

# RIGHTS STUFF

A Publication of The City Of Bloomington Human Rights Commission



CITY OF BLOOMINGTON

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**BHRC**  
**PO BOX 100**  
**Bloomington, IN 47402**

**812.349.3429**

[human.rights@bloomington.in.gov](mailto:human.rights@bloomington.in.gov)

## Court Finds Gender Dysphoria to Be a Disability

**KW** is a transgender woman with gender dysphoria who spent six months incarcerated in the Fairfax County Adult Detention Center. She at first was housed in women's housing, but when she told a prison nurse that she had not had transfeminine bottom surgery, the nurse labeled her as "male" in prison records. The nurse said that prison policy is that "male inmates shall be classified as such if they have male genitals." The prison required her to give up her women's clothing and assigned her to men's housing.

Once in men's housing, KW said she was mistreated. She said that male guards conducted her body searches, despite a woman guard being available, and that at least once, the guard searched her in a "highly aggressive" way, bruising her breast. Later, he "mocked [her pain] and made light of his actions in searching her person." She was told she would be placed in solitary if she resisted searches by male guards.

She sued, alleging that the prison had violated the Americans with Disabilities Act (ADA), the Rehabilitation Act and the constitution. The 4th District Court of Appeals ruled in her favor, finding, apparently for the first

time, that gender dysphoria can be a disability under the ADA.

When the ADA was first enacted, it excluded several conditions from its definition of disability, including "transsexualism, pedophilia, exhibitionism, voyeurism and gender identity disorders not resulting from physical impairments." KW convinced the court that her condition, gender dysphoria, is not the same as gender identity disorder. Gender identity disorder focusses exclusively on a person's gender identity; gender dysphoria is the "clinically significant distress" that some people experience who have "an incongruence between their gender identity and their assigned sex." Not everyone who has gender identity disorder has gender dysphoria. In addition, KW presented evidence that gender dysphoria may be caused by a physical impairment, possibly by hormonal issues in utero.

The court of appeals overturned the trial court's dismissal of KW's case and remanded it for further proceedings consistent with its opinion.

*The case is Williams v. Kincaid, 2022 WL 3364824 (4th Cir. 2022). If you have questions about discrimination, please contact the BHRC.*

# Employers Should Think Before Denying Accommodation Request

**WS** works for AT&T as a radio access network engineer. He drives through states trying to detect interference with AT&T's cell signal frequencies. If he detects interference, he attempts to shut it down at its source.

He has PTSD from his military service. Dakota, his service dog, is able to help him work his way through depressive episodes or anxiety attacks. He asked AT&T to provide him with a company vehicle with enough space for Dakota. He also asked for his vehicle to be modified to accommodate Dakota, including removing the backseat, installing a barrier to protect the dog, installing LED lighting, installing a fan in Dakota's door to help cool him, providing window tinting and a remote start to help cool or heat the vehicle and providing placards to notify others that there was a service animal in the truck.

AT&T's human resources department rejected WS's request without conducting a cost-benefit analysis and without proposing any alternative accommodations. He sued. Both parties moved for summary judgment, and both motions were denied.

AT&T said that WS's requests for an accommodation were unreasonable because he was currently doing his job without any accommodations. The court disagreed; it said that employers may need to provide accommodations so that the employee can "work in reasonable comfort."

AT&T also argued that his request was "sufficiently unreasonable that summary judgment is appropriate." But the court said that whether a request is unreasonable is highly fact-specific. AT&T had not conducted a cost-benefit analysis to determine what it would cost them to provide his requested accommodations.

AT&T also argued that some of the requested accommodations were unsafe or illegal. The court said that argument ignored the fact that WS had proposed many accommodations and had suggested backup accommodations if AT&T thought his initial request was not feasible. And AT&T had not tried to work with him to determine

which, if any, of his proposed accommodations were practical.

And the company argued that providing these accommodations would be an undue burden on the company. It lost that argument because it had not provided any information on its overall financial resources.

WS argued that he should win his motion for summary judgment because the company had not sufficiently engaged in the required interactive process with him. The court said that the company had communicated with him a number of times, and a reasonable jury could conclude that it adequately participated in the interactive process.

*The case, Schroeder v. AT&T Mobility Services, LLC, 2021 WL 4942870 (M.D. TN 2021), will now go to a full trial unless the parties settle. If you have questions about the Americans with Disabilities Act, please contact the BHRC.*

**The next BHRC meeting will take place at 5:30 p.m. September 26, 2022, in McCloskey Room 135, in Showers City Hall.**

**Visit our website or Facebook page for the most up-to-date meeting information.**

# Uber Settles Discrimination Claims



Uber charges a wait-time fee to passengers who take more than two minutes to get into the vehicle once the vehicle arrives at the passenger's home. That might be reasonable for many passengers, but not for some passengers with disabilities.

One passenger who was affected by this policy was a woman the Department of Justice called Passenger A in a lawsuit last year. A is a woman with quadriplegia. She uses a collapsible wheelchair. In 2020, she moved to Louisville for treatment, and used Uber ten times a week to get to and from therapy. When the Uber vehicle arrived, A's nursing assistant used a sliding board to help her transfer into the backseat of the vehicle. Then the assistant would fasten A's seatbelt and collapse and store her wheelchair in the vehicle's trunk. It would take about five minutes for her

and her wheelchair to board the vehicle.

When A realized Uber was consistently charging her a wait-time fee, she complained, but Uber never issued her a refund.

Other people with disabilities complained as well, and in November, the Department of Justice (DOJ) sued Uber. In July of 2022, Uber agreed to settle the matter. Under the terms of the settlement, Uber agreed to do the following:

--Waive wait-time fees for all Uber riders who certify that they (or someone they frequently travel with) need more time to get in an Uber car because of a disability.

--Make it easier for people with disabilities to get a refund if they don't have a waiver and are charged a wait-time fee because of their disability.

--Credit the accounts of more than 65,000 eligible riders who signed up for the waiver program for double the amount of wait-time fees they were ever charged.

--Pay \$1,738,500 to more than 1000 riders who complained to Uber about being charged wait-time fees because of their disability, and \$500,000 to other harmed individuals identified by the DOJ.

Kristen Clarke, an assistant attorney general with the DOJ's Civil Rights Division, said that "People with disabilities should not be made to feel like second-class citizens or punished because of their disability, which is exactly what Uber's wait-time fee policy did. This agreement sends a strong message that Uber and other ridesharing companies will be held accountable if their services discriminate against people with disabilities."



# Court Says Property Owner Had to Request an Accommodation

**M**ichael Daugherty owns a racetrack in Boswell, Indiana. The Benton County assessor valued his property at \$457,900. He appealed to the county property tax assessment board of appeals and the board lowered his assessment to \$315,200. He thought that was still too high and appealed to the state.

The Indiana Board of Tax Review scheduled a hearing for November 19, 2020; because of COVID, the hearing would be a telephonic hearing. The county assessor asked for and received a continuance to January 5. Daugherty didn't call in for that hearing. He said later he had not received notice of the rescheduled hearing. A new hearing was scheduled for May 4. He didn't call in for that hearing, either. He later apologized and said he had

been unable to file for a continuance due to a last minute medical issue with his mother. The board found for the county, denying his appeal. It noted that he failed to call in to the hearing and failed to offer any evidence or argument into the record.

Daugherty appealed to the court. He said the county had used inaccurate information in making its determination and was biased against him. The assessor filed her brief by the deadline, but Daugherty did not. A few days after the deadline, he filed a response to her brief that said "the telephonic administrative hearing provided no TTY or TDD option which violates the Americans with Disabilities Act of 1990. No in person meeting was offered. This administrative hearing was invalid due to violating said ADA Act of 1990." (TTY and TDD devices help

people with hearing impairments communicate with people who can hear.)

The court agreed that under the ADA, public entities have to provide reasonable accommodations to allow people with disabilities to participate in their programs. But there was nothing in the record to show that Daugherty "ever stated that he was disabled or requested an accommodation." Not once in the record "did he request the use of an auxiliary aide or service such as the TTY." The court thus upheld the board's decision.

*The case is Daugherty v. Benton County Assessor, 186 NE 3d 176 (Tax Court of Indiana 2022). If you have questions about reasonable accommodations, please contact the BHRC.*



## BHRC Director Shares Bubbles at CCA Event

CCA member Zoe Waters talks with BHRC Director Barbara E. McKinney, aka Barbara the Bubble Queen, at the Council for Community Accessibility's annual celebration of the anniversary of the ADA. Photo by Rachel Guglielmo.