UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

DONNA M. CATLETT PLAINTIFF

v. CIVIL ACTION NO. 3:00CV-340-S

JEFFERSON COUNTY CORRECTIONS DEPARTMENT, et al DEFENDANTS

MEMORANDUM OPINION

This matter is before the court on the motion of the defendants John Aubrey, in his official capacity as Jefferson County Sheriff, and the Jefferson County Sheriff's Department to dismiss plaintiff's Complaint for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6). For the reasons set forth below, the defendants' motion will be denied.

I. Background

The plaintiff alleges that she was born "profoundly deaf, borderline retarded and with memory disorders." Compl., ¶ 7. On November 27, 1999, the plaintiff claims that she was arrested by deputies of the Jefferson County Sheriff's Department pursuant to a valid arrest warrant. She claims that she was then transported to the Jefferson County Corrections Facility where she was held until November 30, 1999. From the time of her arrest until her release, the plaintiff claims that she was unable to communicate with anyone in the facility. The plaintiff also alleges that one result of this inability to communicate was that she failed to receive high blood pressure medication when needed. Compl., ¶¶ 8-14.

The plaintiff filed her Complaint on May 26, 2000 in Jefferson Circuit Court against John Aubrey, in his official capacity as Jefferson County Sheriff, the Jefferson County Sheriff's Department, Rebecca Jackson, in her official capacity as Jefferson County Judge Executive, Michael Horton, in his official capacity as Chief of the Jefferson County Corrections Department, and the

Jefferson County Corrections Department. The plaintiff claims that the defendants violated her rights guaranteed by Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12131- 12165 (1995), §504 of the Rehabilitation Act of 1973, 29 U.S.C. §794 (1995), and Chapter 344 of the Kentucky Civil Rights Statutes, Ky. Rev. Stat. Ann. §§344.010-.990 (Michie 1997) (herein, collectively "Title II").[1] The plaintiff alleges that by failing to provide some reasonable accommodation such as qualified sign language interpreter throughout the arrest and detention process, the defendants violated her civil rights.

On June 13, 2000, the plaintiff's action was removed to this court. On July 13, 2000, these defendants, John Aubrey, in his official capacity as Jefferson County Sheriff, and the Jefferson County Sheriff's Department, filed a Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6). Because we find that the plaintiff has stated a claim upon which relief can be granted under the Title II, the motion of the defendants will be denied.

II. Standard of Review

When considering a motion to dismiss, the district court must determine whether a reasonable jury could find for the plaintiff under any set of facts. *Cheatham v. Paisano Publications, Inc.*, 891 F. Supp. 381, 384 (W.D. Ky. 1995). In making this determination, the court will construe the complaint in the light most favorable to the plaintiff. *Columbia Natural Resources, Inc. v. Tatum*, 58 F.3d 1101, 1109 (6th Cir. 1995), *cert. denied*, 516 U.S. 1158, 116 S.Ct. 1041 (Mem.), 134 L.Ed.2d 189 (1996). Only when it appears beyond doubt that the plaintiff would be

[1] As the parties note in their briefs, the ADA, the Rehabilitation Act, and the Kentucky Civil Rights Statutes are similar in purpose, language, and effect. Def.'s Memo. in Supp. at 4; Pl.'s Memo. in Opp. at 2. Therefore, analysis of claims brought pursuant to the three statutes is virtually identical. *Mills v. Gibson Greetings, Inc.*, 872 F. Supp. 366 (E.D. Ky. 1994); *Thompson v. Williamson County, Tenn.*, 219 F.3d 555 (6th Cir. 2000). §504 of the Rehabilitation Act additionally requires that the allegedly discriminatory entity be federally funded to be covered by the statute. 29 U.S.C. §794. Plaintiff alleges that the Jefferson County Sheriff's Department is federally funded. Compl. ¶47. Therefore, this requirement is met for the purposes of this motion. Having disposed of this additional requirement, the following analysis of the ADA's applicability applies equally to the applicability of the Rehabilitation Act and the Kentucky Civil Rights Statutes.

unable to recover under any set of facts that could be presented consistent with the allegations of the complaint will such a motion be granted. *Conley v. Gibson*, 355 U.S. 41, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957).

III. Discussion

Title II provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. §12132. In order to state a claim under Title II, the plaintiff must allege: (a) that she is a qualified individual with a disability; (b) that the defendant(s) excluded her from participation in, or denied her the benefits of, services, programs, or activities, or otherwise subjected her to discrimination (c) that each defendant is a public entity; (d) and that she was discriminated against by reason of her disability. *See, e.g., Layton v. Elder*, 143 F.3d 469, 472 (8th Cir. 1998); *Hoot by Hoot v. Milan Area Schools*, 853 F. Supp. 243, 249 (E.D. Mich. 1994).

A. Qualified Individual with a Disability

The plaintiff must first allege that she is a qualified individual with a disability as defined by Title II. The ADA defines a "disability" as "(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment". 42 U.S.C. §12102(2). Title II defines "qualified individual with a disability" as:

> an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, 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 *Yeskey v. Pennsylvania Dep't of Corrections*, 524 U.S. 206, 118 S.Ct. 1952, 141 L.Ed.2d 215 (1998), the Supreme Court held that the protections of Title II extend to inmates in state prisons.

Yeskey had been sentenced to serve 18 to 36 months in a Pennsylvania prison. *Id.* at 208. However, he was recommended for placement in a Motivational Boot Camp designed for first-time offenders, the completion of which would lead to his release on parole after only six months. *Id.* Despite this recommendation by his sentencing court, Yeskey was denied admission to the Boot Camp based on his history of hypertension. *Id.* Yeskey brought suit claiming that his exclusion from the Boot Camp violated Title II. *Id.*

After concluding with little discussion that state prisons are public entities for the purposes of Title II, the Court turned to the argument of the Department of Corrections that Title II's definition of the term "qualified individual with a disability" implies voluntariness on the part of the individual who seeks a benefit from the state because the individual is required to "meet the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity." *See id.* at 210-11; 42 U.S.C. §12132. The Department of Corrections argued that state prisoners could never be a "qualified individual with a disability" since they are held against their will. *See id.*

The Court disagreed. It held that the plain meanings of the words "eligibility" and "participation" do not "connote voluntariness." *Id.* at 211 (citations omitted). Also, the Court noted that even if the words did contemplate voluntary participation, some programs provided by state prisons, such as the Boot Camp in which Yeskey wished to participate, are voluntary. *See Yeskey* at 211. Based on these two findings, the Court found Yeskey to be a "qualified individual with a disability" entitled to Title II protections. *See id.* at 213.

Here, the plaintiff alleges that she "was born profoundly deaf, borderline retarded and with memory disorders, rendering her a person with a disability under all applicable statutes." Compl. ¶7. She also alleges that these impairments substantially limit several major life activities. Compl. ¶16. These allegations, coupled with the Supreme Court's holding in *Yeskey* that "eligibility" and "participation" do not connote voluntariness, justify our conclusion that the plaintiff has satisfied

her burden of alleging facts under which a reasonable jury could find that she is a qualified individual with a disability within the meaning of Title II.

B. Denial of Benefits of Services, Programs, or Activities

Having sufficiently alleged that she is a qualified individual with a disability, plaintiff must next allege that she was "excluded from participation in[,] or . . . denied the benefits of[,] the services, programs, or activities of a public entity, or [was] subjected to discrimination by any such entity." 42 U.S.C. §12132. The plaintiff alleges that the defendants violated Title II by failing to accommodate her disabilities during the course of her arrest. Compl. ¶¶26-33. She claims that by not providing a qualified sign language interpreter or some similar accommodation throughout the arrest process, the defendants discriminated against her because of her disabilities.[2] Compl. ¶¶26-33. The defendants, on the other hand, argue that Title II protections do not extend to individuals who have been validly arrested. [3]

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[2]The plaintiff's theory is essentially that "while police properly investigated and arrested [her] for a crime unrelated to [her] disability, they failed to reasonably accommodate [her] disability in the course of investigation or arrest, causing [her] to suffer greater injury or indignity in that process than other arrestees." *Gohier v. Enright*, 186 F.3d 1216, 1220-21 (10th Cir. 1999). The plaintiff does not allege that she would never have been arrested had she not been a qualified individual with a disability. Therefore, we will not address whether Title II protects an individual who is wrongfully arrested because the effects of his or her disability are misperceived as criminal activity. *See id.* at 1220.

[3]The defendants argue that Title II is inapplicable to plaintiff's arrest. *See, e.g.,* Defs.' Mem. in Supp. at 2; Defs.' Reply at 5. However, neither their motion nor their reply contain a description of what actually occurred during plaintiff's arrest. The plaintiff's pleadings are equally factually deficient. *See* Compl. ¶¶7-14. For example, it is impossible to discern the amount of time the plaintiff was in the custody of these defendants, whether any exigencies surrounded the plaintiff's arrest, whether the defendants actually knew or should have known of the plaintiff's condition, or whether the defendants acted in any way other than to deliver the plaintiff into the custody of the Jefferson County Corrections Department. All that is clear is that the plaintiff's arrest was valid. *See* Compl. ¶8; Pl.'s Resp. at 1. In light of these bare assertions by both parties as to the applicability of Title II to plaintiff's arrest, we will address only whether Title II can *ever* apply in the context of a valid arrest. The lack of a more complete factual record precludes us from further focusing the inquiry.

Despite the plaintiff's assertion to the contrary, the Supreme Court's holding in *Pennsylvania Dep't of Corrections v. Yeskey*, *supra*, does not support her argument that Title II applies in the context of a valid arrest. In addition to their argument, discussed above, that a state prison inmate is not a "qualified individual with a disability," the Department of Corrections argued that since prisons do not provide their inmates with "benefits" of "programs, services, or activities," Title II did not apply. However, the Court did not find, as it did with regard to whether a plaintiff is a "qualified individual with a disability," that voluntariness is irrelevant to whether the actions of a public entity are subject to Title II. In fact, the Court stated:

> Modern prisons provide inmates with many recreational "activities," medical "services," and educational and vocational "programs," all of which at least theoretically "benefit" the prisoners (and any of which disabled persons could be "excluded from participation in") . . .. Indeed, the statute establishing the Motivational Boot Camp at issue in this very case refers to it as a "program." The text of the ADA provides no basis for distinguishing these programs, services, and activities from those provided by public entities that are not prisons.

Yeskey, *supra*, at 210 (citations omitted).

This excerpt does not support the plaintiff's argument that a valid arrest may be covered by Title II. Rather, it merely illustrates that a program which is, at least "theoretically," beneficial must be provided on a non-discriminatory basis. *Id.* The Court did not, as the plaintiff suggests, hold that Title II applies to all aspects of the detention of prisoners. Instead, the Court held that even though prisoners are held against their will, Title II may still apply in certain circumstances. *See id.* This neither supports nor contradicts the plaintiff's claim that a valid arrest is covered by Title II. Therefore, we must look elsewhere for guidance as to whether Title II applies in the context of a valid arrest.

Title II provides that "the Attorney General shall promulgate regulations in an accessible format that implement this part." 42 U.S.C. §12134. When interpreting Title II, courts afford these regulations substantial deference. *See, e.g., Helen L. v. DiDario*, 46 F.3d 325 (3d Cir. 1995); *Williams v. Wasserman*, 937 F. Supp. 524 (D. Md. 1996). Therefore, it is instructive to first look

to the regulations promulgated pursuant to §12134 for guidance. The regulations state, in relevant part:

> (a) A public entity shall take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others.
>
> (b)(1) A public entity shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity.
>
> (b)(2) In determining what type of auxiliary aid and service is necessary, a public entity shall give primary consideration to the requests of the individual with disabilities.

28 C.F.R. §35.160.

The duty imposed by the above regulation is not absolute. Rather, the duties to ensure effective communication and to furnish auxiliary aids and services are tempered by 28 C.F.R. §35.164 which states, in relevant part:

> This subpart does not require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens . . .. [A] public entity has the burden of proving that compliance with this subpart would result in such alteration or burdens . . .. If an action required to comply with this subpart would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the public entity.

Id.

These regulations, when read in conjunction with the statutory language itself, suggest that if an arrest is a "service, program, or activity" as contemplated by Title II, then the plaintiff has alleged sufficient facts to support a finding that she was either "denied the benefits of the services, programs, or activities" of these defendants or was otherwise "subjected to discrimination" by these defendants. *See* 42 U.S.C. §12132. The plaintiff claims that communications by the defendants were not as effective as those made to individuals without hearing and mental disorders. *See* Compl.

at ¶30. Also, the plaintiff contends that the defendants had a duty to provide auxiliary aids and services which would have allowed her to communicate more effectively with the defendants. *See* Compl. at ¶34. Under 28 C.F.R. §35.164, the defendants would then have the burden of demonstrating that the accommodations sought by the plaintiff would either fundamentally alter the nature of the arrest process or would result in an undue financial and administrative burden.

While clarifying the duty of public entities to communicate effectively with all applicants, participants and members of the public, the regulations fail to address whether an arrest is the type of service, program, or activity contemplated by Title II. In other words, the regulations clarify the conduct expected of public entities when Title II applies, but does not shed light on the issue of whether Title II applies in this situation. Therefore, we must look to the decisions of other lower courts that have addressed the issue of whether Title II applies to an arrest. As discussed below, their decisions are helpful to our determination of whether Title II applies to the plaintiff's arrest.

Lower courts that have addressed this issue have attached importance to different aspects of an arrest in determining whether Title II applies in that context. Some courts have linked Title II's applicability to the presence of exigencies at the time of the arrest. *See e.g., Hainze v. Richards*, 207 F.3d 795, 801 (5th Cir. 2000) (holding that a duty to comply with Title II arises "[o]nce the area was secure and there was no threat to human safety"); *Rosen v. Montgomery County, Md.*, 121 F.3d 154, 158 (4th Cir. 1997) (noting that "[t]he police do not have to get an interpreter before they can stop and shackle a fleeing bank robber"); *Calloway v. Boro of Glassboro Dep't of Police*, 89 F. Supp. 2d 543, 556 (D.N.J. 2000) (holding that an arresting officer is not required to "provide an auxiliary service or aid to a qualified individual with a disability while effectuating an arrest outside the confines of the police station").

Courts have also attached temporal and spatial limitations to the application of Title II. For example, in *Rosen*, *supra*, the court noted that even if "the police were required to provide auxiliary aids at some point in the process, that point certainly cannot be placed before the arrival at the

stationhouse." *See also Gorman v. Bartch*, 152 F.3d 907, 912-13 (8th Cir. 1998) (finding that Title II was applicable to the post-arrest transfer of a disabled individual); *Hanson v. Sangamon County Sheriff's Dep't*, 991 F. Supp. 1059 (C.D. Ill. 1998) (finding that the denial of the opportunity to post bond and to make a telephone call constitute is actionable under Title II); *Calloway*, *supra*, 556 (limiting its holding to investigative questioning taking place at the police station).

While lower courts have come to varying outcomes with respect to whether Title II applies in the context of a valid arrest, the common thread that runs through all of the decisions is that the determination is fact-specific. As the Tenth Circuit stated in *Gohier v. Enright*, 186 F.3d 1216 (10th Cir. 1999), "a broad rule categorically excluding arrests from the scope of Title II ... is not the law." *Id.* at 1221. Factors which are relevant to the determination of whether Title II applies in a certain situation include, but are not limited to, the defendants' knowledge of the plaintiff's condition, the presence of exigent circumstances surrounding the arrest, and the length and nature of the detention which accompanied the arrest. Only after a court analyzes these inherently factual aspects of an arrest is it prepared to determine whether Title II protections extend to a specific arrestee.

As note above, the circumstances surrounding the plaintiff's arrest are not well-documented in the record. For example, it is unclear whether the arresting officers were aware of the plaintiff's condition prior to executing the arrest. Also, it is unclear whether any exigent circumstances confronted the arresting officers. Third, the length and the nature of the plaintiff's detention by the Sheriff's Department have yet to be established. Due to this sparse factual record, we are unable to conclude that Title II could never apply to the plaintiff's arrest. Therefore, for the purposes of this motion, the plaintiff has sufficiently alleged that she was "excluded from participation in[,] or . . . denied the benefits of[,] the services, programs, or activities of a public entity, or [was] subjected to discrimination by any such entity." 42 U.S.C. §12132.

C. Public Entity

The plaintiff must next allege that a "public entity" was responsible for the denial of benefits she experienced. 42 U.S.C. §12132. Title II includes in its definition of a public entity "any department, agency, special purpose district, or other instrumentality of a State or States or local government . . . ." 42 U.S.C. §12131(1)(B). The plaintiff alleges, and the defendants do not dispute, that both the Jefferson County Sheriff's Department and the Jefferson County Sheriff are agencies of the Jefferson County government. *See* Compl. at ¶¶3, 4. As an "agency" of the Jefferson County Government, the Jefferson County Sheriff's Department is, therefore, a "public entity" for the purpose of this motion. *See Saunders v. Horn*, 959 F.Supp. 689, 696-97 (E.D. Pa. 1996) (noting that Title II covers "all aspects of state and local governance"). *See also Gorman v. Bartch*, 152 F.3d 907, 912 (8th Cir. 1998) (finding that a local police department is a public entity for purposes of Title II).

The defendant John Aubrey, in his official capacity as Jefferson County Sheriff, is also a "public entity" as defined by 42 U.S.C. §12131. As discussed above, the term "public entity," as it is used in Title II, refers to any "instrumentality of a State or States or local government . . .." The office of the Jefferson County Sheriff is clearly an instrumentality of the Jefferson County government. As the court stated in *Niece v. Fitzner*, 922 F.Supp. 1208 (E.D. Mich. 1996):

> There is nothing within Title II which explicitly authorizes or prohibits suits against public actors acting in their official or individual capacities. The Americans with Disabilities Act is a broad, remedial statute enacted to eliminate discrimination against disabled persons. As such, it must be construed broadly to carry out its purpose.

Niece, *supra*, at 1218-19 (citations omitted) (denying the motion to dismiss of the individual defendants sued both in their official and individual capacities).

D. Discrimination By Reason of Plaintiff's Disability

Finally, the plaintiff must allege that she was discriminated against "by reason of her disability." 42 U.S.C. §12132. As several courts have noted, an individual bringing suit under Title

II is not required to allege discriminatory motive or intent on the part of the defendants. *See,e.g., Tyler v. City of Manhattan*, 857 F.Supp. 800, 817 (D. Kan. 1994) (citing *Concerned Parents to Save Dreher Park Center v. City of West Palm Beach*, 853 F.Supp. 424, 424-26 (S.D. Fla. 1994). Rather, an allegation of discriminatory effect is sufficient. *See id.*

Here, the plaintiff alleges that the defendants' failure to provide her with a qualified sign language interpreter or some other equivalent accommodation during her arrest resulted in her inability to communicate "with Defendants' employees and other inmates throughout her arrest and incarceration." Compl. at ¶29. She further alleges that "individuals without disabilities are provided effective communication with Defendants' employees and other inmates" and that she "did not enjoy the same level of communication afforded other individuals without disabilities." *Id.* at ¶¶30, 31. Given these allegations and the fact that the defendants do not refute them, we conclude that the plaintiff has sufficiently alleged facts upon which a jury could reasonably find that the plaintiff was discriminated against "by reason of her disability."

IV. Conclusion

For the reasons stated above, the defendants' Motion to Dismiss for failure to state a claim upon which relief can be granted will be denied. The plaintiff has sufficiently alleged facts upon which a jury could reasonably find: (a) that the plaintiff is a qualified individual with a disability; (b) that the defendant(s) excluded her from participation in, or denied her the benefits of, services, programs, or activities, or otherwise subjected her to discrimination (c) that each defendant is a public entity; (d) and that she was discriminated against by reason of her disability. A separate order will be entered this date in accordance with this opinion.

This _____ day of _____, 2000.

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CHARLES R. SIMPSON III, CHIEF JUDGE
UNITED STATES DISTRICT COURT

cc: Counsel of Record

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

DONNA M. CATLETT PLAINTIFF

v. CIVIL ACTION NO. 3:00CV-340-S

JEFFERSON COUNTY CORRECTIONS DEPARTMENT, et al. DEFENDANTS

ORDER

Motion having been made by the defendants, John Aubrey, in his official capacity as Jefferson County Sheriff, and the Jefferson County Sheriff's Department, to dismiss plaintiffs' Complaint for failure to state a claim upon which relief can be granted, and for the reasons set forth in the memorandum opinion entered herein this date, and the court being otherwise sufficiently advised, **IT IS HEREBY ORDERED AND ADJUDGED** that defendants' motion is **DENIED**.

This _____ day of _____, 2000.

_____
CHARLES R. SIMPSON III, CHIEF JUDGE
UNITED STATES DISTRICT COURT

cc: Counsel of Record