

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

DISABILITY RIGHTS MISSISSIPPI

PLAINTIFF

V.

CAUSE NO. 3:22-cv-429-DPJ-FKB

ST. DOMINIC – JACKSON MEMORIAL HOSPITAL

DEFENDANT

COMPLAINT
For Declaratory & Injunctive Relief

Plaintiff, DISABILITY RIGHTS MISSISSIPPI (“DRMS” or “Plaintiff”) files this Complaint against the Defendant, ST. DOMINIC – JACKSON MEMORIAL HOSPITAL (“St. Dominic” or “Defendant”) seeking declaratory and injunctive relief, attorney’s fees, expenses, and costs pursuant to Title II of The Americans with Disabilities Act of 1990, 42 U.S.C. § 12181 *et seq.* and its implementing regulations (the “ADA”), and Section 504 of The Rehabilitation Act of 1973, 29 U.S.C. § 701 *et seq.* and its implementing regulations (the “Rehab Act”), in connection with St. Dominic’s failure to provide and ensure safe access for individuals who utilize wheelchairs, scooters, and/or those that mobility impairments who require the use of mobility aids at its facility, submitting as follows:

I. INTRODUCTION

1. Despite passage of the ADA nearly thirty years ago, and the Rehab Act nearly fifty years ago, to this date, St. Dominic is not fully accessible to persons with mobility disabilities/impairments who use wheelchairs or scooters.
2. St. Dominic has discriminated, and continues to discriminate individuals with mobility disabilities/impairments by denying full and safe access to, and full and safe enjoyment of the services, facilities, privileges, advantages and accommodations at St. Dominic by failing

to provide safe access to its patients who need to utilize its pedestrian bridge crossing Lakeland Drive from the hospital's parking garage.

3. St. Dominic has also failed to make reasonable modifications to its policies, practices, and procedures that are necessary to provide its services, facilities, and accommodations to individuals with mobility disabilities/impairments. By failing to undertake efforts to ensure that no individual with a mobility disability/impairment is excluded, denied services or otherwise provided safe access to the hospital, St. Dominic subjects individuals with mobility disabilities/impairments to discrimination, exclusion, and unsafe treatment in violation of the ADA and the Rehab Act.
4. Specifically, St. Dominic has cut off pedestrian access to its pedestrian bridge which crosses over Lakeland Drive so that individuals who park in the garage must cross a dangerous, busy street in an effort to access the hospital's main facilities.
5. Moreover, there is a complete lack of safety and/or ADA-compliant features for an individual who is forced to cross Lakeland Drive in a wheelchair, scooter, or other mobility device. Simply put, it's a tragic accident waiting to happen.
6. St. Dominic's failure to provide safe access from its parking garage to its facilities is a denial of full and safe access, results in unsafe treatment of individuals with mobility disabilities/impairments, and is statutorily prohibited by the ADA and the Rehab Act.
7. St. Dominic will continue discriminating unless and until it is enjoined from this conduct. Accordingly, Plaintiff seeks declaratory and injunctive relief, enjoining St. Dominic from continuing its discriminatory conduct, including an order directing St. Dominic to make readily achievable alterations to its facilities to remove physical barriers to access and make its facilities and services fully accessible to and independently usable by people with disabilities to the extent required by the ADA and the Rehab Act; an order requiring St.

Dominic to make all reasonable modifications in policies, practices, or procedures necessary to afford all offered goods, services, facilities, privileges, advantages or accommodations to individuals with disabilities; and a declaration determining that St. Dominic's policies and practices of discrimination result in a violation of the ADA, the Rehab Act, and their respective implementing regulations; an award of attorneys' fees, expenses, and costs associated with pursuit of this litigation; and any other such relief that this Court deems just and proper.

II. THE RIGHT TO ACCESSIBILITY

8. The Rehab Act was the first law in the United States to seek to eliminate discrimination against, and provide equal access for, people with disabilities.
9. By the early 1990s, Congressional findings revealed that the Rehab Act alone was not sufficient to protect people with disabilities from discrimination. The ADA was signed into law by George H.W. Bush on July 26, 1990 with the intent to "provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1).
10. When the ADA's implementing regulations were revised in 2010, a regulatory impact analysis found that "[s]ome of the most frequently cited qualitative benefits of increased access are the increase in one's personal sense of dignity that arises from increased access and the decrease in possibly humiliating incidents due to accessibility barriers. Struggling [to use a non-accessible facility] negatively affect[s] a person's sense of independence and can lead to humiliating accidents, derisive comments, or embarrassment. These humiliations, together with feelings of being stigmatized as different or inferior from being relegated to use other, less comfortable or pleasant elements of a facility . . . all have a negative impact on persons with disabilities." *Final Regulatory Impact Analysis of the Final Revised Regulations*

Implementing Titles II and III of the ADA, Including Revised ADA Standards for Accessible Design, U.S. Dep't Just. (July 3, 2010)¹.

11. Title III of the ADA requires that “[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.” 42 U.S.C. § 12182(a).
12. Discrimination on the basis of disability can occur, generally, through a denial of the opportunity to participate in or benefit from goods, services, facilities, privileges, advantages, or accommodations (42 U.S.C. § 12182(b)(1)(A)(i)); from affording goods, services, facilities, privileges, advantages, or accommodations that are not equal to those afforded to other individuals (42 U.S.C. § 12182(b)(1)(A)(ii)); from providing goods, services, facilities, privileges, advantages, or accommodations that are separate from those provided to other individuals (42 U.S.C. § 12182(b)(1)(A)(iii)); or from utilizing methods of administration that have the effect of discriminating on the basis of a disability (42 U.S.C. § 12182(b)(1)(D)).
13. The ADA also defines prohibited discrimination to include the following: (i) the failure to remove architectural barriers when such removal is readily achievable for places of public accommodation that existed prior to January 26, 1992 (28 C.F.R. § 36.304(a) and 42 U.S.C. § 12182(b)(2)(A)(iv)); (ii) the failure to design and construct places of public accommodation for first occupancy after January 26, 1993, that are readily accessible to and usable by individuals with disabilities (28 C.F.R. § 36.401 and 42 U.S.C. § 12183(a)(1)); and (iii) for alterations to public accommodations made after January 26, 1992, the failure to make

¹ http://www.ada.gov/regs2010/RIA_2010regs/DOJ%20ADA%20Final%20RIA.pdf

alterations so that the altered portions of the public accommodation are readily accessible to and usable by individuals with disabilities (28 C.F.R. § 36.402 and 42 U.S.C. § 12183(a)(2)).

14. Section 504 of the Rehabilitation Act of 1973 covers medical care providers that receive federal financial assistance, which can include Medicare and Medicaid reimbursements, and requires that medical care providers provide individuals with disabilities full and equal access to their health care services and facilities.
15. The Rehab Act further requires reasonable modifications to policies, practices, and procedures when necessary to make health services fully available to individuals with disabilities, unless the modification would fundamentally alter the nature of the services.
16. The Department of Justice (“DOJ”), pursuant to 42 U.S.C. § 12186(b), has promulgated the ADA Accessibility Guidelines (“ADAAG”) in implementing Title III of the ADA. There are two active ADAAGs that set forth the technical structural requirements that a public accommodation must meet in order to be “readily accessible”: the 1991 ADAAG Standards, 28 C.F.R. § pt. 36, App. D (“1991 Standards”), and the 2010 ADAAG Standards, 36 C.F.R. § pt. 1191, App. D (“2010 Standards”).

III. JURISDICTION AND VENUE

17. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 1343, which provides for original jurisdiction over all civil suits involving questions of federal law. Plaintiff’s federal claim is made pursuant to the ADA and the Rehab Act.
18. Venue is appropriate in this district pursuant to 28 U.S.C. § 1391(b) as the Defendants may be found in this District and Division of this Court.

IV. PARTIES

19. Plaintiff, DISABILITY RIGHTS OF MISSISSIPPI, is a non-profit corporation duly incorporated in the state of Mississippi. DRMS is designated by the Governor of the State of

Mississippi as the protection and advocacy system for people with disabilities in Mississippi. DRMS files this complaint in its own name to redress injuries to itself in fulfilling its mandate to protect and advocate for the rights of people with disabilities.

20. DRMS is located at 5 Old River Place, Suite 101, Jackson, Mississippi 39202.
21. Congress established the protection and advocacy (“P&A”) system in 1975 to protect and advocate for the rights of persons with developmental disabilities, and reauthorized the system in the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (the “PADD Act”). 42 U.S.C. § 15041 *et seq.* Congress provided P&A systems with the authority to investigate incidents of abuse and neglect against individuals with developmental disabilities and pursue legal, administrative, and other remedies on their behalf. 42 U.S.C. § 15043(a). Congress thereafter expanded the scope of the P&A system to provide protection and advocacy services to all persons with disabilities. The Protection and Advocacy for Individuals with Mental Illness Act of 1986 (the “PAIMI Act”) provides for the protection of rights of individuals with mental illness, 42 U.S.C. § 10801 *et seq.*; and the Protection and Advocacy of Individual Rights Program (the “PAIR Act”) was created to protect the rights of all other individuals with disabilities who are not covered under the PADD and PAIMI Acts. 29 U.S.C. § 794e *et seq.*
22. Pursuant to these laws, DRMS has a federal mandate to protect and advocate for the rights of persons with disabilities in Mississippi. Among other activities, DRMS travels across the state of Mississippi, regulating monitoring facilities, ensuring program compliance, and investigating allegations of abuse and neglect.
23. Defendant, ST. DOMINIC – JACKSON MEMORIAL HOSPITAL, is a non-profit Mississippi corporation. Its registered agent, Jonathan Werne, may be served with process at 969 Lakeland Drive, Jackson, Mississippi 39216.

V. FACTUAL ALLEGATIONS

24. St. Dominic is a 571-bed hospital located 969 Lakeland Drive in Jackson, Mississippi, providing healthcare to central Mississippi. See **Exhibit A** to the Complaint.
25. The parking lot in front of the main St. Dominic facility located at 969 Lakeland Drive is limited in spaces, specifically handicapped accessible spaces. Therefore, those accessing the hospital utilize the parking garage located across Lakeland Drive or the parking lot on North Curran Drive. See **Exhibit A** to the Complaint.
26. The parking garage is connected to the main hospital by a pedestrian bridge which aerially crosses Lakeland Drive. See **Exhibit A** to the Complaint.
27. Access points to public transportation are located along Lakeland Drive (and various other points in the area).
28. The nearest intersection from the parking garage is located at North Curran and Lakeland Drive. At this intersection, there are eight (8) lanes of traffic which is controlled by a traffic light. While there is a painted crosswalk present, there is not a crossing light for pedestrians crossing Lakeland Drive, only for those crossing North Curran Drive. See **Exhibit A and B** to the Complaint.
29. To avoid crossing this busy intersection without adequate crosswalk notifications, individuals should be able to access the pedestrian bridge from a doorway located on Lakeland Drive – just as the motorists in the parking garage are allowed to access the bridge. See **Exhibit C** to the Complaint.
30. Notwithstanding this entry point for the Lakeland pedestrian bridge, if an individual with a mobility disability/impairment does attempt to and safely crosses the busy intersection, they are faced with another uphill battle – literally. The alternative route from the crosswalk involves navigating extreme running slopes and cross-slopes that are inaccessible and not

ADA-compliant, traversing against the flow of traffic in the parking lot, and non-ADA compliant surfaces to get to the entrance of the hospital. See **Exhibit D** to the Complaint.

31. There is an access point inside the parking garage, however, if a pedestrian wishes to access the Lakeland pedestrian bridge from inside the parking garage, they must traverse North Curran Drive (absent of sidewalks) and enter the parking garage. Then, they must maneuver up to the access point (essentially the ‘other side’ of the area they should be able to open) through the sloped parking garage. See **Exhibit E and F** to the Complaint.
32. Further, any individual with a mobility disability/impairment that parks in the additional parking across the street on North Curran Street cannot safely cross to the main facility. The smaller pedestrian bridge which connects this parking lot to the parking garage is accessible only by stairs. Individuals with mobility disabilities/impairments that want to utilize the safe Lakeland pedestrian bridge from the North Curran parking area must follow the same path as pedestrians. See **Exhibit A and G** to the Complaint.
33. While St. Dominic has been informed of this violation and safety hazard since 2014, DRMS outlined the problem in a letter sent to Office of Security on January 27, 2022. There was no response.
34. DRMS sent an Advocate to accompany a St. Dominic patient, a power chair user, on May 3, 2022 to a clinic appointment and recorded the issues encountered by a wheelchair user who travels via public transportation.
35. During this encounter, DRMS Advocate and the patient could not access the door to the Lakeland pedestrian bridge, so they crossed eight (8) lanes of Lakeland traffic, crossed up an extremely steep ramp, across flow of traffic in the front parking lot to the front entrance of the hospital.

36. Most troubling is that, in the background of the video, you can visibly see people utilizing the Lakeland pedestrian bridge which begs the question as to why some individuals can use this safe passage and others – especially individuals with mobility concerns - cannot.
37. Through reports by concerned patients, Plaintiff has been informed that St. Dominic’s position is that keeping the door open and accessible is a ‘safety concern’ and that particular door has been linked to criminal activity that occurred in the parking garage. It is unclear how closing off only one access point to the parking garage would prevent criminal activity.
38. On June 23, 2022, DRMS spoke with a St. Dominic representative, Attorney Jonathan Werne, to convey the concerns that this inaccessibility poses for all St. Dominic patients, but specifically the elevated risk for those that experience mobility issues/impairment and/or utilize a mobility aid.
39. DRMS was informed, at this point, that the door afforded homeless people ‘ease of access’ to the parking garage. There was no response regarding to why this particular door was the only access point that was addressed when an able-bodied person with intention to commit a crime could clearly access the parking garage at other points.
40. Essentially, it seems that St. Dominic is more concerned with keeping ‘homeless’ people out of its garage than the safety of those that require use of its Lakeland pedestrian bridge.

**COUNT I – VIOLATION OF THE AMERICANS WITH
DISABILITIES ACT (42 U.S.C. §§ 12181, et seq.)**

41. Plaintiff re-alleges and incorporates herein by reference the above and foregoing paragraphs.
42. Plaintiff, as the P&A for the state of Mississippi, brings this claim individually and on behalf of those individuals with disabilities of which the Plaintiff is mandated to represent, advocate, and protect, including those that possess a disability which substantially limits one or more major life activities. 42 U.S.C. § 12102(1)(A); 28 C.F.R. § 36.105.
43. Defendant is a public accommodation under the ADA. 42 U.S.C. § 12181(7).

Failure to Provide Accessible, Safe Facility

44. The ADA requires that facilities existing prior to the effective date of the ADA that are altered in a manner that affects or could affect their usability must be made readily accessible to individuals with disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2).
45. Defendant has failed to make St. Dominic readily accessible to individuals with disabilities to the maximum extent feasible in violation of the ADA.
46. Defendant has discriminated against individuals with mobility disabilities/impairments and continues to discriminate against the same by maintaining and operating St. Dominic in a non-compliant state that violates the ADA.
47. Defendant's failure to provide accessible, safe passage from its parking garage precludes individuals with mobility disabilities/impairments who use wheelchairs or scooters, or who otherwise require use of mobility aids, from safe access to Defendant's services and facilities.

Failure to Remove Architectural Barrier

48. The ADA prohibits failing to remove architectural barriers that are structural in nature in existing facilities where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv).
49. Defendant has the financial resources to remove the architectural barriers at issue. Safe, accessible passage from its parking garage is readily available. Defendants merely have to unlock the door providing passage.
50. Defendant has possessed sufficient control and authority to remove the architectural barriers at St. Dominic and to remedy this simple issue to comply with the ADA's requirements, but Defendant has not removed such impediments despite having knowledge of the struggles it has caused individuals with mobility disabilities/impairments. Instead, Defendant has intentionally maintained St. Dominic to be inaccessible and has refrained from making alterations to make St. Dominic accessible to individuals with mobility

disabilities/impairments who use wheelchairs or scooters or who otherwise require the use of mobility aids.

Denial of ‘Full and Equal’ Enjoyment & Use

51. Title III of the ADA prohibits discrimination against individuals with disabilities in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation. 42 U.S.C. § 12182(a).
52. Defendant discriminated and continues to discriminate against individuals with mobility disabilities/impairments by denying “full and equal” enjoyment and use of the goods, services, facilities, privileges, advantages, and accommodations of St. Dominic.
53. Defendant’s refusal to remedy a situation which allows those individuals with mobility disabilities/impairments to safely access its facilities by utilizing the parking garage offered by the hospital denies these individuals equal access to St. Dominic.

Failure to Modify Existing Policies, Practices, and Procedures

54. By failing to provide safe, accessible passage from its parking lot, Defendant has engaged, directly, or through contractual, licensing, or other arrangements, in illegal disability discrimination by failing to make reasonable modifications in policies, practices, or procedures where necessary to afford services, privileges, advantages, or accommodations to against individuals with mobility disabilities/impairments.
55. Defendant has failed to ensure that individuals with mobility disabilities/impairments who use wheelchairs or scooters or who otherwise require the use of mobility aids receive and are afforded safe access to its facilities to those received by and afforded to individuals without disabilities.

56. For example, while not ideal or safe, individuals without disabilities can navigate the busy crossing at Lakeland Drive and the non-compliant sidewalk/slope on the hospital side of the street. For individuals with mobility disabilities/impairments, crossing a busy intersection is much more dangerous and, if they manage to safely cross the street, they are met with other obstacles to gain access to the facility.
57. Defendant's policies, practices, and procedures have failed to ensure individuals with mobility disabilities/impairments are afforded equal access to its services and facilities.
58. Defendant has further failed to create, implement, and maintain policies, practices, and procedures that comply with ADA barrier removal requirements and building design regulations and standards.
59. A reasonable modification in the policies, practices, and procedures described above will not fundamentally alter the nature of Defendant's services, facilities, privileges, advantages, and accommodations.
60. Defendant's ongoing and continuing violations of the ADA have caused, and, in the absence of an injunction, will continue to cause harm to individuals with mobility disabilities/impairments.

**COUNT II – VIOLATION OF THE
REHABILITATION ACT (29 U.S.C. § 701 *et seq.*)**

61. Plaintiff re-alleges and incorporates herein by reference the above and foregoing paragraphs.
62. Plaintiff, as the P&A for the state of Mississippi, brings this claim individually and on behalf of those individuals with disabilities of which the Plaintiff is mandated to represent, advocate, and protect, including those that possess a disability substantially limiting one or more major life activities pursuant to the Rehab Act. 29 U.S.C. § 705(20); 28 C.F.R. § 41.32.
63. Defendant receives federal monies and financial assistance, including but not limited to Medicare and Medicaid reimbursements, and is therefore subject to the Rehab Act.

64. Defendant has, solely by reason of their disabilities, excluded individuals with mobility disabilities/impairments from equal and safe participation in the services, programs, and activities provided by Defendant.
65. Defendant has denied excluded individuals with mobility disabilities/impairments, solely by reason of their disabilities, the benefits of the services, programs, and activities provided by Defendant.
66. Defendant has discriminated against individuals with mobility disabilities/impairments by failing to remove architectural barriers, namely access to its pedestrian bridge, which denies persons with disabilities equal, safe access to Defendant's services and facilities.
67. Defendant has failed to make reasonable modifications to policies, practices, and procedures necessary to make health care services fully available to individuals with mobility disabilities/impairments.
68. Defendant has failed to provide reasonable, safe access to the services, programs, and activities provided by Defendant in violation of the Rehab Act.
69. Defendant's ongoing and continuing violations of the Rehab Act have caused, and, in the absence of an injunction, will continue to cause harm to individuals with mobility disabilities/impairments.
70. Pursuant to the remedies, procedures and rights set forth in the Rehab Act, the ADA, and their respective implementing regulations, Plaintiff requests relief as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that the Court:

- A. Issue a declaratory injunction that Defendant, St. Dominic, is in violation of the specific requirements of Title III of the ADA and Section 504 of the Rehab Act described above, and those Acts' respective relevant implementing regulations, in that Defendant's facilities and

services, as described above, are not fully accessible to, and independently usable by, individuals who use wheelchairs, scooters, or other mobility aids;

- B. Issue a permanent injunction which directs Defendant to: (i) take all steps necessary to remove the architectural barriers described above and to bring its facilities into full compliance with the ADA and the Rehab Act's requirements, so that Defendant's facilities and services are fully accessible to, and independently usable by, individuals use wheelchairs, scooters, or other mobility aids; (ii) that Defendant changes its policies and practices to prevent and to ensure that its facilities and services are accessible to individuals use wheelchairs, scooters, or other mobility aids; and (iii) that Plaintiff shall monitor St. Dominic to ensure that the injunctive relief ordered above remains in place.
- C. Attorney's Fees, Costs, and Expenses;
- D. Pre-judgment and post-judgment interest; and
- E. Such further relief as is deemed just and proper.

RESPECTFULLY SUBMITTED, this the 28th day of July, 2022.

DISABILITY RIGHTS MISSISSIPPI

/s Greta Kemp Martin

GRETA KEMP MARTIN, MSB

Attorneys for Plaintiff:

GRETA K. MARTIN, MSB #103672
KATHERINE HENDERSON, MSB#104522
DISABILITY RIGHTS MISSISSIPPI
5 OLD RIVER PLACE, SUITE 101
JACKSON, MISSISSIPPI 39202
Office: (601)968-0600
Facsimile: (601)968-0665