

**BEFORE THE IDAHO HUMAN RIGHTS COMMISSION**

**Ellyn Murphy**, Complainant

Case No.: PA-0315-330

vs.

Bases: Disability

**Bogus Basin**, Respondent  
Boise, Idaho

Issues: Reasonable Accommodation  
(Public)

INVESTIGATOR'S REPORT AND  
COMMISSION DETERMINATION

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**SUMMARY OF INVESTIGATION**

**A. Complainant's Position & Evidence**

Complainant is a person with a disability (brain injury) that prevents her from being able to ski or snowboard standing up. Complainant uses a "ski bike" as an adaptive device so that she can ski sitting down. On January 30, 2015, Complainant's husband requested that Complainant be allowed to ski at Respondent's resort using her adaptive device. On January 31, 2015, Complainant received an email response to his request from Recreation Unlimited, an organization which evaluates Respondent's adaptive equipment. The email states, ". . . neither [Respondent] nor Recreation Unlimited is currently ready to proceed with the ski bikes on the mountain in our program until we can iron out mutually acceptable procedures."

**B. Respondent's Position & Evidence**

Respondent contends that it did not know the extent of Complainant's disabilities and that the design of her adaptive device had no bearing on the decision to deny her access to Respondent's facility. Although Respondent acknowledges that ski bikes are "common in adaptive skiing," they are not "universally recognized" as adaptive skiing equipment. Respondent states that Complainant's request was denied because its policies do not allow lift access for ski bikes "for any reason." Respondent indicates also that its lease of public lands through The United States Forest Service (USFS) precludes the use of ski bikes on its leased property.

Although Respondent states that Recreation Unlimited was exploring ski bikes' use as an adaptive skiing device, it had not yet "formally adopted ski bikes into their program." However, at the time of Respondent's response (April 28, 2015), Recreation Unlimited had not yet developed "operational guidelines and procedures for their use."

### **C. Complainant's Rebuttal and Respondent's Sur-Rebuttal**

Complainant rebuts Respondent's contention that it has an "unfettered" right to evaluate adaptive equipment for disabled individuals: "Bogus Basin's inspection of a disabled individual's skiing equipment must be reasonable and essentially similar to equipment evaluation imposed on Bogus Basin's non-disabled customers." Complainant contends that, although Respondent acknowledges that ski bikes could be permitted as adaptive devices, policies like Respondent's refuses disabled individuals' access based on an independent reviewer who is not being ready to evaluate the adaptive device.

Complainant contends that she is entitled to access to Respondent's ski area on an equal-footing with non-disabled skiers. Disabled skiers "are entitled to these same privileges and advantages."

Respondent identifies a range of adaptive ski equipment that it allows on its ski hills. Although ski bikes in general are not allowed on its facilities and were not allowed at all at the time of Complainant's request, Respondent, consulting USFS and Recreation Unlimited, subsequently allowed ski bikes for individuals with "qualified disabilities."<sup>1</sup> Respondent contends that, at the time of Complainant's request, other adaptive devices were available which could accommodate her.

### **D. Discussion and Analysis of Evidence**

An individual alleging disability discrimination in a public accommodation must show that she is disabled as defined by the statute; that Respondent is a private entity that owns, leases, or operates a place of public accommodation; that Respondent employed a discriminatory policy or practice; or that Respondent discriminated against the Complainant based upon the her disability by failing to make a requested reasonable modification that was necessary to accommodate Complainant's disability.

Complainant is a person with a disability, and Respondent, a ski area, operates a place of public accommodation. Complainant uses an assistive device, generally defined as a "ski bike," that provides her equal, independent enjoyment of Respondent's facility. On January 31, 2016, Respondent denied Complainant access, citing its policy of prohibiting the use of ski bikes on its grounds.

It is a prohibited act under the Idaho Human Rights Act (IHRA)

- "[F]or a person ... to deny an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of a place of public accommodation, or ... to print, circulate, post, or mail or otherwise cause to be published a statement, advertisement or sign which indicates that the full and equal enjoyment of

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<sup>1</sup> Respondent email response, January 29, 2016. "Adaptive Equipment Policy."

the goods, services, facilities, privileges, advantages and accommodations of a place of public accommodation will be refused, withheld from, or denied an individual or that an individual's patronage of or presence at a place of public accommodation is objectionable, unwelcome, unacceptable, or undesirable" on the basis of disability.

- To fail to make reasonable modifications in policies, practices, or procedures when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages or accommodations;
- To fail to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue burden;<sup>2</sup>

Respondent employs an organization tasked with evaluating adaptive equipment for use in its facility. Somewhat later, an evaluation by that organization led Respondent to allow Complainant's particular assistive device. However, at the time Complainant was denied use of her adaptive device, Respondent did not evaluate the efficacy of Complainant's device but instead denied Complainant use of her device on the basis that it was a ski bike. Thereby Respondent denied Complainant equal access. The Americans with Disabilities Act (ADA) states: "People with disabilities have the right to choose whatever mobility device best suits their needs . . . unless there is a legitimate safety reason that it cannot be accommodated." Additionally, "Such safety requirements must be based on actual risks, not on speculation or stereotypes about a particular type of device or how it might be operated by people with disabilities using them."<sup>3</sup>

Idaho law and the ADA do not make allowances for delaying a user of a public accommodation access while it seeks expert advice and ponders a decision. In fact, the ADA and Idaho law both support a disabled individual's use of his chosen adaptive device provided it does not impose an undue burden on the place of public accommodation. Here, Respondent's denial of Complainant's use of her chosen device did not come through an evaluation of the device itself an assessment of whether or not it posed an undue burden on its operations. Respondent clearly relied on "speculation or stereotypes about a particular type of device or how it might be operated by people with disabilities using them." The record only illustrates Respondent's reluctance to make a decision at the time of Complainant's request. Complainant has shown that Respondent discriminated against him by denying her request to use her chosen assistive device.

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<sup>2</sup> (Idaho Code § 67-5909(5). Also C and D

<sup>3</sup> <https://www.ada.gov/opdmd.htm>

In its subsequent decision to allow ski bikes, Respondent indicates that it would allow assistive devices through a measure of a "qualified disability." However, ADA guidelines describe a term, "credible assurance," which defines the limits of what Respondent can do to establish a customer's disability when she requests the use of an assistive device: Although a state-issued disability and parking placard may be used as proof of disability, *"if the person does not have this documentation, but states verbally that the [assistive device] is being used because of a mobility disability, that also must be accepted as credible assurance. . . (emphasis added)."* Thus, Respondent is reminded that it cannot base its decision to allow assistive devices like ski bikes on its property through its own measure of "qualified disability." Rather, it must rely upon a person with a disability's credible assurance.

#### COMMISSION DETERMINATION

Given this evidence, the Commission finds **probable cause** to believe that illegal disability discrimination has occurred. A staff member will be in contact with the parties to attempt resolution of the probable cause finding.

3/31/17  
Date

  
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Linda L. Goodman, Administrator  
On behalf of the Commission

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#### **DETERMINACIÓN DE LA COMISIÓN Y ORDEN DE DESPIDO**

Dado esta evidencia, la Comisión acierta **causa probable** en creer que discriminación ilícita ha ocurrido. Un/a miembro/a del equipo estará en contacto con ambos grupos para intentar resolución del descubrimiento de causa probable.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 31 day of Mar. 2017, I caused a true and correct copy of the foregoing document to be served as follows:

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