



VIA ELECTRONIC MAIL

October 4, 2018

Anna Maria Farias
Assistant Secretary for Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
451 7th Street S.W.
Washington, DC 20410
Evonne.G.Heredia@hud.gov

Re: Assistance Animal Guidance Meeting on October 1, 2018

Dear Assistant Secretary Farias,

We would like to thank you, Tim Petty, Lynn Grosso, and Ashley Ludlow for meeting with disability stakeholders on October 1, 2018. During that meeting, the disability community shared several concerns regarding HUD's upcoming assistance animal guidance. This letter summarizes those concerns. It also addresses an issue about veterans with disabilities.

We appreciate that the issue of assistance animals resonates with you. You have emphasized your mother's dogs contribute to her well-being and happiness, and allow her to age-in-place. The same is true for people with disabilities who have assistance animals, including emotional support animals. As noted during the meeting, people in disaster areas risk their lives for their animals, and people with disabilities have faced homelessness rather than get rid of assistance animals. Hence, the stakes attendant to HUD's assistance animal guidance are high.

Unfortunately, despite the high stakes, we have struggled to discern (a) HUD's position on a number of concerns we have raised and (b) how the new guidance will impact people with disabilities. Indeed, we are left to guess what HUD contemplates for the current guidance, and even which issues around assistance animals will be addressed. Although grateful for the opportunity to present our positions on a myriad of issues, we are left to wonder about HUD's position on such issues and why it is reticent to share them with us. This is frustrating and represents an over-arching concern about the entire process.

Now, we turn to specific concerns.

I. HUD Should Provide Education on Assistance Animals

HUD issued robust assistance animal guidance in 2013 that squarely addresses many issues. However, confusion about those issues remains, as evidenced by the number of cases filed with HUD by people with assistance animals. This confusion includes mistakes that defy common sense and the express dictates of the guidance, such as the insistence by housing providers for verification when a person's disability and need for an assistance animal is obvious (e.g., a blind person with a guide dog). This is a problem that begs for education on the guidance. Without a far-reaching educational campaign, this confusion will persist.

II. Verification of Disability and Need for Animal

We are concerned the guidance will limit who can verify a person's disability and need for an assistance animal. In particular, we worry HUD will instruct that only doctors, or only certain specialists, such as psychiatrists, can issue verifications. As a preliminary matter, beyond prescribing medications, psychiatrists are infrequently involved in the treatment of people with psychiatric disabilities. In addition, limiting verification to doctors would severely limit the rights of low-income people with disabilities to get an assistance animal. Many people with disabilities cannot afford to see a doctor regularly. Instead, they may see: (a) a counselor, such as a LCSW, psychologist, or mental health professional; (b) a social service provider, such as a caseworker; or (c) a physical or occupational therapist. These providers are often familiar with the needs of an individual with a disability, including his/her need for an assistance animal. In addition, dog training centers can verify a person's limitations and need for an animal.

As you know, we share HUD's concerns regarding the cottage industry of fraudulent websites that "certify" an assistance animal. This industry hurts housing providers and people with disabilities alike, as both groups mistakenly believe animals have to be registered or that the animal owner must present a certificate/license. However, a bright line rule against online providers would be problematic for people with disabilities, especially considering the popularity of e-medicine, particularly in rural areas.

Instead of a bright line rule, we urge HUD to create factors to ascertain the reliability of verification that comes from the internet. We endorsed the following factors in our letter to you in May of this year, and we commend them to you again:

1. the extent to which the documentation demonstrates the provider has personal knowledge of the person with a disability and the disability-related need for the assistance animal;
2. the extent to which the documentation describes the professional relationship between the provider and the person with a disability, including the length of this relationship; and
3. whether the documentation appears to be from a business (e.g. a website) whose sole purpose is to provide a certificate, license, letter, or similar statement that an animal is an assistance animal. (If so, the documentation may not be sufficient.)

However, even with factors, HUD should prioritize education of people with disabilities and housing providers alike to ensure they fully comprehend acceptable versus unacceptable verification.

III. Dog Breed Restrictions

The 2013 guidance prohibits breed restrictions. It stresses that housing providers should consider whether a specific animal poses a direct threat. During the meeting on October 1, we emphasized two points: (a) some dog training centers train breeds wrongly assumed to be inherently dangerous; and (b) it can be difficult to discern a dog's breed, especially when a dog is adopted from a shelter or rescue center. If HUD imposes a breed restriction, a person could adopt an assistance animal from a shelter, not know the breed, and later confront a housing provider

who rejects the dog based on its perceived breed. Although HUD told the National Council on Disability it is not considering breed restrictions, when we asked about this possibility on October 1, HUD's position was somewhat circumspect. We urge HUD to rely on the 2013 guidance and reject breed restrictions.

IV. Animal Restrictions

We urge that any new guidance not proclaim a hard and fast prohibition against a non-traditional animal as an assistance animal. As with many issues in disability law, a one-size-fits-all solution is not appropriate. Although in Chicago it might be strange to have a rabbit or a ferret as an assistance animal, this might not be strange in a more rural area.

If presented with a request for a non-traditional assistance animal, the housing provider should evaluate the reliability of the verifying documentation and consider the characteristics of the community (urban vs. rural) and the specific property (e.g. size of the unit) to determine whether the particular animal is reasonable. In other words, a nontraditional animal should be evaluated under a reasonableness standard based on community landscape and space characteristics.

In addition, some individuals, due to a disability, are unable to care for a traditional animal. In these instances, if the individual has reliable verification, a non-traditional assistance animal may be a legitimate emotional support animal.

V. Different Housing Types

We urge HUD to maintain the same standards for every housing type (e.g., apartment buildings, condominium buildings, dormitories, and shelters). Apparently, universities are sometimes confused about how to deal with assistance animals in student housing. However, the 2013 guidance addresses common issues that occur in university housing, such as claims by students to be allergic to certain animals. Robust education of university personnel is the answer, rather than a different standard for dormitories. In any event, we were pleased to learn HUD does not plan to establish different standards for different types of housing.

VI. Veterans

The discussion on October 1 left us concerned the new guidance may single out veterans with disabilities for a preferred status in terms of assistance animals, including emotional support animals. HUD did not state this directly, but our group thought HUD may consider such a position. While we endorse the rights of veterans with disabilities to rely on assistance animals of all types to address physical and mental health issues, it makes little sense to treat veterans with disabilities differently than others with disabilities who experience mobility limitations, depression, PTSD, or other mental health problems.

During the meeting, we reiterated our request to review the new guidance before it is issued, and asked HUD to assemble a group of disability and housing stakeholders to discuss the issues attendant to assistance animals. HUD rejected both requests.

This was a disappointment. In our view, our requests will result in a better end-product that is endorsed by the widest swath of constituents. Indeed, the convening of stakeholders from both sides creates an opportunity for reasonable compromise and a win-win outcome. Accordingly, we urge you to reconsider.

Again, thank you for your time and opportunity to comment. We appreciate your attention to this extremely important issue for people with disabilities.

Sincerely,

A handwritten signature in blue ink that reads "Ken Walden". The signature is fluid and cursive, with the first name "Ken" and last name "Walden" clearly distinguishable.

Kenneth M. Walden
Managing Attorney

A handwritten signature in blue ink that reads "Mary Rosenberg". The signature is fluid and cursive, with the first name "Mary" and last name "Rosenberg" clearly distinguishable.

Mary Rosenberg
Staff Attorney

cc: Lynn Grosso, Director of Enforcement
Tim Petty, Office of General Counsel
Ashley Ludlow, Office of Congressional & Intergovernmental Relations