

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**JAMES HANDWORK**

Plaintiff,

**v.**

**THE OHIO DEPARTMENT OF  
REHABILITATION AND CORRECTION**

and

**GARY C. MOHR**  
In his official capacity

Defendants.

Case No. 1:16-cv-00825-SO  
JUDGE SOLOMON OLIVER, JR.

**PLAINTIFF JAMES HANDWORK'S MEMORANDUM  
SUPPORTING HIS MOTION FOR SUMMARY JUDGMENT**

**I. Overview**

For three decades, Plaintiff James Handwork, a hearing-impaired prisoner currently housed in the Lake Erie Correctional Institution, has needed and worn hearing aids in both ears. Despite his longstanding and well-documented need for these aids, and a current prescription for two hearing aids, the Ohio Department of Rehabilitation and Correction (ODRC)<sup>1</sup> refuses to provide him with more than one because, it says, for a prisoner under its jurisdiction, hearing out of one ear is enough. ODRC's refusal is based solely on its statewide policy requiring that prisons provide

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<sup>1</sup> Because this action is against the ODRC and its director Gary Mohr in his official capacity, the defendants will be collectively referred to as either Defendants or ODRC.

only one hearing aid to any hearing disabled prisoner, even when two are medically and practically necessary.

As shown below, ODRC's policy and its treatment of Mr. Handwork constitute disability discrimination under the Americans with Disabilities Act (ADA), 42 U.S.C. Sections 2101 and Section 1213 *et seq*, and under Section 504 of the Rehabilitation Act (RA), 29 U.S.C. Section 794, as well as a violation of Mr. Handwork's Eighth Amendment right to be free of cruel and unusual punishment. The facts material to this case are not contested and the law is straightforward, entitling Mr. Handwork to summary judgment on his claims.

## **II. Statement of Undisputed Facts**

Mr. Handwork, who is serving a 15-years-to-life sentence, has been hearing-disabled since his service as a paratrooper in the U.S. Army in the mid-1980's, when his long exposure to loud airplane engines caused permanent damage to his hearing. Complaint, par. 4. After his discharge from the military in about 1986, he was prescribed hearing aids in both ears and he has needed them continuously ever since. *Id.*

Mr. Handwork's hearing aids were lost when he was arrested in approximately August, 2002, but after he was convicted and incarcerated in Trumbull State Prison ("Trumbull"), the audiologist retained by the prison system assessed him, and he was provided with two new hearing aids. Complaint, par. 7. In 2008, as a result of his good behavior, ODRC transferred Mr. Handwork to his present facility, Lake Erie Correctional Institution ("LECI"). The hearing aids that had been dispensed to him by Trumbull received periodic maintenance and cleaning, but in 2015, Mr. Handwork began to have trouble hearing from both of them. Complaint, par. 8. On August 12, 2015, Mr. Handwork was brought to a Beltone Hearing Center for an audiometric examination, where the audiologist assessed him, found "severe hearing loss, bilat ears,"

determined that both of his hearing aids had become worn out, obsolete, and too outmoded to be susceptible of further maintenance, and recommended replacement of both. Complaint par. 8, and “Off Site Service Request – Update 9/24/2015,” Attached as Exhibit A.

Following up on the audiological recommendation, the prison noted that Mr. Handwork’s “boss at the current prison job (maintenance?) called medical c/o that IM cannot hear on the job.” Exhibit A. It also noted that Mr. Handwork’s “bilateral hearing loss (was) affecting ability to perform work functions and difficulty following orders in housing unit.” “Off Site Service Request Update 11/27/2015,” attached as Exhibit B. Additionally, ODRC’s file contains a letter from Dr. Jason Rupeka, D.O, dated February 8, 2016, stating that “two hearing aids are recommended [for Mr. Handwork] for identification of sound & direction.” Exhibit C.

Despite the audiological testing results and medical recommendation unequivocally establishing Mr. Handwork’s need for two hearing aids, and the observations from his boss and others that he had difficulty performing work and following guards’ orders, Mr. Handwork was approved for only one hearing aid. “Off Site Request 10/23/2015,” attached as Exhibit D. Complaint par. 9. The reason: OCRC will provide only one hearing aid, even for a prisoner in need of two.

Mr. Handwork pursued and exhausted ODRC’s formal grievance process. Complaint, par. 9. The grievance was denied, and ODRC’s controlling policy was set forth and reaffirmed several times in writing:

- The January 11, 2016, disposition of Mr. Handwork’s grievance stated that, “The **established protocol** of ODRC health services is that **hearing aid replacement is to ensure that the inmate is able to hear, at a minimum, from one ear.**” (emphasis supplied) Exhibit E.

- The January 29, 2016, Grievance Appeal decision confirmed that the ODRC's Chief Inspector had "contacted [the] ODRC Director of Nursing to find out the current practice...[T]he process (has) not changed and **only one hearing aid is replaced for patients wearing two.**" (emphasis supplied) Exhibit F.
- Restating the basis for the decision, on January 20, 2016, the Assistant Chief Counsel to the ODRC, Trevor Clark, himself confirmed that **ODRC's "established protocol" is "to ensure one working hearing aid."** (emphasis supplied) Exhibit G.
- Then, as if the policy or its origin needed any clarification, ODRC Counsel Clark once again confirmed that the denial had been "reviewed from a general policy standpoint for ODRC facilities." Exhibit H.

Now, with the single functioning hearing aid that the prison would supply, Mr. Handwork feels like he is "living in a Mason Jar" or in a "tunnel with echoes." Complaint, par. 10. Hearing from one ear causes him to experience vertigo, making it hard for him to walk in a straight line or identify the direction a sound is coming from (Complaint, par. 10, Doctor's letter, Exhibit C, Declaration of James Handwork, Exhibit I). Mr. Handwork cannot communicate effectively with other prisoners or prison staff (Complaint Exhibit B, Exhibit I), respond to the orders of corrections officers (Complaint par. 10, Exhibit B, and Exhibit I), hear warnings or fire alarms (Complaint par. 10, Exhibit B and Exhibit I), participate in prison programs that require hearing, or take advantage of equipment available to other prisoners, such as television. Complaint, par. 10 and Exhibit I. He is unable to experience prison life fully or safely. Complaint, par. 10, Exhibits B, C and I.

The Defendants do not contradict even a single one of the facts set forth above. In their answer Defendants plead only that they “lack sufficient information as to the nature of” each of these facts. Answer, par. 4, 7. Likewise, no factual assertion in their Statement of Facts in their First Motion for Summary Judgment, pp. 3-4, contradicts any of these facts.

The material facts in this case are simple, clear, and not in dispute: Defendants refuse to provide Mr. Handwork with two hearing aids, despite his documented, longstanding need, because of their policy, which is to provide only one hearing aid - even for prisoners with a medical need for two. The law, too, is clear: this denial is a violation of Mr. Handwork’s rights under the ADA and RA, as well as under the Eighth Amendment to the Constitution.

### **III. Law and Argument**

#### **a. The Summary Judgment Standard.**

This Court is authorized to grant judgment as a matter of law when there is no genuine issue of material fact. Fed.R.Civ.P. 56(c); *Johnson v. United States Postal Service*, 64 F.3d 233, 236 (6th Cir. 1995). A “genuine issue” exists when “evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986) (noting that bare assertions cannot serve to raise genuine issues of material fact). “A non-movant opposing summary judgment may not rest on conclusory allegations or denials” but must adduce specific facts showing that there is a genuine issue for trial. *Clarkson v. Coughlin*, 898 F. Supp. 1019, 1033 (S.D.N.Y. 1995).

Defendants’ evidence has been displayed, and their position fleshed out: they have filed their answer, have turned over Mr. Handwork’s complete medical file, and have even filed a 31-page summary judgment motion of their own. Defendants cannot deny the undeniable: their own

documentary evidence clearly reveals their blanket refusal to provide two hearing aids despite Mr. Handwork's manifest need for two.

All evidence shows - multiple times over - that Mr. Handwork's medically-necessary hearing aid was flatly denied according to the unambiguous terms of OCRC statewide policy. ODRC's "established protocol," "to ensure one working hearing aid," was set forth in two written grievance dispositions, and then bluntly repeated by ODRC's Assistant Chief Counsel Trevor Clark. Exhibits E, F, G, and H. Defendants do not contradict any of these written statements made *by them, on their own forms, stating their own policy*. When confronted with this evidence of their statements, they only plead that they "lack sufficient information." Answer, par. 9.

**b. Defendants' Denial of Two Medically Necessary Hearing Aids is a Violation of the Americans with Disabilities Act**

Title II of the ADA regulates state entities, and the ADA's protections cover a prison inmate as much as any other citizen. *Pennsylvania Dep't of Corr. v. Yeskey*, 524 U.S. 206, 209, (1998).

A prima facie case of discrimination under both the ADA and the RA<sup>2</sup> is established when the plaintiff shows that (1) he is disabled within the meaning of the ADA and the RA, (2) he is qualified to participate in some program or service, and that (3) he is being "denied the benefits of the services, programs, or activities of a public entity, or subjected to discrimination by any such

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<sup>2</sup> A public entity that receives federal funding is liable, not only under the ADA, but also under Section 504 of the Rehabilitation Act of 1976. *Pennsylvania Dep't of Corr. v. Yeskey*, 524 U.S. 206, 213 (1998); *Doherty v. S. Coll. of Optometry*, 862 F.2d 570, 573 (6th Cir. 1988). Because ODRC does receive federal funding, <http://drc.ohio.gov/web/grants/DRC%20FY%202015%20Grant%20&%20Subgrant%20List.pdf>, it is liable under both acts. A prima facie case of discrimination is the same under both acts. See *O'Brien v. Michigan Dep't of Corr.*, 592 F. App'x 338, 344 (6th Cir. 2014); *Doherty v. S. Coll. of Optometry*, 862 F.2d 570, 573 (6th Cir. 1988).

entity” based on his disability. *See Gilday v. Mecosta County*, 124 F. 3d 760, 762 (6th Cir. 1997); *Clarkson v. Coughlin*, 898 F. Supp. 1019, 1035, 1036 (S.D.N.Y. 1995).

Mr. Handwork easily meets these criteria:

**i. Mr. Handwork is a disabled person under the ADA and the RA.**

Under the ADA and the RA a person has a “disability” when he has (1) a physical or mental impairment that substantially limits one or more major life activities, (2) has a record of such an impairment, *or* (3) is regarded as having such an impairment. 42 U.S.C. § 12102(1).

It is well established that a person who requires hearing aid(s) comes under the protection of both Acts. “Hearing” and “communicating” are specifically enumerated as protected “major life activities” in the Acts, 42 U.S.C. § 12102(2)(A), and the Sixth Circuit has explicitly acknowledged that a person who requires a hearing aid is disabled within the meaning of the ADA. *See Gilday v. Mecosta Cty.*, 124 F.3d 760, 763 (6th Cir. 1997).<sup>3</sup>

**ii. Mr. Handwork is qualified to participate in prison programs from which his disability excludes him.**

A qualified individual is “an individual with a “disability who, with or without ... the provision of auxiliary aids... meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.” 42 U.S.C. § 12131(2). In the context of a prison, a “qualified” prisoner is one who is eligible to participate in a prison program or service. *Yeskey*, 524 U.S. at 210. The Supreme Court instructs that the sweeping

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<sup>3</sup> Many cases have held a prison’s failure to provide auxiliary aids to deaf or hearing-impaired inmates is a violation of the ADA and the RA: *Taylor v. City of Mason*, 970 F. Supp. 2d 776, 782 (S.D. Ohio 2013); *Niece v. Fitzner*, 922 F. Supp. 1208, 1216 (E.D. Mich. 1996); *Clarkson v. Coughlin*, 898 F. Supp. 1019, 1044 (S.D.N.Y. 1995); *Rewolinski v. Morgan*, 896 F. Supp. 879, 881 (E.D. Wis. 1995); *Randolph v. Rodgers*, 170 F.3d 850, 858 (8th Cir. 1999); and *Duffy v. Riveland*, 98 F.3d 447, 453–56 (9th Cir. 1996).

breadth of prison life covered under the ADA as prison “programs” or “services” entails all activities that the prison offers – “all of which could at least theoretically ‘benefit’ the prisoners.”

*Id.* The Court notes that that such programs even include peripheral activities such as “contact visitation” and “recreational activities.” *Id.*

**iii. Mr. Handwork is denied the benefits of the programs and services offered at LECI.**

Mr. Handwork is “qualified,” but impeded, from benefiting from many of the activities of prison life. He cannot communicate effectively with other prisoners or prison staff, Complaint, par. 10, Exhibit I, has difficulty following the orders of corrections officers in his housing unit, and, according to his prison boss, cannot hear on the job. Exhibit A, Exhibit B, and Exhibit I. He also has trouble hearing warnings or fire alarms, and cannot take full advantage of equipment available to other prisoners, such as television. Complaint, par. 10, Exhibit I. He is unable to experience prison life fully or safely because hearing from one ear causes him to experience vertigo, making it hard for him to walk in a straight line or identify the direction a sound is coming from, which is hazardous when navigating life in general, to say nothing of life in general population in a penal environment. Complaint, par. 10, Exhibit A, Exhibit C, Exhibit I.

As demonstrated, Mr. Handwork has a disability within the meaning of the ADA and the RA and is qualified to participate in the range of activities of prison life, but is denied the opportunity of full participation because of his disability. Pursuant to Defendants’ policy that prisons ration out only one hearing aid for any hearing disabled prisoner, regardless of an individualized medical assessment indicating the need for two, the prison excludes Mr. Handwork from full participation in the activities and programs he is entitled to. Not only does this policy discriminate against Mr. Handwork on the basis of his disability, it enshrines the same discrimination in practice statewide. Based on the facts alleged, which Defendants have not



disputed either in their Answer or their Motion for Summary Judgment, Mr. Handwork is entitled to recover on his statutory claims as a matter of law.

**c. Defendants' Denial of Two Medically Necessary Hearing Aids is a Violation of Mr. Handwork's Rights under the Eighth Amendment of the United States Constitution.**

“Having stripped [inmates] of virtually every means of self-protection and foreclosed their access to outside aid, the government and its officials are not free to let the state of nature take its course.” *Farmer v. Brennan*, 511 U.S. 825, 833 (1994). The Eighth Amendment requires the government “to provide medical care for those whom it is punishing by incarceration.” *Estelle v. Gamble*, 429 U.S. 97, 103 (1976). For 15 years before he was incarcerated, Mr. Handwork was able to, and did, supply his own hearing aids. As a prisoner, however, he lacks the freedom to do so, and, without intervention by this court, he must rely upon Defendants' mercy to meet – or as it stands, deny - this medical need.

When, as here, the failure to provide care “may result in pain and suffering which no one suggests would serve any penological purpose,” the failure constitutes cruel and unusual punishment. *Id.* at 103. When a prison official shows “deliberate indifference” towards a prisoner's “serious medical need,” the failure to address the need is a violation of the Eighth Amendment. *Harrison v. Ash*, 539 F.3d 510, 518 (6th Cir. 2008).

**i. Mr. Handwork's hearing impairment is a “serious medical need.”**

A medical need is “serious” if it “has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention.” *Harrison v. Ash*, 539 F.3d 510, 518 (6th Cir. 2008); *Gunther v. Castineta*, 561 F. App'x 497, 499 (6th Cir. 2014); *see also Carter v. Chambers*, 408 F.3d 305, 311 (6th Cir.2005). Both things are true in Mr. Handwork's case. His need has been diagnosed by an audiologist and

confirmed by a physician. Further, even a lay person (his boss and the prison guards) recognize his need.<sup>4</sup>

The element of the seriousness of Mr. Handwork's need, however, is not disputed here, because Defendants did not even pretend to deny Mr. Handwork's hearing aid on the ground that it was not a serious need. Instead, all of the evidence that Defendants gathered - from medical professionals, Mr. Handwork's prison boss, and corrections officers - makes it obvious that he does have a serious need. Instead, Defendants deny Mr. Handwork's second hearing aid purely on the ground that, regardless of Mr. Handwork's, or any prisoner's actual medical need for two hearing aids, Defendants' policy provides for only one: As they bluntly put it "[o]nly one is replaced for patients wearing two." Exhibit F.

**ii. Defendants have shown "deliberate indifference" towards Mr. Handwork's "serious medical needs."**

As the record demonstrates, Defendants know—indeed, have been on notice for many years—that Mr. Handwork has bilateral hearing loss requiring two hearing aids, but by the terms of their policy, Defendants have *mandated* that care not be provided. For their conduct to be deemed "deliberately indifferent," it is not necessary for the Defendants to have acted with the "purpose of causing harm or with knowledge that harm will result." *Blackmore v. Kalamazoo Cty.*, 390 F.3d 890, 896 (6th Cir. 2004) (quoting *Farmer v. Brennan*, 511 U.S. 825, 835 (1994)). Instead, it is merely "knowledge of the asserted serious needs... [that] is essential to a finding of deliberate

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<sup>4</sup> Courts have specifically recognized that a prison's failure to provide adequate remediation for substantial, treatable hearing loss is a sufficient basis to state an Eighth Amendment claim. In *Gilmore v. Hodges*, 738 F.3d 266, 269 (11th Cir. 2013), the Eighth Circuit held that "[a]n uncorrected, substantial inability to hear...may place an inmate at risk of serious harm and substantially interfere with the inmate's ability to function in a penal environment." *See also*, *Wheeler v. Butler*, 209 Fed. Appx. 14, 15 (2nd Cir. 2006); *Large v. Wash. Cnty. Det. Ctr.*, 915 F.2d 1564 (4th Cir. 1990); *Cooper v. Johnson*, 255 Fed.Appx. 891, 892 (5th Cir. 2007).

indifference.” *Id.* at 896 (6th Cir. 2004) (quoting *Horn v. Madison County Fiscal Court*, 22 F.3d 653, 660 (6th Cir.1994)). The awareness of “facts from which the inference could be drawn that a substantial risk of serious harm exists, [and drawing] the inference,” is enough to establish deliberate indifference. 390 F.3d at 896 (quoting 511 U.S. at 837).

The record makes it abundantly clear that Defendants are aware of Mr. Handwork’s need, that they are fully aware of his risk of harm, but that they have chosen to be indifferent to it.

**iii. A categorical policy mandating only partial treatment of a medical condition regardless of individualized medical assessment, blatantly violates the 8th Amendment’s “deliberate indifference” standard.**

Defendants’ statewide policy mandates that prisons afford only one hearing aid to prisoners, even in the face of a known, diagnosed need for two. This “categorical denial” of treatment is the very type of deliberate indifference the Eighth Amendment is designed to prevent. Defendants’ refusal to provide Mr. Handwork with medically necessary hearing aids cannot be regarded as anything other than deliberate. Using a blanket policy of denial of care, rather than an individualized treatment, by itself shows the requisite intent for an Eighth Amendment claim.

A statewide blanket policy mandating that prisons offer only partial medical treatment for a given diagnosis, regardless of an individualized medical assessment, is unconstitutional deliberate indifference. “Categorical denial” of treatment, especially “in the face of medical recommendations to the contrary,” epitomizes “the very definition of deliberate indifference.” *Colwell v. Bannister*, 763 F.3d 1060, 1063 (9th Cir. 2014) (finding unconstitutional an administrative policy authorizing prisoner cataract surgery for only one eye regardless of whether individuals needed surgery in both). Where, as here, the Defendants willfully follow an administrative policy in the face of contrary medical recommendations, their actions cannot be called anything except deliberately indifferent. *See also Rosati v. Igbinoso*, 791 F.3d 1037, 1039-

40 (9th Cir. 2015); *De'Lonta v. Angelone*, 330 F.3d 630, 634-35 (4th Cir. 2003); *Soneeya v. Spencer*, 851 F.Supp. 2d 228, 243-44 (D. Mass. 2012); *Kosilek v. Maloney*, 221 F.Supp. 2d 156, 193 (D. Mass. 2002) (each finding, in the context of medically necessary treatment for transgender prisoners, blanket or “freeze frame” policies disallowing treatment or allowing only partial treatment amounted to deliberate indifference).

The undisputed facts amply demonstrate not only Defendants’ deliberate indifference to Mr. Handwork’s serious medical needs in violation of his Eighth Amendment rights. Perhaps more gravely, the record demonstrates that Defendants have codified deliberate indifference into a policy that controls care for prisoners with hearing disabilities throughout Ohio’s penal system. This Court should grant Mr. Handwork’s Motion for Summary Judgment, entitling him to the hearing aids he requires and striking down Defendants’ unlawful policy.

#### **IV. Conclusion**

The material facts are undisputed: Defendants deny Mr. Handwork a medically-necessary hearing aid, not on the grounds of his individualized determination, but in spite of it. Defendants base their denial entirely on their blanket policy that arbitrarily, and cruelly, limits prisoners to hearing from just one ear. This denial is a violation of the Americans with Disabilities Act, the Rehabilitation Act, and the Eight Amendment to our Constitution. This Court should order Defendants to provide Mr. Handwork with another hearing aid and order all other relief that is just.

Dated this 19th day of September, 2016.

Respectfully submitted,

s/ Freda J. Levenson  
Freda J. Levenson (0045916)  
Trial Attorney for Plaintiffs  
Elizabeth Bonham (0093733)  
ACLU of Ohio Foundation, Inc.  
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**CERTIFICATE OF SERVICE**

I hereby certify that on September 19, 2016 the foregoing was filed electronically.  
Notice of this filing will be sent to all parties for whom counsel has entered an appearance by  
operation of the Court's electronic filing system. Parties may access this filing through the  
Court's system.

Dated this 19th day of September, 2016

s/ Freda J. Levenson  
Freda J. Levenson (0045916)

CCA Med-Forms

**EXHIBIT A**

Page 1 of 1



Welcome Merilee Rebera

Help Home Logout  
CCA Med-Forms  
10/02/2015

## Off-Site Service Request - Update

Message:

## Request Information:

Off-Site Request Id: 275005

Requesting Provider: C Aiken, CNP

Title: PA / NP

Request Date: 09/24/2015

CCA Facility Name: LAKE ERIE CORRECTIONAL INST

Request Type: Medical

## Service Information:

Procedure Requested: New Hearing Aid/s

ICD-9 Codes: Persons with a condition influencing their health status (V40-V49)

Reason for Service: Consultation: Recommend Treatment

History of Present Illness: 55 yo male with bilat hearing loss-  
has been in hearing aids since

Physical Findings: na

Previous Testing: audiology testing done 8/12-  
determined need for bilat hearing

Diagnostic Impression: non-functioning hearing aids

## Inmate/Resident Information:

Last Name: Handwork

First Name: James

Inmate/Resident Number: 440803

Sex: MALE

Age: 55

Date of Birth: REDACTED

Date of Intake: 11/27/2002

Race: White

Projected Release Date: 08/08/8888

Customer Contract: DOC

## Hospital Information:

Mode of Transportation: VAN

Transport Date/Time: 09/24/2015 13:05

Hospital/Provider Name: na

Hospital/Provider Phone: na

Primary Chronic Clinic: Hypertension

## Approval Information:

Approving Physician: C. Stephen Paine MD

Date: 09/24/2015

Status: PENDING

Comment History: CCPAIN740009/24/2015: Need more information: Can offender communicated (hear enough) without hearing aid at present time? Thank you  
CCAIKE939809/25/2015: I am not sure how to answer- audiology testing says "severe hearing loss" bilat ears... his boss at the current prison job (maintenance?) called medical c/o that IM cannot hear on the job...  
CCPAIN740009/26/2015: Please make appt. to assess his ability to communicate. Also, asking guards who are familiar with the offender helps to determine need. When loss of hearing may endanger offender (i.e. unable to hear guards give commands) a hearing aid will be necessary. Thank you

Comments:

*Applied again in om's 10/7/15*

Submit

Save

Cancel

**EXHIBIT B****CORRECTIONS CORPORATION OF AMERICA**

Off Site Request ID: 275934

**Request Information:**

<b>Requesting Provider:</b>	M. Rebera for Dr. Rupeka	<b>Date Of Request:</b>	11/27/2015
<b>Title:</b>	Medical Doctor	<b>Type Of Request:</b>	Medical
<b>CCA Facility:</b>	LAKE ERIE CORRECTIONAL INST		

**Service Information:**

<b>Procedure Requested:</b>	Hearing aides - Beltone Hearing Center
<b>ICD-9 Codes:</b>	Persons encountering health services for specific procedures and aftercare (V50-V59)

**Reason For Service:** Consultation: Recommend Treatment

**History Of Present Illness:**

**Physical Findings:** 55 year old with bilateral hearing loss - please see approved request from 10/23/15 for 1 hearing aide.  
bilateral hearing loss affecting ability to perform work functions and difficulty following orders in housing unit. Had previously been approved for 1 replacement on 10/23/15 but by ODRC policy, if the inmate came in with 2 functional hearing aides, we have to maintain them. Ms. Gillespie sent an email to Dr. Paine advising him of this.

**Previous Testing:** audiology testing done 8/12 - non functioning hearing aides

**Diagnostic Impression:** Bilateral hearing loss with non functioning hearing aides - by ODRC policy must replace them

**Inmate/Resident Information:**

<b>First Name:</b>	James	<b>Inmate/Resident #:</b>	440603
<b>Last Name:</b>	Handwork	<b>Date of Intake:</b>	11/27/2002
<b>Date of Birth:</b>	REDACTED	<b>Projected Release Date:</b>	08/08/8888
<b>Inmate Age:</b>	55	<b>Customer Contract:</b>	DOC
<b>Inmate Sex:</b>	Male		
<b>Inmate Race:</b>	White		

**Hospital Information:**

<b>Hospital/Provider Name:</b>	aaaaaaaa	<b>Mode Of Transportation:</b>	VAN
<b>Hospital/Provider Phone:</b>	000000000	<b>Transport Date/Time:</b>	11/27/2015 11:02

**Approval Information:**

**This request has not been approved.**

<b>Physician:</b>	Yvonne Neau, MD
<b>Date:</b>	12/21/2015
<b>Status:</b>	DENIED

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Handwork, James A440603

Test on site Take impression  
for right ear. Will process  
for approval of 1 hearing aid.

NOTE: Two hearing aids are  
recommended for identification  
of sound & direction.

Performed services on 2.8.16

Signature: Kathleen Lidrick

Date 2.8.16

Hearing Instrument Specialist

Returned 2/8/16 2:57pm

Interim Lidrick 2/8/16

2/9/16

Jason Rupeka, DO





CORRECTIONS CORPORATION OF AMERICA

Off Site Request ID: 275464

**Request Information:**

<b>Requesting Provider:</b>	M. Rebera RN for C. Aiken CNP	<b>Date Of Request:</b>	10/23/2015
<b>Title:</b>	Physician Assistant, Nurse Practitioner	<b>Type Of Request:</b>	Medical
<b>CCA Facility:</b>	LAKE ERIE CORRECTIONAL INST		

**Service Information:**

<b>Procedure Requested:</b>	New hearing aid - provider to determine which ear will receive hearing aid as only 1 approved
<b>ICD-9 Codes:</b>	Persons encountering health services for specific procedures and aftercare (V50-V59)

<b>Reason For Service:</b>	Consultation: Recommend Treatment
<b>History Of Present Illness:</b>	55 year old male with bilateral hearing loss - has had bilateral hearing aids since 2005. Neither one working. Audiologist recommends replacement. Prior approval for 1 and advised to resubmit approval form
<b>Physical Findings:</b>	Audiology recommends replacement
<b>Previous Testing:</b>	audiology
<b>Diagnostic Impression:</b>	non-functioning hearing aids resubmitted with approval for 1

**Inmate/Resident Information:**

<b>First Name:</b>	James	<b>Inmate/Resident #:</b>	440603
<b>Last Name:</b>	Handwork	<b>Date of Intake:</b>	11/27/2002
<b>Date of Birth:</b>	REDACTED	<b>Projected Release Date:</b>	08/08/8888
<b>Inmate Age:</b>	55	<b>Customer Contract:</b>	DOC
<b>Inmate Sex:</b>	Male		
<b>Inmate Race:</b>	White		

**Hospital Information:**

<b>Hospital/Provider Name:</b>	aaaaa	<b>Mode Of Transportation:</b>	VAN
<b>Hospital/Provider Phone:</b>	000000	<b>Transport Date/Time:</b>	10/23/2015 11:57

**Approval Information:**

<b>Approving Physician:</b>	C. Stephen Paine MD
<b>Approval Date:</b>	10/24/2015

SIGNATURE

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DRC4089

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**DISPOSITION OF GRIEVANCE**

**INMATE:** HANDWORK, JAMES R      **COMPLAINT CODE:** INSTITUTIONAL OPERATIONS - Health Care - Medical aide / device  
**NUMBER:** A440603      **DISPOSITION:** DENIED - Staff action was a valid exercise of discretion  
**INSTITUTION:** LAECI      **GRIEVANCE NUMBER:** LAECI-01-16-000029  
**DATE:** 01/11/2016

☐ The disposition of this grievance will be delayed longer than 14 calendar days for the following reason(s):

☒ Your grievance, filed on 01/08/2016, has been reviewed and disposed of as follows:

This office is in receipt of Notification of Grievance #1-16-29 submitted by Inmate Handwork #440-603. In your grievance you stated that you don't understand how medical can replace only one hearing aid when you came into the prison system with two. You go on to state that when you were at T.C.I. both of your hearing aids were replaced. You also stated your hearing aids have been repaired a few times. You then stated that you believe that your test results from Beltone indicate your hearing is worse and you balance will be affected. You finally stated that you believe that this is against the Americans with Disabilities Act and the right thing is to have both of your hearing aids replaced.

I have reviewed your Informal Complaint submitted to Clinical Nursing Supervisor Rebera which was answered on December 21, 2015 and your Notification of Grievance which was received by this office on January 8, 2016. I also reviewed AR 5120-9-31, ODRC policy 68-MED-01, and contacted ODRC medical personnel that have direct knowledge of the protocols regarding hearing aids. Let it be noted that you have filed your grievance 18 days after the date of the response of your informal complaint. Administrative Rule 5120-9-31 section (2) states in part "All inmate grievances must be filed by the inmate no later than fourteen calendar days from the date of the informal complaint response or waiver of the informal complaint step. The inspector of institutional services may also waive the timeframe for the filing of the notification of grievance, for good cause." Due to the nature of your complaint I find good cause and will perform a review of your complaint. I contacted the Ohio Department of Rehabilitation and Correction's Office of Correctional Healthcare. I communicated with the Director of Nursing Viets. The established protocol of ODRC health services is that hearing aid replacement is to ensure that the inmate is able to hear, at a minimum, from one ear. You were approved for one hearing aid. You will be scheduled for an outside appointment. At that time your hearing aid will be ordered.

My findings are that staff action was a valid exercise of discretion and therefore your grievance is denied. The role of the Inspector is to ensure that you are receiving care in accordance with ODRC policy. Although you may not agree with your medical care, you are receiving treatment as outlined by ODRC policy 68-MED-01. As the Institutional Inspector, I will continue conducting rounds ensuring that applicable rules and regulations are being followed; needs and concerns are being addressed for all inmates. This ends Disposition of Grievance #1-16-29.

If you wish, you may appeal this decision to the Chief Inspector within 14 calendar days. Appeal forms are available in the office of the Inspector of Institutional Services.



Page 1 of 1

## Decision of the Chief Inspector on a Grievance Appeal

Inmate:	HANDWORK, JAMES R	Institution:	LAECI
Number:	A440603	Grievance No.:	LAECI-01-16-000029
Date:	01/29/2016		

The office of the Chief Inspector is in receipt of your notification of grievance, the disposition of that grievance, and your appeal to this office. A review of your appeal has been completed. The decision of the Inspector is hereby

### Affirmed

In your Notification of Grievance filed 1-8-16 you state you can't understand how the medical staff can only get by by replacing just one of your hearing aids. You came to the prison system with two of them and you understand that it is stated in an ODRC policy that this is the case, then it has to be replaced. When you were at TCI before coming to LAECI, they replaced both of them; but since you have been at LAECI you have had them repaired a few times. The last time it was at Beltone, who gave you a new hearing exam, which proved your hearing is worse. Also you believe that it states that your balance will be greatly affected if these are not worn. You state you know for a fact that if you wear only one that you feel like you are in a tunnel. Now you have been without the assistance of these since August 2015. You believe this is against the Americans with Disabilities Act. What you believe is the right thing is to have both your hearing aids replaced since your old ones are worn out. You are in the care of ODRC, where you state you can't take care of yourself.

The investigation at your facility by the Institutional Inspector included review of your ICR submitted to Clinical Nursing Supervisor Rebera which was answered on 12-2-15 and your Notification of Grievance which was received by this office on 1-8-16. He also reviewed AR 5120-9-31, ODRC policy 68-MED-01, and contacted ODRC medical personnel that have direct knowledge of the protocols regarding hearing aids. You were told that you have filed your grievance 18 days after the date of the response of your informal complaint. Administrative Rule 5120-9-31 section (2) states in part "All inmate grievances must be filed by the inmate no later than fourteen calendar days from the date of the informal complaint response or waiver of the informal complaint step. The inspector of institutional services may also waive the timeframe for the filing of the notification of grievance, for good cause." Due to the nature of your complaint I find good cause and will perform a review of your complaint. The IIS contacted the Ohio Department of Rehabilitation and Correction's Office of Correctional Healthcare. I communicated with the Director of Nursing Viets. The established protocol of ODRC health services is that hearing aid replacement is to ensure that the inmate is able to hear, at a minimum, from one ear. You were approved for one hearing aid. You will be scheduled for an outside appointment. At that time your hearing aid will be ordered. The IIS found that staff action was a valid exercise of discretion and therefore your grievance is denied. He advised that although you may not agree with your medical care, you are receiving treatment as outlined by ODRC policy 68-MED-01. Your grievance was denied.

In your Appeal to the Chief Inspector filed 1-16-16 you make the same complaint.

My investigation of your Appeal included review of the above information. I also reviewed the FMC MOSS database that provides the details of dates for any scheduled medical trips to FMC and OSU hospitals. It also provides the results of lab work or testing ordered by physicians and schedule for chronic care clinic appointments. In addition, I reviewed your electronic health records, and your medical file at your facility and commissary records. You are being followed in CCC regarding hypertension and right ankle osteoarthritis; last seen on 1-13-16. Mr. Sackett discussed your case with me and with that question, I knew that when I was an HCA up until 2006, that only one hearing aid was being replaced. So, as your IIS stated we contacted Ms. Viets, ODRC Director of Nursing to find out the current practice. We were advised the process had not changed and only one hearing aid is replaced for patients wearing two. If you are experiencing issues; see DSC for evaluation of your current status.

My response, after review of the above information, is that the medical staff at your facility is giving you the proper care within the ODRC guidelines. I encourage you to maintain close contact with staff to ensure that your current medical concerns are being addressed. No further action will be taken in regard to this appeal at this time.

Signature: <i>Mona Parks</i>	Title: R.N., ASSISTANT CHIEF INSPECTOR (MEDICAL)
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**Freda Levenson**

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**From:** Trevor.Clark@odrc.state.oh.us  
**Sent:** Wednesday, January 20, 2016 12:13 PM  
**To:** flevenson@acluohio.org  
**Cc:** Lauren.Chalupa@odrc.state.oh.us  
**Subject:** RE: Letter to Warden Sloan

Ms. Levenson,

As we discussed, our response to the grievance on this issue indicated that the "established protocol" is to ensure one working hearing aid. I cannot give you a copy of the grievance without a release of information because it is not a public record; however, Mr. Handwork has been given a copy.

Upon consulting with our Bureau of Medical Services, I learned that the protocol is not written. It is more accurately described as a routine practice in these types of consults unless the inmate's health needs would require otherwise.

The inmate has been approved for the replacement of one device. He will be scheduled and seen ASAP.

Should you have any questions, please let me know.

Trevor M. Clark, Esq.  
*Assistant Chief Counsel*  
Ohio Department of Rehabilitation and Correction  
770 West Broad Street  
Columbus, Ohio 43222  
Direct: (614) 752-1764  
Main: (614) 752-1765

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**From:** Freda Levenson [mailto:flevenson@acluohio.org]  
**Sent:** Wednesday, January 20, 2016 10:07 AM  
**To:** Clark, Trevor <Trevor.Clark@odrc.state.oh.us>; Chalupa, Lauren <Lauren.Chalupa@odrc.state.oh.us>  
**Cc:** mbrickner@acluohio.org; tcable@acluohio.org  
**Subject:** Letter to Warden Sloan

Dear Trevor and Lauren,

I want to give you the courtesy of sending directly to you a letter that we have this morning sent to Warden Sloan of the Lake Erie Correctional Institution regarding a disabled prisoner with a medical need. We are appreciative of your help on other matters, and want you to have a heads up on this as well. Please do not hesitate to call us.

Sincerely,

Freda

Freda J. Levenson  
Legal Director  
ACLU of Ohio  
4506 Chester Avenue  
Cleveland, Ohio 44103  
(216) 472-2220

**From:** [Trevor.Clark@odrc.state.oh.us](mailto:Trevor.Clark@odrc.state.oh.us)  
**To:** [flevenson@acluohio.org](mailto:flevenson@acluohio.org)  
**Cc:** "Tim Cable"; [stephen.gray@odrc.state.oh.us](mailto:stephen.gray@odrc.state.oh.us)  
**Subject:** Re: Complaint re: failure to provide hearing aids to James Handwork  
**Date:** Friday, March 04, 2016 2:38:21 PM

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Please be advised that this issue was reviewed from a general policy standpoint for ODRC facilities based upon your letter. However, Lake Erie Correctional Institution is a private prison with its own medical providers and specialty consult review processes. ODRC physicians were not involved in the specialty consult requests or approvals for Mr. Handwork's specific case. If you wish to place someone on notice for a lawsuit, you will need to advise counsel for CCA.

ODRC has reviewed its own procedures for providing hearing aids to inmates. As I indicated to you previously, our physicians determine the number of necessary hearing aids based upon the specific needs of the inmate. We do not have a "one size fits all rule" as described in your letter. Our review of applicable court cases indicates that a physician using his judgment on a case by case basis does not constitute an 8th Amendment violation.

Sincerely,

**Trevor M. Clark, Esq.**  
*Assistant Chief Counsel*  
Ohio Department of Rehabilitation and Correction  
Division of Legal Services  
770 West Broad Street, 2nd Floor  
Columbus, Ohio 43222  
Main: (614) 752-1765  
Direct: (614) 752-1764  
[Trevor.Clark@odrc.state.oh.us](mailto:Trevor.Clark@odrc.state.oh.us)

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**From:** Freda Levenson <[flevenson@acluohio.org](mailto:flevenson@acluohio.org)>  
**Sent:** Friday, March 4, 2016 2:18 PM  
**To:** Clark, Trevor  
**Cc:** 'Tim Cable'  
**Subject:** Complaint re: failure to provide hearing aids to James Handwork

Dear Trevor,

We wrote on January 20, and again on February 17, complaining of the failure of the Lake Erie Correctional Institution to provide James Handwork, prisoner #440-603, with two functioning hearing aids, in violation of the Americans with Disabilities Act and the Eighth Amendment of the United States Constitution. This complaint still has not been resolved. You have informed us that one hearing aid will be provided, but this is not adequate to meet Mr. Handwork's documented

medical needs.

We are left with no choice but to prepare to file suit and are thus putting you and your client on notice not to destroy, conceal or alter any paper or electronic files and other data generated by and/or stored on your client's files, computers, or storage media, or any other electronic data, such as voice mail that could be evidence or potential evidence relating to our complaint.

Sincerely,

Freda Levenson

Freda J. Levenson  
Legal Director  
ACLU of Ohio  
4506 Chester Avenue  
Cleveland, Ohio 44103  
(216) 472-2220

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**Request an ACLU speaker:** [www.acluohio.org/resources/request-a-speaker](http://www.acluohio.org/resources/request-a-speaker)

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Please note that an e-mail message, or a portion thereof, may be releasable as a public record in accordance with Chapter 149 of the Ohio Revised Code.

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Please note that an e-mail message, or a portion thereof, may be releasable as a public record in accordance with Chapter 149 of the Ohio Revised Code.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**JAMES HANDWORK**

Plaintiff,

v.

**THE OHIO DEPARTMENT OF  
REHABILITATION AND CORRECTION**  
and

**GARY C. MOHR**

In his official capacity as Director of  
Ohio Department of Rehabilitation and  
Correction

Defendants.

Case No. 1:16-cv-00825-SO  
JUDGE SOLOMON OLIVER, JR.

**DECLARATION OF JAMES HANDWORK  
(pursuant to 28 USC Section 1746)**

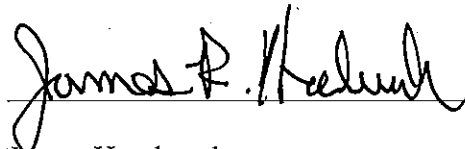
I, James Handwork, hereby declare as follows:

1. I am over the age of 18, and I make this declaration based on my personal knowledge.
2. I currently reside at the Lake Erie Correctional Institution, P.O. Box 8000, Conneaut, Ohio.
3. I am the plaintiff in the above-captioned matter.
4. Since the time that I filed my complaint asking the Court to require the defendants to provide me with two hearing aids rather than only one, the prison did supply me with a new hearing aid for one ear, as it said it would do, but it still refuses to provide one for my other ear.

5. With only one functioning hearing aid, I continue to have severe problems with my hearing and I continue to suffer vertigo.
6. My old hearing aid, which I still wear because I need something in that ear, only works about 40 percent of the time, and when it does work, emits noisy static, which makes it hard to hear from either ear.
7. Having decent hearing from one ear, and bad hearing and static in the other, makes me off balance and unable to walk in a straight line. I also can't tell what direction sounds are coming from.
8. Since filing my complaint, I have continued to have problems hearing my boss and the people I have to interact with on my job, where I work five days a week. I also have problems hearing the TV, problems hearing commands from my guards, and trouble communicating with other prisoners. I am worried that if there were a fire or other emergency, I wouldn't be able to hear what was going on.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 15, 2016

  
James Handwork