

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
Washington, D.C. 20507

Office of Legal Counsel

August 12, 2011

Steven Soifer
International Paruresis Association, Inc.
P.O. Box 65111
Baltimore, MD 21209

Dear Mr. Soifer:

This is in response to your June 1, 2011 letter to General Counsel P. David Lopez asking whether paruresis is a disability under the Americans with Disabilities Act (ADA), as amended by the ADA Amendments Act of 2008 (ADAAA), and under the regulations implementing the AD AAA published by the U.S. Equal Employment Opportunity Commission (EEOC) on March 25, 2011.

According to the literature you provided, paruresis (sometimes called "shy bladder syndrome" or "bashful bladder syndrome") is the inability to urinate in public restrooms or in close proximity to other people, or the fear of being unable to do so. Paruresis is generally considered to be an anxiety disorder, and typically is treated with cognitive-behavioral therapy. Your letter states that paruresis is also a chronic pelvic floor dysfunction. Individuals with paruresis sometimes are subjected to adverse employment actions because they are unable to pass standard tests designed to detect the illegal use of drugs, and are denied permission to take alternative tests that do not involve urination.

As was true prior to the AD AAA, the determination of whether someone has a disability requires an individualized assessment. The ADA defines "disability" as:

- 1.a physical or mental impairment that substantially limits one or more major life activities (sometimes referred to in the regulations as an "actual disability"); or
- 2.a record of a physical or mental impairment that substantially limited a major life activity ("record of"); or
- 3.when a covered entity takes an action prohibited by the ADA because of an actual or perceived impairment that is not both transitory and minor ("regarded as").

42 U.S.C § 12102(1); 29 C.F.R. § 1630.2(g)(1). To be entitled to reasonable accommodation, such as being given the option to take alternative drug tests, an individual's impairment must meet the first or second definition above; individuals whose impairment only meets the third

definition are not legally entitled to accommodation. 42 U.S.C. § 12201(h); 29 C.F.R. § 1630.9(e).

Although the amended regulations and accompanying interpretive guidance (appendix) provide illustrative examples, those are by no means the only impairments that are considered disabilities. To the contrary, many impairments that are not specifically mentioned, including paruresis, will be disabilities if they meet any one of the three definitions above. Moreover, as a result of the AD AAA and the EEOC's implementing regulations, it is now far easier than it previously was for individuals to demonstrate that they meet one of the definitions of "disability," for reasons discussed below.

I. Coverage Under the First or Second Definition of "Disability"

A. Major Life Activities Now Include Major Bodily Functions

Under the AD AAA and the EEOC's regulations, an individual with paruresis has a disability under the first or second definition if his or her condition substantially limits (or substantially limited in the past), one or more major life activities. 42 U.S.C. § 12102(1)(A), (B); 29 C.F.R. § 1630.2(g)(1)(i), (ii). As a result of the AD AAA, major life activities include major bodily functions, such as bladder and brain functions, and functions of the neurological and genitourinary systems. 42 U.S.C. § 12102(2)(B); 29 C.F.R. § 1630.2(i)(1)(ii). Major **life** activities also include activities that the EEOC and many courts recognized as major life activities prior to the AD AAA, such as caring for oneself. *See* 42 U.S.C. § 12102(2)(A); 29 C.F.R. § 1630.2(i)(1)(i).

B. "Substantially Limits" Is Not Meant to be a Demanding Standard

Both the statute and the amended regulations state that the term "substantially limits" shall be construed broadly in favor of expansive coverage. 42 U.S.C. § 12102(4)(A); 29 C.F.R. § 1630.2(j)(1)(i). The term now requires a lower degree of functional limitation than was required prior to the AD AAA; an impairment does not need to prevent or severely or significantly restrict a major life activity to be considered "substantially limiting." ADA Amendments Act of 2008. Pub. L. No. 110-325, § 2(b)(4), (6), 122 Stat. 3553 (2008); 29 C.F.R. § 1630.2(j)(1)(ii), (iv)-(v).

In addition, the determination of whether an impairment substantially limits a major life activity must be made without regard to the ameliorative effects of mitigating measures (with the exception of "ordinary eyeglasses or contact lenses"). 42 U.S.C. § 12102(4)(E); 29 C.F.R. § 1630.2(j)(1)(vi). Thus, an individual's paruresis substantially limits a major life activity if it would do so in the absence of treatment, including cognitive-behavioral therapy and medication.

The statute and regulations also state that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. 42 U.S.C. § 12102(4)(D); 29 C.F.R. § 1630.2(j)(1)(vii). Therefore, the determination of whether an individual's paruresis substantially limits a major life activity is based on the limitations imposed by the condition when its symptoms are present (disregarding any mitigating measures that might limit or eliminate the symptoms).

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II. The Statute and Regulations Make it Easier for Individuals to Establish Coverage Under the "Regarded As" Definition of "Disability"

Under the AD AAA and the EEOC's regulations, a covered entity "regards" an individual as having a disability if it takes an action prohibited by the ADA (e.g., failure to hire, termination, or demotion) based on an individual's impairment, or on an impairment that the covered entity believes the individual has, unless the impairment is both transitory (lasting or expected to last for six months or less) and minor. 42 U.S.C. § 12102(3); 29 C.F.R. § 1630.2(1). Under the AD AAA, the focus for establishing coverage is on how a person has been treated because of an impairment (that is not transitory and minor), rather than on what an employer may have believed about the nature of the impairment. 29 C.F.R. § 1630.2(j)(1)(iii). Paruresis does not appear to be a transitory impairment. Therefore, if a covered entity terminates, fails to hire, or takes a similar adverse action against an individual because of paruresis, whether the condition is real or perceived, the individual probably will be "regarded as" having a disability.¹

However, as noted above, an individual who is covered only under the "regarded as" definition of "disability" is not entitled to a reasonable accommodation. 29 C.F.R. § 1630.9(e). Thus, someone who needs a reasonable accommodation for paruresis (e.g., to be permitted to take a hair, saliva, or patch test intended to detect the

illegal use of drugs rather than a urine test) would need to demonstrate that his or her paruresis constitutes either an actual or record of disability. In addition, an employer determining if it must grant a request to take an alternative drug test will be able to consider whether such a test would cause an "undue hardship," which may include whether an alternative test is an effective means of determining current illegal use of drugs.

III. Conclusion

As was true prior to the AD AAA, a person with paruresis is required to show individually that he or she meets the definition of "disability." The AD AAA and its implementing regulations make this showing much easier, by including bladder and brain functions as major life activities, lowering the standard for establishing that an impairment "substantially limits" a major life activity, and focusing the determination of whether an individual is "regarded as" having a disability on how the individual has been treated because of an impairment, rather than on what the employer may have believed about impairment. No negative inference should be drawn from

¹ The question of whether someone with paruresis is regarded as having a disability is separate from the question of whether an employer's action is lawful. For example, an employer may exclude someone from a job because of an impairment if the impairment renders the individual unable to perform a job's essential functions or if the impairment poses a direct threat (i.e., a significant risk of substantial harm) to the individual or others in the workplace.

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the fact that paruresis is not specifically mentioned in the EEOC's regulations implementing the AD AAA.

We hope this information is helpful. This letter is an informal discussion of the issues you raised and should not be considered an official opinion of the EEOC.

Sincerely,

Peggy R. Mastroianni

Legal Counsel