

**UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

AMBER ALVEY,

Plaintiff,

v.

Case No.

SHERIFF BOB GUALTIERI, in his  
official capacity as Sheriff of  
Pinellas County,

Defendant.

**COMPLAINT FOR DECLARATORY JUDGMENT, INJUNCTIVE RELIEF  
AND DAMAGES**

**PRELIMINARY STATEMENT**

1. Plaintiff Amber Alvey brings this action for declaratory judgment, injunctive relief and damages pursuant to the Americans with Disabilities Act (ADA), 42 U.S.C. §12101, *et seq.*

2. Defendant Sheriff operates a homeless shelter, Pinellas Safe Harbor, that purports to provide temporary housing for individuals who otherwise have no place to live. In June 2014, Alvey found herself with no safe place to live and sought shelter at Pinellas Safe Harbor. After an incident that arose from Defendant's failure to reasonably accommodate Alvey's physical disabilities that resulted in Alvey's brief hospitalization, Defendant decided to exclude Alvey from Pinellas Safe Harbor. Defendant's failure to provide reasonable modifications and the subsequent decision to exclude Alvey from the programs and benefits at

Pinellas Safe Harbor constitutes discrimination in violation of the ADA.

### **JURISDICTION**

3. The Court has jurisdiction over Plaintiff's claims under: 28 U.S.C. §1331, which gives district courts original jurisdiction over civil actions arising under the Constitution, laws or treaties of the United States; and U.S.C. § 1343 (3) and (4), which give district courts jurisdiction over actions to secure civil rights extended by the United States government.

### **VENUE**

4. Venue lies in the Middle District of Florida pursuant to 28 U.S.C. §1391(b) and in the Tampa Division pursuant to Local Rule 1.02(c) because the events that gave rise to this Complaint occurred in this District and Division.

### **PARTIES**

5. At all times relevant to this action, Plaintiff Alvey was a resident of the City of St. Petersburg, Florida. Alvey currently resides in St. Petersburg, Florida.

6. Defendant Bob Gualtieri is the Sheriff of Pinellas County and is sued in his official capacity. The Sheriff operates Pinellas Safe Harbor. Pinellas Safe Harbor is a shelter for homeless individuals located in a jail annex adjacent to the Pinellas County Jail.

### **STATEMENT OF FACTS**

7. Alvey is a 59 year-old woman.

8. Alvey has physical impairments that substantially limit major life

activities.

9. Alvey's impairments resulted from an extreme incident of domestic violence in 1981 that left Alvey in a coma and hospitalized for weeks. She had head injuries, pelvic fractures, internal injuries to bladder and other internal organs, and spinal fractures that could not be surgically repaired. Alvey now has osteoporosis/arthritis in her spine, lives with chronic pain, and cannot walk without assistance. Over the years, she has used wheelchairs and canes to ambulate. When she walks, she must use a cane and can only manage short distances. Her gait is slow and measured. She also has epilepsy and other medical conditions. She has prescriptions for medications to manage these conditions, including pain medication, muscle relaxers, seizure medication, and sleep medication.

10. The Social Security Administration determined Alvey to be a person with a disability and she has received Supplemental Security Income (SSI) since 1994. During 2014, the monthly SSI payment was \$721. Due to her disabilities, she is unable to work.

11. Alvey has experienced difficulty finding safe housing that she can afford on her fixed income. Alvey usually rents a room that she pays for by the month.

12. In June 2014, Alvey had to leave her housing due to serious health and safety concerns, including a lice infestation and illegal activity on the premises by other boarders and their visitors involving drug use and prostitution.

She had been living there for less than two weeks.

13. Alvey could not find a place to stay and temporarily sought shelter in an abandoned bus for one day. Prior to that date, Alvey had never slept outside.

14. On June 19, 2014, Alvey called 211, a community resource hotline to assist individuals who need critical health and human services. She told them she had nowhere to go and that she was currently in an abandoned bus in an abandoned lot.

15. After Alvey called 211, Deputy Darryl Martin, a Pinellas County Sheriff's deputy, arrived and told her he could transport her to a safe place where she could stay.

16. The deputy transported Alvey to Pinellas Safe Harbor in a Sheriff's vehicle used for prisoner transport.

**Pinellas Safe Harbor Homeless Shelter**

17. According to its website, "Pinellas Safe Harbor is an emergency shelter designed to be a safe haven for those currently homeless and who require services to help them get back on their feet."

18. Safe Harbor identifies the people who stay at the facility as "residents." All Safe Harbor residents receive an identification card for entry and exit and may stay on shelter grounds throughout the day and night. Residents may keep their belongings and receive mail at Safe Harbor. There is no set limit to the number of days that residents may stay at Safe Harbor.

19. When Alvey arrived at Safe Harbor, she was using a cane to assist her in walking. She was in a lot of physical pain and having difficulty walking with her cane. She saw an empty wheelchair and asked if she could use it. Safe Harbor staff allowed her to sit in it, but it had a broken wheel so she was not able to move the chair on her own. A guard at Safe Harbor wheeled her into the room where she would be staying.

20. Alvey was admitted to Safe Harbor. During the intake process, she provided information to Safe Harbor staff regarding her physical disabilities and medical conditions. She was identified as having a long term disability on her intake forms. Alvey was required to turn over her medications to Safe Harbor staff who told her they would dispense them to her as needed.

21. Alvey's pain medication is prescribed for every 4-6 hours as needed. When she requested pain medication to alleviate severe pain she was experiencing, she was told that there was no one in the "pharmacy" and that Safe Harbor rules were that she could only receive medications two times a day.

22. After Alvey protested, staff told her they would make an exception for her one time only, and they provided her with her prescribed pain and seizure medication.

23. Staff at Safe Harbor informed Alvey that she would be required to sleep on a mat that is on a short platform inches from the floor. Alvey told staff that due to her physical disabilities, she would not be able to safely get down onto the mat or get back up again. Alvey noted that there were empty beds in

Safe Harbor. She asked several Safe Harbor staff, multiple times, to accommodate her disability by allowing her to sleep in one of the empty beds.

24. Safe Harbor staff told Alvey that a doctor's note was required before they would allow her to sleep in a bed, despite the fact that her physical disability was obvious and that she had already provided them with information about her physical and medical conditions and her prescription medications, alerting them to her medical diagnoses.

25. Alvey attempted to show Safe Harbor staff a copy of a disability permit application signed by a doctor, but they insisted that a separate doctor's note would be required before they would allow her to sleep on a bed. Since this was a Friday afternoon, getting a separate physician's note would not have been possible.

26. Despite the fact that there were beds available, Safe Harbor staff continued to refuse Alvey's request for a reasonable modification and told her she would be required to sleep on a mat on the floor.

27. That evening, Alvey was lying down in her mat when Safe Harbor staff told everyone they were required to get up and go outside for a "head count."

28. Alvey was unable to get up without physical assistance. She told Safe Harbor staff that she could not get up on her own, but no one on the Safe Harbor staff provided her with assistance.

29. A fellow resident at Safe Harbor stayed behind to try to get a

wheelchair over to Alvey to assist her. When Alvey tried to get up using her cane, she fell straight back onto her cane. The cane was underneath her, and Alvey hit her elbow, hip and head on the concrete floor. The fellow resident went to get the guards after Alvey fell.

30. Safe Harbor staff called an ambulance which transported her to Northside Hospital. Alvey did not want to go to the hospital and asked them not to call the ambulance.

### **Hospital Treatment and Discharge**

31. Alvey had bruises on her right hip and on her back from where she fell on the ground. Northside Hospital released her shortly after midnight because she had not broken any bones and did not have apparent internal injuries. She was directed to follow up with her primary physician, or to seek emergency medical attention if any of the following occurred: if she could not speak clearly (slurring), one side of face drooped, or experienced weakness in the arms or legs (especially on one side); if she passed out; if she had severe headache, dizziness, or problems with balance; if she had severe pain; if she could not walk; or if she fell and hit her head.

32. Northside Hospital staff told Alvey that she could go back to Safe Harbor since she had no place else to sleep that night. Staff at Northside Hospital put Alvey in a taxi cab with directions to take her to Safe Harbor. Alvey does not know who paid for the taxi cab.

33. The taxi cab driver dropped Alvey off in the parking lot of Safe

Harbor after midnight on Saturday, June 21, 2014.

**Exclusion from Safe Harbor Programs and Benefits**

34. When Alvey attempted to enter the facility after being discharged from the hospital, Safe Harbor staff refused her entry. Safe Harbor staff told her she had been banned from the facility and was not allowed to be on the property.

35. Safe Harbor staff told Alvey that the reason she was no longer allowed to stay on the property is that she has “too many medical issues.” She was told that she “needed to be in a nursing home.”

36. Safe Harbor official non-discrimination policy states that staff and volunteers shall not “discriminate against any resident, member or volunteer on the basis of race, sex, creed or national origin.” The Safe Harbor non-discrimination policy fails to prohibit discrimination on the basis of disability.

37. Safe Harbor records state that Alvey was banned from the entire facility starting on June 20, 2014, by the following staff: “Semone, Cline, Durr, Heimlinger, Dep. Anthony and Dep. Hill.” The records state the reason for the ban is that the “facility is not conducive to the medical needs of the resident.”

38. With reasonable modification, Alvey met all of Safe Harbor’s essential eligibility requirements.

39. When Safe Harbor staff informed her that she was banned from the facility in the early morning hours of January 21, 2014, Alvey requested that her personal belongings and medications be returned to her. Safe Harbor staff refused and told her she would have to return the following Monday at 4:00 p.m.

to retrieve her property.

40. Alvey was told she had to leave the property immediately. She started to cry and protested that she had nowhere else to stay.

41. Safe Harbor records state that Alvey was informed “she would not be able to stay at Pinellas Safe Harbor because she had been deemed medically unfit for Pinellas Safe Harbor until cleared by senior staff.”

42. Although the records also state that Alvey was told that “she could sleep in Pod 6 for the night due to her medical condition,” Alvey was not actually told that Pod 6 was an option. Even if she had been, it would have been unsafe given her disability.

43. Pod 6 is an outdoor courtyard that is open to the elements. Sleeping accommodations in Pod 6 are mats inches from a concrete floor. Blankets are not offered except in winter months. Pod 6 is utilized for: (1) current residents who smell of alcohol/drugs or are visibly impaired; (2) current residents who are not in compliance with the rules of Safe Harbor; (3) current residents who are not complying with case management requests or direction; or (4) overflow for new intakes if bed space is not available inside.

44. A guard escorted Alvey off the property.

45. Alvey left the property without her possessions, with no money, and without her prescribed medications.

46. Alvey stayed in the bus stop outside the gate to Safe Harbor from approximately 1:00 a.m. until the first bus arrived after 8:00 a.m. The bus stop

had a roof and plastic panels on three sides.

47. Alvey was in pain from the fall and the fall had made her chronic pain worse. The bench at the bus stop had partitioned seats so she was unable to lay down and had to sit up all night. There were no restrooms available to her outside, which was particularly difficult for Alvey due to a small bladder from prior surgery.

48. Alvey was terrified to stay in the bus stop overnight, but due to her physical disability, she had no place else to go and no way to travel anywhere until the buses were running in the morning. While at the bus stop, various men passed by doing drugs and one asked her to perform a sex act on him.

49. Alvey used a bus pass that she had received from staff at Safe Harbor the previous day to return to the unsafe place she had recently been staying because she had no place else to go.

50. Alvey was not able to stay at other emergency shelters located in the area because they are only temporary night shelters, requiring people to leave during the day time. Due to her physical disability, she cannot manage walking around all day until the shelter opens again.

51. Alvey returned to the Safe Harbor property the following Monday at approximately 1:00 p.m. to retrieve her belongings and her medications.

52. Safe Harbor staff returned her medications at 1:00 p.m., but refused to provide her other personal belongings until after 4:00 p.m.

53. While Alvey was waiting for the return of her personal belongings,

Safe Harbor staff refused to allow her entrance to the air-conditioned facility or to use the bathrooms inside because she was banned from the facility.

54. Alvey was forced to wait outside for three hours and was only permitted to use portable toilets located outside the facility in the courtyards when she needed to use the bathroom.

55. Alvey's housing situation continues to be unstable due to her inability to work. She could reasonably be expected to need safe shelter again, but would not be able to access Safe Harbor under the current policies.

### **CLAIM FOR RELIEF**

#### **AMERICANS WITH DISABILITIES ACT TITLE II**

56. Alvey incorporates and re-alleges paragraph 1 through 55, as if fully set forth here.

57. Alvey is a qualified individual with a disability.

58. Defendant is a "public entity" under the Americans with Disabilities Act.

59. Defendant excluded Alvey from the public services, programs, and activities offered at Safe Harbor and otherwise discriminated against her.

60. Defendant refused to provide reasonable modifications to Alvey in order for her to be able to participate in the activities offered at Safe Harbor. The modifications were necessary to avoid discrimination on the basis of disability.

61. Such failure to provide reasonable modifications, exclusion from and denial of benefits, and discrimination was by reason of Alvey's disabilities.

62. Defendant acted with deliberate indifference and discriminatory intent.

63. Defendant's conduct constitutes unlawful discrimination under Title II of the ADA, 42 U.S.C. § 12132.

64. As a direct and proximate result of Defendant's unlawful discrimination, Plaintiff has sustained injuries and damages, including emotional distress.

### **REQUEST FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully requests that this Court:

- A. Declare that Defendant's denial of reasonable modifications and exclusion from benefits constitute unlawful discrimination in violation of Title II of the Americans with Disabilities Act;
- B. Enter a permanent injunction ordering Defendant to provide reasonable modifications for individuals with disabilities as required by Title II of the Americans with Disabilities Act;
- C. Award compensatory damages;
- D. Award a reasonable attorneys' fee, including litigation expenses, and costs pursuant to 42 U.S.C. § 12205; and
- E. Order all such other and further relief as the court deems to be just and equitable.

Dated: August 7, 2015.

Respectfully submitted,

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