

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

JAMES HANDWORK
Lake Erie Correctional Institution
P.O. Box 8000
Conneaut, Ohio 44030

Plaintiff,

v.

**THE OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION**
777 West Broad St.
Columbus, OH 43222

and

GARY C. MOHR
In his official capacity as Director of Ohio Department
of Rehabilitation and Correction
777 West Broad St.
Columbus, OH 43222

Defendants.

Civil Action No. 1:16-cv-00825
Judge Solomon Oliver, Jr.

PLAINTIFF'S THIRD STATUS UPDATE

On February 14, 2017, after a status conference, this Court granted the parties an additional 30 days to attempt to resolve their dispute. The Court ordered Defendants to discover from their contractor, Corrections Corporation of America, whether an audiologist appointment had been set for Plaintiff, and ordered Defendants to convey to their contractor that the Court was interested in the matter being expedited.

As a result of the February 14 status conference, progress has been made, but three central issues still require resolution:

First, Plaintiff still has not received his hearing aid. Plaintiff has been seeking his needed hearing aid for almost one and a half years. Thanks to this Court's recent Order, Plaintiff was finally taken for examination by an audiologist on March 9, 2017. Defendants have not provided a date by which Plaintiff will actually receive a hearing aid. Instead, Defendants continue to assert, as they have at every stage of negotiations, that they have no control over information from their own contractor, Corrections Corporation of America.

At the last status conference, Defendants took the disingenuous position that Mr. Handwork's medical need for his hearing aid still must be determined, via a three-step medical and bureaucratic review process by the prison. However Plaintiff already underwent every stage of the three-step medical review process, and also every step of the prison grievance process, in 2015. At that time, an audiologist and then two successive prison doctors determined that he needed hearing aids in both ears. It was solely the imposition of Defendants' one-hearing-aid policy that blocked Mr. Handwork's access to the medically-approved hearing aid. Medical necessity having been established in 2015, it is now only Defendants' persistent delays in this litigation that are depriving Plaintiff of this medically necessary device.

Second, Defendants still have not adequately corrected their defective hearing aid policy. Instead, Defendants insist that their written policy on hearing devices needs no correction and that, as they say, it "reads fine the way it is." But the policy obviously does need correction, because it resulted in the widespread understanding throughout ODRC—including by its general counsel and its medical staff—and in the private prison, that "only one hearing aid is replaced for patients wearing two," and that "[t]he 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." Defendants must make an affirmative correction to provide a clear policy that ensures that all of

their prisons in Ohio—whether privately operated or not—will provide medically-necessary hearing aids according to a constitutional and ADA-compliant process.

Third, the parties have not come to any agreement as to attorney fees. Counsel for Defendants did request an accounting of Plaintiff's counsel's billed hours, and Plaintiff provided a detailed statement on January 13, 2017. Defendants complained that these fees were too high, but they have not provided any counter-offer or any principled reason or way to discount the actual fees that were accrued.

Dated this 21st Day of March, 2017.

Respectfully submitted,

s/ Freda J. Levenson

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CERTIFICATE OF SERVICE

I certify that the foregoing was electronically filed with the District Court of the Northern District of Ohio on this 21st Day of March, 2017. The Court's electronic filing system will provide notice of this filing to all parties, and all parties may access this filing through the Court's electronic filing system.

s/ Freda J. Levenson
Freda Levenson (0045916)
Trial Attorney for Plaintiff