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Opinion No. 05-178

Food Allergies under the ADA

QUESTION

Is a food allergy that can result in anaphylactic shock considered a disability under the Americans with Disabilities Act (ADA)?

OPINION

No. Food allergies, such as to peanuts, are generally not regarded as a disability as that term is defined by the ADA.

ANALYSIS

Federal courts have routinely rejected ADA disability claims based solely on food allergies, such as to peanuts and peanut products. The courts have unanimously concluded that the allergic condition, by itself, does not rise to the level of a disability as defined by the ADA, 42 U.S.C. § 12131, *et seq*.

Land v. Baptist Medical Center, 164 F.3d 423 (8th Cir. 1998), is the leading case on the issue. Megan, the child in *Land,* was allergic to peanuts and peanut derivatives, and broke out in splotches and hives while at Baptist Medical Center's day care. After her second allergic episode, Megan was barred from the day care center. In response to the mother's ADA claim, the Court of Appeal found the "pivotal question" to be "whether Megan's allergy substantially limits her ability to eat or breathe, and we conclude that it does not."

The *Land* court focused on whether Megan's allergy limited her ability to engage in a major life activity, like eating or breathing, and found that these activities were rarely, and therefore, not substantially affected by her allergy to peanuts.

> Although Megan cannot eat foods containing peanuts or their derivatives, the record does not suggest that Megan suffers an allergic reaction when she consumes any other kind of food or that her physical ability to eat is in any way restricted. Additionally, the record shows that Megan's ability to breathe is *generally* unrestricted, except for the limitations she experienced during her

> two allergic reactions.

Land v. Baptist Medical Center, 164 F.3d at 425 (emphasis added). Because Megan's ability to eat and breathe was generally unrestricted, except during specific allergic episodes, the court concluded that the food allergy did not substantially limit any major life activity, and therefore, was not a disability under the ADA.

Analogously, in the employment context, a federal district court in Pennsylvania found that a worker's allergy to animals was not a disability under the ADA. *Gallagher v. Sunrise Assisted Living of Haverford*, 268 F.Supp.2d 436 (E.D. Pa 2003). *Gallagher* found it "undisputed" that the worker's allergy to cats and dogs was a "physical impairment," but held that the allergy, alone, did "not qualify ... for disability status under the ADA." The court concluded that the worker's allergy to animals did not substantially limit a major life activity, a result reached through application of criteria set forth in federal regulations:

> "(i) [t]he nature and severity of the impairment; (ii) [t]he duration or expected duration of the impairment; and (iii) [t]he permanent or long term impact resulting from the impairment."

Gallagher, 268 F.Supp.2d at 440, citing 29 C.F.R. § 1630.2(j)(2).

In addition, the courts have held that physical or mental impairments that can be corrected by medication or other mitigating measures do not substantially limit major life activities, and therefore, are not "disabilities" under the ADA. *Sutton v. United Air Lines, Inc.* 527 U.S. 471, 482-483, 119 S.Ct. 2139, 2146 (1999).

Although the inquiry asks specifically whether a food allergy is a disability under the ADA, the question apparently stems from a child suffering anaphylactic shock while in school, thus potentially implicating the Individuals with Disabilities in Education Act (IDEA), 20 U.S.C. § 1400, *et seq.* Our research has revealed no court or regulatory authority that has construed a food allergy as a disability under the IDEA.

The IDEA defines a "child with a disability" to include those with "health impairments" that "need[] special education and related services." § 20 U.S.C. 1401(a)(3)(A)(i) and (ii). However, existing case law indicates that a food allergy is not the kind of impairment that triggers a special obligation by the school under the statute.

In *Lyons v. Smith*, 829 F.Supp. 414 (D.D.C. 1993), the court held that a student with attention deficit and hypertension disorder (ADHD) did not have a health impairment covered by the IDEA. While not a food allergy case, the court's reasoning in *Lyons*, would lead to the same result unless the allergy resulted in the child "having limited strength, vitality or alertness, due to chronic or acute health problems . . . which adversely affect the child's educational performance." *Lyons*, 829 F.Supp. 418, citing 20 U.S.C. 1401(a)(1).

The *Lyons* court found that the child was not "health impaired" because his alertness was not affected by his ADHD. This suggests that an allergic reaction to peanut products would be insufficient to affect a child's overall educational performance, and therefore fail to establish a qualifying health impairment under the IDEA.

Finally, Federal regulations promulgated under the IDEA, 34 C.F.R § 300.7, evidence no inclusion of food allergies within the scope of health impairments that the IDEA is intended to cover.

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