

**IN THE 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.

COMPLAINT

Case No.

I. INTRODUCTORY STATEMENT

1. This is a complaint by James Handwork, a hearing-disabled man incarcerated in the Lake Erie Correctional Institution (the "Prison"). The Prison is controlled by defendants, the Ohio Department of Rehabilitation and Correction (ODRC) and ODRC's director Gary Mohr. The gravamen of Mr. Handwork's complaint is that the defendants refuse to meet his diagnosed medical need for two functional hearing aids, in violation of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, and the Eighth Amendment to the United States

Constitution. Defendants maintain a statewide policy of providing prisoners only one working hearing aid, even for prisoners who have a medical need for two.

II. JURISDICTION AND VENUE

2. Plaintiff brings his claims pursuant to 42 U.S.C. §1983. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

3. Venue is proper under 28 U.S.C. § 1391(b) because the events giving rise to this action are occurring in this judicial district, at the Lake Erie Correctional Institution.

III. PLAINTIFF

4. James Handwork is a prisoner serving a 15-years-to-life sentence at the Prison. Mr. Handwork has been hard of hearing since he served as a paratrooper in the U.S. Army in the mid-1980's, during which his long exposure to loud airplane engines caused permanent damage to his hearing. When his mother suffered a heart attack, he was discharged from military service. At that time, he was prescribed hearing aids in both ears and has worn them continuously since approximately 1986 except when he removed them to sleep, when necessary to avoid loud ambient noise, or when they were malfunctioning.

IV. DEFENDANTS

5. Defendant ODRC is the state agency that controls all Ohio state prisons, including the Prison where Mr. Handwork is incarcerated. ODRC sets the policies and protocols that govern the Prison's health services.

6. Defendant Gary Mohr is the Director of ODRC and is responsible for its practices and policies. At all times relevant to this complaint, Defendant Mohr was acting under color of law as an agent of ODRC. Defendant Mohr is sued in his official capacity and as a representative of ODRC.

V. DEFENDANTS' DENIAL OF MEDICAL CARE TO JAMES HANDWORK

7. As stated above, Mr. Handwork wore prescribed hearing aids in both ears since approximately 1986. That first set of hearing aids was lost when he was arrested in August of 2002.

After he was convicted and incarcerated in Trumbull State Prison (Trumbull), the audiologist retained by Trumbull assessed him and provided him two new hearing aids in the summer of 2003.

8. As a result of his good behavior, in 2008, Mr. Handwork was transferred to where he is presently housed, the Lake Erie Correctional Institution (the Prison). The Prison is a lower security institution where his hearing aids (the same pair dispensed to him by Trumbull in 2003) have received periodic maintenance and cleaning. In late 2015, Mr. Handwork began to have trouble hearing from both hearing aids. At that time, an audiologist retained by the Prison determined that both of Mr. Handwork's hearing aids had become worn out, obsolete, and too outmoded to be susceptible of further maintenance. The audiologist prescribed new hearing aids for both ears. Hearing aids commonly last between 5-7 years; Mr. Handwork's were approximately double this age.

9. Prison officials refused to replace both of Mr. Handwork's hearing aids, and would only replace one. This refusal was pursuant to ODRC's "established protocol," which is "to ensure one working hearing aid." *See* Exhibit A, email from ODRC attorney Trevor Clark, January 20, 2016; Exhibit B, Disposition of Grievance, January 11, 2016: "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;" and Exhibit C, Decision of the Chief Inspector on a Grievance Appeal: "...the process (has) not changed and only one hearing aid is replaced for patients wearing two."

10. Mr. Handwork is a qualified individual with a disability, within the meaning of the ADA and Section 504. Without provision of two functioning hearing aids, he is unable to participate in Prison programs and activities for which he is eligible. Without the ability to hear from both ears, Mr. Handwork feels like he is "living in a Mason Jar" or in a "tunnel with echoes." Having only one functioning hearing aid in causes him to experience vertigo, so he cannot walk in a straight line. He cannot identify the direction a sound is coming from; communicate effectively with other prisoners or prison staff; respond to the orders of corrections officers; hear warnings or fire alarms; participate in prison programs that require hearing; or take advantage of equipment

available to other prisoners such as television. Mr. Handwork is denied the opportunity to experience prison life fully – or safely.

11. Mr. Handwork is serving a potential life sentence. Though incarcerated since 2002 he has not had a single write-up since 2006, when he was reprimanded for the slight infraction of possessing two, rather than only one, pair of prison-allowed beard trimmers. He has never before initiated litigation against the prison. He now fears he will have to spend many years unable to hear adequately while suffering destabilizing vertigo.

VI. EXHAUSTION OF REMEDIES

12. Mr. Handwork has pursued and exhausted ODRC's 3-step grievance procedure. He filed an Informal Complaint on December 20, 2015, which was denied on the basis that "per policy 68-MED14, it was determined by CCA medical director and ODRC medical director that only 1 hearing aid would be approved." (Exhibit D). Mr. Handwork appealed on January 11, 2016, and his appeal was denied because "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." (Exhibit B). Finally, he appealed to the Chief Inspector who confirmed that the "process" was that "only one hearing aid is replaced for patients wearing two." (Exhibit C).

13. At the time of filing, Prison officials have not replaced either of Mr. Handwork's hearing aids. One of his hearing aids is completely broken, and the other is barely functional, frequently cutting out and emitting disruptive static, and deemed by the audiologist to be unserviceable and completely beyond repair.

VII. DEFENDANTS' PRACTICE AND STATEWIDE POLICY OF DENYING MEDICAL CARE TO HARD OF HEARING PRISONERS

14. In email correspondence between counsel for Mr. Handwork and counsel for ODRC, ODRC confirmed its statewide policy of denying two hearing aids to prisoners who need them, affirming that ODRC's "established protocol" is "to ensure one working hearing aid." (Exhibit A).

15. In further correspondence with ODRC, ODRC counsel said Mr. Handwork's "issue was reviewed from a general policy standpoint for ODRC facilities." (Exhibit E).

16. On information and belief, ODRC is administering this policy at all state prisons in Ohio.

17. Defendants' failure to provide Mr. Handwork with two medically necessary hearing aids constitutes a violation of the Eighth Amendment of the United States Constitution which forbids cruel and unusual punishment, and a violation of the ADA and Section 504 of the Rehabilitation Act, which prohibit public entities from denying "a qualified individual with a disability...the benefits of the services, programs, or activities of the public entity" because of that person's disability. 42 U.S.C. §12132.

18. For the defendants to maintain and act pursuant to a statewide policy which provides all state prisoners only one hearing aid when two are medically necessary is also a violation of the Eighth Amendment, the ADA, and the Rehabilitation Act, which each demand that prisoners receive individualized medical care and accommodations.

19. Mr. Handwork challenges the defendants' denial of hearing aids to him, and he also challenges the defendants' unlawful statewide policy.

CLAIMS FOR RELIEF

COUNT I – AMERICANS WITH DISABILITIES ACT

20. Plaintiff hereby reaffirms and realleges every allegation made in ¶¶ 1-19 above as if fully set forth here.

21. This count is brought under Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. §2101 *et seq.* and 42 U.S.C. §12131 *et seq.* and its implementing regulations.

22. Defendant ODRC is a public entity within the meaning of the ADA.

23. Mr. Handwork is a qualified individual with a disability.

24. By refusing to replace both of his hearing aids even though he has binaural hearing loss, the defendants are excluding Mr. Handwork from participating in and benefiting from the prison services, programs, and activities available to other prisoners, and are discriminating against him on the basis of his disability.

25. The defendants have a statewide policy and practice of excluding hard of hearing people who experience hearing loss similar to that experienced by Mr. Handwork (qualified individuals with disabilities) from participation in and benefits of services, programs, and activities because of their disabilities.

26. As a result of the defendants' policy and practices, Mr. Handwork does not have equal access to prison programs and services for which he is otherwise qualified.

COUNT II – REHABILITATION ACT

27. Plaintiff hereby reaffirms and realleges every allegation made in ¶¶ 1-19 above as if fully set forth here.

28. This count is brought pursuant to Section 504 of the Rehabilitation Act, 29 U.S.C. §794 and its enacting regulations.

29. On information and belief, ODRC receives federal financial assistance within the meaning of the Rehabilitation Act.

30. Mr. Handwork is a qualified individual with a disability.

31. The defendants' policy and practice of discriminating against and failing to reasonably accommodate Mr. Handwork and all hard of hearing prisoners in state prisons who experience hearing loss similar to that experienced by Mr. Handwork is a violation of the Rehabilitation Act.

32. As a result of the defendants' discrimination and failure to accommodate, Mr. Handwork and all hard of hearing state prisoners who experience hearing loss similar to that experienced by Mr. Handwork are excluded from equal access to and benefits of prison services, programs, and activities for which they are otherwise qualified.

COUNT III – EIGHTH AMENDMENT

33. Plaintiff hereby reaffirms and realleges every allegation made in ¶¶ 1-19 above as if fully set forth here.

34. This count is brought pursuant to the Eighth Amendment to the United States Constitution which prohibits cruel and unusual punishment.

35. The defendants have been on notice of Mr. Handwork's serious diagnosed need for two hearing aids since 2003, and have been on notice of his diagnosed need for new hearing aids for many months.

36. By refusing to provide Mr. Handwork the care he needs, the defendants are deliberately indifferent to Mr. Handwork's documented medical need for two hearing aids.

37. As a result of the defendants' deliberate indifference, Mr. Handwork continues to suffer cruel and unusual punishment in violation of his Constitutional rights, including being continually exposed to a substantial risk of serious harm.

PRAYER FOR RELIEF

WHEREFORE, Mr. Handwork prays that the Court:

1. Issue an injunction requiring the defendants to immediately provide him with two hearing aids, and to bring their statewide prison policy into conformity with the ADA so that any deaf or hard-of-hearing prisoner is treated on an individualized basis, rather than being subject to an arbitrary and unlawful policy that relegates them to hearing from only one ear.

2. Order the defendants to pay compensatory and punitive damages to Mr. Handwork.

3. Award reasonable attorneys' fees and costs, pursuant to 42 U.S.C. §§ 1983, 794(a), and 12133; and

4. Grant all further relief that is just.

Dated this 7th day of April, 2016.

Respectfully submitted,

s/ Freda J. Levenson

Freda J. Levenson (0045916)

Trial Attorney for Plaintiffs

Elizabeth Bonham (0093733)*

ACLU of Ohio Foundation, Inc.

4506 Chester Ave.

Cleveland, OH 44103

Tel: (216) 472-2220

Fax: (216) 472-2210

flevenson@acluohio.org

ebonham@acluohio.org

Attorneys for Plaintiff

**Application for admission pending*

Exhibit A

Freda Levenson

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

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

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: <p style="text-align: center;">HANDWORK, JAMES R</p>	Institution: <p style="text-align: center;">LAECI</p>
Number: <p style="text-align: center;">A440603</p>	Grievance No.: <p style="text-align: center;">LAECI-01-16-000029</p>
Date: <p style="text-align: center;">01/29/2016</p>	

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: 	Title: R.N., ASSISTANT CHIEF INSPECTOR (MEDICAL)
--	---

12/21/15 12pm

Informal Complaint Resolution

Institution: LAECI

Top section to be completed by inmate, within 14 days of incident.
Inmate will forward the White & Canary copies to the supervisor of the staff person or department most responsible for complaint; Forward Pink copy to the Inspector; and keep the Goldenrod copy.

Submitted To: Medical Dept. (Ms. Rebera)	Date Submitted: 12/20/15
Inmate's Name: Handwork	Number: 440-603
	Housing Assignment: OA-21

Complaint Regarding: In regards to my hearing aids, its now been several months since they went bad. I was under the impression that I would have been out to get my new ones by now. But as it is I'm still waiting for someone to give the okay. How is it that the state says that these have to be replaced. But after this much time I'm getting the run around.

Without these two items, it makes my life here difficult. A lot of times I'll have to ask someone close by what was said. Almost like I'm living in a mason jar.

I know that red tape is difficult to get through sometimes. I would just greatly appreciate getting to the bottom of this. And to be once again to hear like a person should.

Thank You,
Jim Handwork # 440-603

Lower Section to be completed by the supervisor of the staff person or department most responsible for complaint.
Return Canary copy to inmate within 7 calendar days. Send White copy to the Inspector.

Action Taken (Cite appropriate policy, procedure or regulation in response):

12/21/15 Per policy, it was determined by CCI/medical director and ODC medical director that only 1 hearing aid would be approved at this time. It can take up to 3 months to go for an appointment. Your appointment is in process of being scheduled.

Staff Member's Signature and Title: [Signature]	Date: 12/21/15
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Complaints not resolved may be addressed in accordance with 5120-9-31.

From: Trevor.Clark@odrc.state.oh.us
To: flevenson@acluohio.org
Cc: "Tim Cable"; 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

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

From: Freda Levenson <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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