rather than accepting the accommodation proposed by the claimant.

Second, the respondent has successfully accommodated other deaf skydivers by providing written instruction, notes and physical demonstrations. By refusing to even try the respondent's proposed accommodation the claimant abandoned the interactive process of arriving at a reasonable accommodation.

Third, both sides agree that the respondent never denied the claimant the opportunity to skydive or access to the respondent's services. The claimant did in fact complete a tandem jump and the respondent allowed the claimant's interpreter to accompany her at no charge throughout the entire activity. Respondent accommodated the claimant by allowing the interpreter to ride in the plane with the claimant, which still cost the respondent money because the interpreter takes a seat away from a paying customer in the plane.

Based on these facts, respondent's offered accommodations of either written instruction or allowing the claimant to bring her own interpreters to accompany her free of charge were reasonable under the circumstances.

For the reasons cited above, there was no violation by the respondent of the Michigan Persons With Disabilities Civil Rights Act.

Respectfully submitted,

Dated: September 10, 2003

A handwritten signature in cursive script that reads "Margaret M. VanHouten". The signature is written in black ink and is positioned above a horizontal line.

Margaret M. VanHouten, Commissioner