

STATE OF MICHIGAN
IN THE SUPREME COURT

RIVERBROOK,

Plaintiff-Appellee,

v

ABIMBOLA FABODE and All Other

Occupants,

Defendants-Appellants.

Supreme Court No. 162330

Court of Appeals No. 349065

Macomb County Circuit Court
No. 2018-000274-AV

42-2 District Court No. 18-1698-LT

Filed under AO 2019-6

**SUPPLEMENTAL REPLY BRIEF IN SUPPORT OF
DEFENDANTS-APPELLANTS' APPLICATION
FOR LEAVE TO APPEAL**

Steve Tomkowiak (P-40042)
FAIR HOUSING CENTER OF METROPOLITAN
DETROIT
Counsel for Defendants-Appellants
5555 Conner St., Suite 2244
Detroit, MI 48213
(313) 579-3247 x2
stomkowiak@fairhousingdetroit.org

I. Matthew Miller (P-51351)
LAW OFFICES OF I. MATTHEW PLLC
MILLER, PLLC
Counsel for Plaintiff-Appellee
29566 Northwestern Hwy, Suite 110
Southfield, MI 48034
(248) 285-9303
matt@immillerlaw.com

April 22, 2022

TABLE OF CONTENTS

Index of Authorities	2
I. INTRODUCTION	3
II. PLAINTIFF-APPELLEE RIVERBROOK CITES NO AUTHORITY TO SUPPORT AN EXPERT WITNESS REQUIREMENT FOR REASONABLE ACCOMMODATION (RA) REQUESTS	6
III. THE COURT OF APPEALS INCORRECTLY CHARACTERIZED ANNE VENET AS AN EXPERT WITNESS AND REMANDED FOR CONSIDERATION OF HER TESTIMONY UNDER MRE 702	8
IV. CONCLUSION	11
Supplemental Appendix	12
Certificate of Compliance	13
Proof of Service	14

INDEX OF AUTHORITIES

CASES

<i>Klabunde v Stanley</i> , 384 Mich 276; 181 NW2d 918 (1970)	10
<i>Riverbrook v Fabode</i> , 333 Mich App 645; 963 NW2d 415 (2020)	<i>passim</i>

STATUTES, REGULATIONS & LEGISLATIVE HISTORY

42 USC 3602	8
42 USC 3604(f)(3)(B)	8
MCL 37.1103(d)	8
MCL 37.1506a(1)(b)	8

EVIDENCE RULE

MRE 701	11
MRE 702	<i>passim</i>

FEDERAL AGENCY GUIDANCE

FHEO-2020-1, <i>Assessing a Person's Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act</i> (Jan. 28, 2020) & <i>Fact Sheet on HUD's Assistance Animals Notice</i>	<i>passim</i>
--	---------------

I. INTRODUCTION

Instead of directly addressing the two points on which this Court ordered supplemental briefing, Plaintiff-Appellee Riverbrook argues that this Court’s “questions have to be considered in the context of the facts of this case”. Plaintiff-Appellee’s Supplemental Brief, at 1. Claiming that “[t]he facts of this case are not in dispute,” *id.* at 6, Riverbrook throughout its supplemental brief makes trial court type arguments as to its version of the facts.¹

This is unwarranted. The District Court at the onset of the continued hearing restricted questions bearing on “medical decisions”, Appendix 24, Transcript, Motion to Stay Writ, at 12 (42-2 District Court Oct. 23, 2018)(Appendix 25, Appendix p 393). As a result, the record was not sufficiently developed for the courts below to determine whether Antony Fabode has a disability and whether a reasonable accommodation (RA) would be warranted as to the otherwise applicable pet policy. Though Riverbrook repeatedly draws conclusions, the Court of Appeals acknowledged that no findings could be made on this incomplete record:

As the district court did not allow the record to be developed, neither the district nor circuit court nor this Court can assess whether Antony has a handicap and requires a reasonable accommodation by Riverbrook of its pet policy to allow King to live in the home and assist his owner.

¹Defendants-Appellants’ summary of the facts of this case, and the lower court record and proceedings, are set forth in Defendants-Appellants’ Application for Leave to Appeal from the Michigan Court of Appeals, at 14-18, and in Defendants-Appellants’ Supplemental Brief in Support of Application for Leave to Appeal, at 20-23.

Further proceedings must be had below before this matter can be resolved. . . .

Riverbrook v Fabode, 333 Mich App 645, 659; 963 NW2d 415 (2020).

It is apparent that three courts below struggled with the standard to apply in evaluating a disability certification. Defendants-Appellants have consistently urged that this Court give deference to HUD's FHEO-2020-1, *Assessing a Person's Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act* (Jan. 28, 2020)(Appendix 1, Appendix pp 2-20) & *Fact Sheet on HUD's Assistance Animals Notice* (Appendix 1, Appendix pp 21-25)(collectively "*HUD's 2020 Assistance Animals Guidance*"). It will provide the straightforward guidance needed, not only by the courts below, but also by housing providers throughout the state in evaluating RA requests involving assistance animals. Defendants-Appellants have cited recent decisions and settlements in which courts and administrative agencies have directed housing providers to follow *HUD's 2020 Assistance Animals Guidance*.

Notably, *Riverbrook*, in its supplemental brief, does not oppose any aspect of *HUD's 2020 Assistance Animals Guidance*, or challenge any of the decisions and settlements that defer to HUD's guidance. *Riverbrook* previously argued to this Court that Defendants-Appellants "reliance on the HUD 2020 guidance is far overstated". Response to Application for Leave to Appeal, at 16. *Riverbrook* now recognizes the applicability of *HUD's 2020 Assistance Animals Guidance*: HUD "addressed the salient issue involved in this case, specifically the validity of, and the authority to be granted to, internet-procured documentation". Plaintiff-Appellee's Supplemental Brief, at 9.

HUD's 2020 Assistance Animals Guidance, of course, does far more than merely address the salient issue or issues in this case. It

provides detailed guidance as to virtually all issues that arise in connection with service and support animals:

HUD is providing this guidance to help housing providers distinguish between a person with a non-obvious disability who has a legitimate need for an assistance animal and a person without a disability who simply wants to have a pet or avoid the costs and limitations imposed by housing providers' pet policies, such as pet fees or deposits. The guidance may also help persons with a disability who request a reasonable accommodation to use an assistance animal in housing. (Appendix 1, Appendix p 5)

There is little, if any, disagreement by the parties and amici in this case as to the applicability *HUD's 2020 Assistance Animals Guidance* in addressing RA requests involving service and support animals.² Accordingly, this Court has a sound basis for giving

²Riverbrook references the amici brief filed in the Court of Appeals by a property management association and its affiliate chapters. This amici brief does not aid Riverbrook. The amici brief does not advocate for the novel MRE 702 type approach for disability certifications subsequently adopted by the Court of Appeals. Additionally, this amici brief was filed on January 14, 2020. It does not address *HUD's 2020 Assistance Animals Guidance*, which was issued on January 28, 2020.

It is unlikely that such industry groups will, in good faith, oppose *HUD's 2020 Assistance Animals Guidance*. Leading industry groups have already implemented the guidance. *See, e.g.*, Rental Property Owners Association (Michigan's Largest REIA and Landlord Association), Assistance Animal Fact Sheet (available at <https://rpoaonline.org/kb/fair-housing/>)(last accessed 4/22/22)(Appendix 31, pp 464-470).

deference to *HUD's 2020 Assistance Animals Guidance* and remanding this case to the courts below for reconsideration consistent with HUD's guidance.

II. PLAINTIFF-APPELLEE RIVERBROOK CITES NO AUTHORITY TO SUPPORT AN EXPERT WITNESS REQUIREMENT FOR REASONABLE ACCOMMODATION (RA) REQUESTS

Defendants-Appellants' supplemental brief showed that there is no expert witness requirement or analysis required for disability certifications under the Fair Housing Act (FHA) or HUD's implementing regulations. Likewise, no expert witness requirement or analysis has ever required—or even mentioned—by any federal appellate courts, HUD or the DOJ. Riverbrook cannot rebut this showing. In its supplemental brief, Riverbrook fails to cite a single authority to support the Court of Appeals' novel MRE 702 approach for evaluating disability certifications.

Yet Riverbrook refuses to candidly admit there is no authority for the Court of Appeals' approach. Instead, Riverbrook argues repeatedly that the Court of Appeals' MRE 702 approach should be limited to “this case” and “those like it”. Plaintiff-Appellee's Supplemental Brief, at 1 (“[t]his is not a case about all reasonable accommodation requests”); *id.* (“these questions have to be considered in the context of the facts of this case”); *id.* at 2 (“The Court of Appeals did not adopt an expert witness requirement for all reasonable accommodation requests.”); *id.* at 5 (“The Court of Appeals did not hold that an expert witness was required for every ESA case, nor for every other case based upon a request for a reasonable accommodation.”); *id.* (“the Court of Appeals held that in this case, and those like it, where

Property management companies increasingly operate on a multistate basis. *HUD's 2020 Assistance Animals Guidance* offers an easily applied, uniform, nationwide standard.

the purported treater could not provide any facts relating to treatment, that such a person had to be scrutinized like an expert pursuant to MRE 702”); *id.* (“The court properly adopted that requirement in cases like this one, but it did not require experts in every case regarding a reasonable accommodation.”).

According to Riverbrook, the Court of Appeals’ novel FRE 702 approach for evaluating disability certifications should apply when there is not a “sufficient” or “actual” relationship between the individual and the health care provider. *Id.* at 1-2; *id.* at 4 (“true doctor-patient relationship with an actual licensed health-care provider lasting more than a few minutes”); *id.* (“actual patient-provider relationship”); *id.* at 7 (“actual doctor-patient relationships with the disabled people about whom they testified”).

Riverbrook’s argument fails completely. The Court of Appeals’ published opinion draws no such distinctions. At no point in its opinion does the Court of Appeals condition its FRE 702 approach on the length of time that a doctor-patient or health care provider-patient relationship existed or whether it was a “sufficient”, “actual”, or “true” relationship. Nor do any court decisions, HUD regulations, or HUD and DOJ guidance suggest any such distinctions.

Riverbrook’s argument, if accepted, would result in uncertainty and litigation. It offers no guidance whether a health care provider-patient relationship—to render unnecessary a FRE 702 analysis—would need to last a month, several months, or more. Further, there is objective basis for determining a “sufficient”, “actual”, or “true” health care provider-patient relationship. Unlike *HUD’s 2020 Assistance Animals Guidance*, Riverbrook’s approach would cause confusion for housing providers seeking to evaluate disability certifications.

Riverbrook also attempts to distinguish this case from cases involving service animals. Plaintiff/Appellee's Supplemental Brief, at 1 ("[t]his is not a case about a service animal"). The issue, however, is not whether the type of animal is a service or support animal. The statutory definition of "handicap" under the Fair Housing Act (FHA), 42 USC 3602, or "disability" under the Michigan Persons With Disabilities Civil Rights Act (PWDCRA), MCL 37.1103(d), applies to all types of reasonable accommodation requests. The FHA and PWDCRA's definitions of "handicap" and "disability", and reasonable accommodation provisions, 42 USC 3604(f)(3)(B); MCL 37.1506a(1)(b), make no distinction between RA requests involving service or support animals.

Further, this Court's Order of January 26, 2022, is not restricted to support animals. To the contrary, this Court, appropriately, asks whether "an expert witness requirement" should be applied "for requests for a reasonable accommodation." Riverbrook's proposed service/support animal distinction is unfounded.

III. RIVERBROOK FAILS TO GIVE A DIRECT ANSWER AS TO WHETHER THE COURT OF APPEALS CORRECTLY CHARACTERIZED ANNE VENET AS AN EXPERT WITNESS

Riverbrook, in response to this Court's second question, repeatedly argues that the Court of Appeals did not characterize Ann Venet as an expert witness. Plaintiff-Appellee's Supplemental Brief, at 2 ("The Court of Appeals did not declare that Venet was an expert witness."); *id* at 6 ("The Court of Appeals never characterized Anne Venet as an expert witness."); *id* at 7 ("At no time did the Court of Appeals declare that Venet was, in fact, an expert.").

This is a serious misreading of the Court of Appeals' decision. Simply put, the Court of Appeals stated that "MRE 702 governs the

admissibility of expert testimony and opinions, such as that of Anne Venet.” *Riverbrook*, 333 Mich App at 657; 963 NW2d 415.

Compounding its erroneous reading of the Court of Appeals’ opinion, *Riverbrook* goes on to argue that the Court of Appeals directed the lower courts on remand to examine whether Ms. Venet was an expert and should be allowed to testify as an expert:

. . . The Court of Appeals directed the lower courts on remand to examine whether Venet was an expert and whether she should be allowed to testify as such. At no time did the Court of Appeals declare that Venet was, in fact, an expert. The lower courts must determine whether Venet should be considered an expert witness, whether she should be allowed to testify, and whether her opinions are reliable. (Plaintiff-Appellee’s Supplemental Brief, at 7).

This is not at all what the Court of Appeals directed the lower courts to do on remand. After characterizing Ms. Venet as an expert witness, the Court of Appeals ordered the lower courts to evaluate Ms. Venet’s methodology and opinion pursuant to MRE 702:

In this case, the district and circuit courts abandoned their roles as the gatekeepers of evidence under MRE 702 and rejected the landlord’s attempt to challenge the validity of the documents presented by the tenant to support his need for an ESA. This was error. We vacate the circuit court order affirming the district court’s eviction decision and remand for further proceedings consistent with this opinion.

. . .

. . . Under MRE 702, the court *must* carefully consider the reliability of the methods employed by Venet, as well as her final opinion. Only then can the district and circuit courts determine if Riverbrook refused to make a reasonable accommodation for a tenant with a disability or handicap.

Riverbrook, 333 Mich App at 648 & 660; 963 NW2d 415.

The Court of Appeals' opinion leaves no wiggle room. It characterized Ms. Venet as an expert witness. It then ordered that a MRE 702 analysis as to Ms. Venet's testimony.

As this Court has noted, "an expert is one who gives opinion testimony, and not testimony concerning 'relevant facts.'" *Klabunde v Stanley*, 384 Mich 276, 282; 181 NW2d 918 (1970). Ms. Venet testified to her telephone discussion or consultation with Antony Fabode. Following her discussion or consultation with Antony Fabode, she made a diagnosis regarding his disability and need for the support animal. Transcript, Motion to Stay Writ (42-2 District Court), 10/23/18 at 5-6 & 8-9 (Appendix 25, Appendix pp 392-393 & 395-396). This testimony pertained to "relevant facts".

All courts that have examined such testimony regarding a disability and need for a reasonable accommodation as to an assistance animal, have done so without escalating the process into a MRE 702 expert witness/*Daubert* analysis. Defendants-Appellants' Supplemental Brief in Support of Application for Leave to Appeal, at 23 (citing cases). The weight to be given to Ms. Venet's testimony and opinions, like the testimony and opinions of other lay witness, can be challenged in an adversarial hearing in a straightforward fashion under MRE 701 (governing lay witness "testimony in the form of opinions or inferences") and other rules of evidence, with the determination of a

disability and diagnosis to be made by a factfinder, in this case the District Court, on a fully developed record.

Finally, Riverbrook does not explain why the Court of Appeals—if it did not find Ms. Venet to be an expert witness—would nonetheless require that her testimony be subjected to a MRE 702 gatekeeping analysis. To suggest that non-expert witnesses be subject to MRE 702, as Riverbrook suggests here, would weaponize MRE 702 as a tool to be used against treating health care providers and lay witnesses in reasonable accommodation cases, to the detriment of persons with disabilities.

IV. CONCLUSION

The Court should defer to *HUD's 2020 Assistance Animals Guidance* for evaluating RA requests for service and support animals under the FHA and PWDCRA, reverse the Court of Appeals' decision, and remand this case to the lower courts for further proceedings consistent with HUD's guidance.

Respectfully submitted,

FAIR HOUSING CENTER OF METROPOLITAN
DETROIT

Counsel for Defendants-Appellants

By: /s/ Steve Tomkowiak (P-40042)

5555 Conner St., Suite 2244

Detroit, MI 48213

(313) 579-3247 x6

stomkowiak@fairhousingdetroit.org

Dated: April 22, 2022

SUPPLEMENTAL APPENDIX

APPENDIX No.		APPENDIX PAGE NO.
31	Rental Property Owners Association (Michigan's Largest REIA and Landlord Association), Assistance Animal Fact Sheet	464

CERTIFICATE OF COMPLIANCE

I hereby certify that this document complies with the formatting rules in Administrative Order No. 2019-6. I certify that this document contains 2,490 countable words (excluding the table of contents, index of authorities, signature block and listing of counsel at the end of the brief, certificate of compliance, proof of service, exhibits, and appendices). The document is set in Century Schoolbook, and the text is in 12-point type with 17-point line spacing and 12 points of spacing between paragraphs.

By: /s/ Steve Tomkowiak (P-40042)
5555 Conner St., Suite 2244
Detroit, MI 48213
(313) 579-3247 x6
stomkowiak@fairhousingdetroit.org

PROOF OF SERVICE

I hereby certify that on April 22, 2022, I electronically filed the foregoing Supplemental Brief in Support of Application for Leave to Appeal, with accompanying Appendix, with the Clerk of the Supreme Court using the TrueFiling system, which will automatically send notice of electronic filing (NEF) of the foregoing to counsel for Plaintiff-Appellant:

I. Matthew Miller (P-51351)
LAW OFFICES OF I. MATTHEW PLLC
Counsel for Plaintiff-Appellant
29566 Northwestern Hwy, Suite 110
Southfield, MI 48034
(248) 285-9303
Email: matt@immillerlaw.com

By: /s/ Steve Tomkowiak (P-40042)

APPENDIX 31

Rental Property Owners Association (Michigan's
Largest REIA and Landlord Association), Assistance
Animal Fact Sheet

[RPOA – Michigan's Largest REIA and Landlord Association](#)

[Member Login](#) [Join RPOA Now](#) [E-Newsletter Sign Up](#)

- [About RPOA](#)
 - [National Real Estate Investor Association Member Benefits](#)
 - [All RPOA Member Services & Benefits](#)
 - [Staff Contact Information](#)
 - [Board of Directors](#)
 - [Committee Information](#)
 - [More...](#)
- [Get Help Now](#)
 - [Contact Us](#)
 - [Online Help](#)
 - [Quick Tips for New Real Estate Investors](#)
 - [Annual Property Operating Data \(APOD\) Sheet](#)
 - [Free Mortgage Calculator](#)
 - [Help for Tenants](#)
 - [Contact RPOA Staff](#)
 - [Contact RPOA Legal Counsel for Advice](#)
 - [Eviction Timeline & Notice Forms](#)
 - [More...](#)
- [Forms & More](#)
 - [Most Popular](#)
 - [Leasing Forms](#)
 - [Land Contract & Real Estate Investor Forms](#)
 - [Eviction Forms](#)
 - [Collections & Small Claim Forms](#)
 - [Landlord & Real Estate Investment Books](#)
 - [All Products](#)
- [Tenant Screening & Credit Reports](#)
 - [Grand Rapids Application Ordinance Information](#)
 - [Get Access to Credit Reports](#)
 - [Free Credit Reports On Prospective Tenants](#)
 - [Tenant Screening Process and Guidelines](#)
 - [More...](#)
- [Education](#)
 - [Event Calendar](#)
 - [Online Training for Landlords and Real Estate Investors](#)
 - [Real Estate Investor Mastery Training Program](#)
 - [EPA RRP Certification](#)
 - [Michigan Landlord & Real Estate Investor Conference & Expo](#)
 - [News](#)
 - [Podcast – Rental Property Owner & Real Estate Investor](#)
 - [More...](#)
- [Contractors & Vendors](#)
 - [Contractors & Vendors](#)
 - [Exclusive Discounts for Landlords & Real Estate Investors](#)
- [Member Resources](#)
 - [Fighting for Landlords' Rights](#)
 - [RPOA PAC Contribution](#)
 - [Financing Resource Guide](#)
 - [Local & National Discounts](#)
 - [All RPOA Member Services & Benefits](#)
 - [Membership Directory](#)
 - [RPOA Member Spotlight](#)
 - [Government Affairs News Blog](#)
 - [More Great Services & Benefits...](#)



Knowledge Base

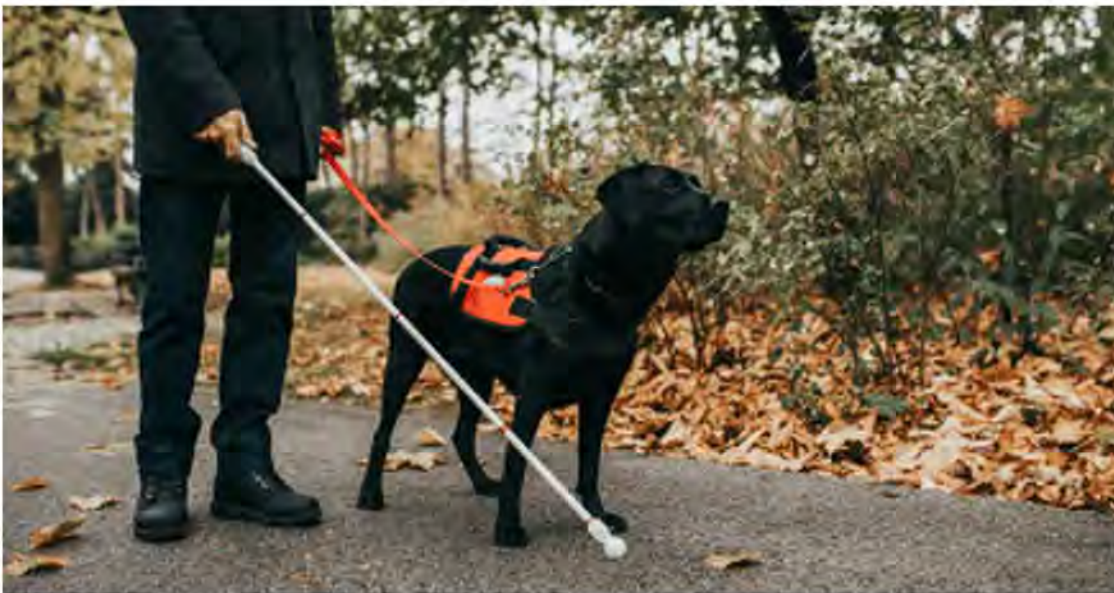
Latest Knowledge Base

- [Assistance Animal Fact Sheet](#)
- [Financing Resource Guide for Real Estate Investment](#)
- [What Is the Landlord's Responsibility for Keeping Their Rental Unit in Good Repair?](#)
- [How to Get Rid of Smoke Smell in Your Rental Unit](#)
- [Smart Home Technology and Security System Pros and Cons](#)
- [How to Handle Noise Complaints](#)
- [Why You Should Accept Rental Payments Online](#)
- [8 Great Ways to Find Renters on Your Own](#)
- [Defining Normal Wear and Tear vs. Actual Damage](#)
- [Emotional Support Animals and the Fair Housing Act](#)

Search

Assistance Animal Fact Sheet

Last Updated: 11 months ago in [Fair Housing](#)



Housing providers must make reasonable accommodations for persons with a disability. One common request a prospective tenant/tenant makes is for a reasonable accommodation as it relates to the housing provider's pet or no animal policy...so that the prospective tenant/tenant will be allowed to have and use an assistance animal in the rental unit.

The Fair Housing Act (FHA) requires housing providers to modify or make exceptions to their policies governing animals—in other words, make reasonable accommodations.

A reasonable accommodation may involve more than one assistance animal. For example, a disabled person may need a service animal and a support animal (both defined below) or two disabled individuals may be living in the same unit, each requiring one or more service or support animals.

Reasonable accommodations include accommodations made for housing provider rules, policies (such as a pet policy), practices, and/or procedures.

Reasonable accommodations apply to prospective/new tenants or existing tenants with a disability that originated after occupancy of the unit. A tenant may request a reasonable accommodation before or after obtaining an assistance animal. A tenant may also request a reasonable accommodation after a housing provider has served a termination notice due to an animal that is in violation of the housing provider's pet/animal policy.

There are two types of assistance animals:

1. *Service Animals*. A dog or miniature horse that is individually trained to perform tasks or do work for the benefit of a person with a disability. The tasks or work the animal does must be directly related to the person's disability. A service animal is defined within the American Disabilities Act (ADA). The ADA also requires reasonable accommodation for service animals.
2. *Other Animals (AKA Support Animals)*. Trained or untrained animals that do work, perform tasks, provide assistance, and/or provide therapeutic emotional support for individuals with disabilities. The FHA requires reasonable accommodation for support animals—the ADA does not.

The guidance document provided by HUD (FHEO-2020-01) for "assessing a person's request to have an assistance animal as a reasonable accommodation under the Fair Housing Act" can be used to determine if a reasonable accommodation is legitimate and be granted. This document recommends the following method for determining if an animal is a service or support animal and if a reasonable accommodation should be granted.

A series of questions, as follows, should be used to determine if an animal is a service or support animal and to determine if a reasonable accommodation is required:

1. Is the animal a dog or miniature horse?

If yes, proceed to question 2.

If no, the animal is not a service animal but may be a support animal. Proceed to question 3.

2. Is it readily apparent that the dog or miniature horse is trained to do work or perform tasks for the benefit of an individual with a disability? ("Readily apparent" means when it is observed that the dog/miniature horse is guiding an individual who is blind or has low vision; pulling a wheelchair; or providing assistance with stability or balance to an individual with an observable mobility disability.)

If yes, further inquiries are unnecessary and inappropriate because the animal is a service animal.

If no, proceed to question 3.

3. In the case where it is not readily apparent that the dog or miniature horse is a service animal, the housing provider may ask the following questions:

A. Is the animal required because of a disability?

If yes, continue with the follow up question B.

If no, the animal is not a service animal but may be a support animal. Continue with question 4.

B. What work or task has the animal been trained to perform?

If work/task is identified, the housing provider must grant the request.

If work/task is not identified, the animal is not a service animal but may be a support animal. Continue with question 4.

4. Did the individual request a reasonable accommodation to keep an animal in connection with a physical and/or mental impairment or disability? (A request for an accommodation may be written or oral and may be made by the prospective tenant/tenant or another person on behalf of the individual with the impairment or disability, including a person legally residing in the unit with the individual or a legal guardian or authorized representative.)

If yes, continue with question 5.

If no, the housing provide is not required to grant a reasonable accommodation that has not be requested.

5. Does the person who will be residing in the unit have an observable disability or does the housing provider already have information giving them reason to believe that the person has a disability? (Some impairments/disabilities are observable, e.g. blindness, deafness, mobility limitations, certain intellectual impairments while others are not, such as those that may include impairments that form the basis for a request for a support animal.)

If yes, go to question 7.

If no, go to question 6.

6. Has the person requesting the accommodation provided documentation with information that reasonably supports that the person seeking the accommodation has a disability? (See “Guidance on Documenting an Individual’s Need for Assistance Animals in Housing” below.)

If yes, go to question 7.

If no, the housing provider does not have to grant the accommodation. (A reasonable opportunity must be allowed for the person requesting the accommodation to obtain the documentation.)

7. Has the person requesting the accommodation provided information which reasonably supports that the animal does work, performs tasks, provides assistance, and/or provides therapeutic emotional support with respect to the individual’s disability?

If yes, go to question 8.

If no, the housing provider does not have to grant the accommodation. (A reasonable opportunity must be allowed for the person requesting the accommodation to obtain the documentation.)

8. Is the animal commonly kept in a household (including dogs, cats, small birds, rabbits, hamsters, gerbils, other rodents, fish, turtles, or other small, domesticated animals that have traditionally been kept in households for pleasure and for non-commercial purposes)?

If yes, the reasonable accommodation should be provided.

If no, the reasonable accommodation need not be provided unless the individual requesting the accommodation can demonstrate a disability-related therapeutic need for the specific animal or the specific type of animal. Documentation may be requested to support the claim. A monkey may be an acceptable unique animal. (See “Unique Animals” below.)

As an overview of the above questions, if a disability requires the use of a service animal (dog or miniature horse) and the housing provider has determined that it is readily apparent that the service animal is needed (see questions 1 and 2 above), no additional documentation should be requested. However, if the need for a service animal is not apparent, proceed with question 3. If the prospective tenant/tenant states that they have the animal(s) due to a disability and they can state the work/task the animal provides, no additional documentation should be requested. If none of these conditions apply, the animal is not a service animal but a support animal and the housing provider may ask the additional questions (4-8 above) and ask for documentation of the need for the animal.

Guidance on Documenting an Individual’s Need for Assistance Animals in Housing

This section provides the best practices for documenting an individual’s need for assistance animals in housing.

Things the housing provider cannot do:

- Ask for the diagnosis for the disability
- Require a form that the health care professional must use
- Require that documents provided by the health care professional be notarized
- Require that documents provided by the health care professional include language that the statements made on the form are done so under the penalty of perjury
- Require that the documents provide detailed information about as person’s physical or mental impairments

According to HUD in its memo (FHEO-2013-01) a landlord may require that documentation be provided by a physician, psychiatrist, social worker, or other mental health professional. At this time, it seems like HUD does not care where the professional is located (e.g. in the U.S. or outside of the country) or whether or not the tenant has a relationship with that professional strictly online or in person at a medical facility/office.

Documents provided by health care professionals should include the following.

General information:

- The patient's name
- Whether the health care professional has a professional relationship with that patient/client involving the provision of health care or disability-related services
- The type of animal(s) for which the reasonable accommodation is sought (i.e., dog, cat, bird, rabbit, hamster, gerbil, other rodent, fish, turtle, other specified type of domesticated animal, or other specified unique animal)

Disability-related information:

- Whether the patient has a physical or mental impairment
- Whether the patient's impairment(s) substantially limits at least one major life activity or major bodily function
- Whether the patient needs the animal(s) (because it does work, provides assistance, or performs at least one task that benefits the patient because of his or her disability, or because it provides therapeutic emotional support to alleviate a symptom or effect of the disability of the patient/client, and not merely as a pet)

Additionally, if the animal is not a dog, cat, small bird, rabbit, hamster, gerbil, other rodent, fish, turtle, or other small, domesticated animal that is traditionally kept in the home for pleasure rather than for commercial purposes, it may be helpful for patients to ask health care professionals to provide the following additional information:

- The date of the last consultation with the patient
- Any unique circumstances justifying the patient's need for the particular animal (if already owned or identified by the individual) or particular type of animal(s)
- Whether the health care professional has reliable information about this specific animal or whether they specifically recommended this type of animal

Date and signature of the health care professional:

- It is recommended that the health care professional sign and date the document provided, but it is not required.

Guest's Service or Support Animals

There is nothing in the ADA or the FHA that addresses whether or not a housing provider must allow a guest visiting or staying with a tenant to bring a service or support animal onto the property or into the unit. However, the Michigan Department of Civil Rights claims that a guest should be granted the same accommodation as the tenant. Whether or not the housing provider can ask for the same evidence/documentation for the guest's animal(s) is not made clear. Some reference to the right for a guest to bring a service or support animal onto or into the property is upheld by the right of the tenant to enjoy the rental unit as their home. There are no court cases known that have addressed this situation that have not been settled out of court.

Unique Animals

As noted under question 8 above, an animal that is not an animal commonly kept in a household, does not necessarily eliminate the possibility that the animal is support animal. Monkeys can provide certain support for some individuals with physical disabilities. However, unique animals must be allowed under federal, state and/or local law. Generally speaking, farm animals (excluding chickens in some communities) are not allowed in residential areas. It is best to check with the locality on codes that specify animals not allowed.

Dangerous Breeds

According to HUD, "[b]reed, size, and weight limitations may not be applied to an assistance animal." (FHEO Notice: FHEO-2013-01 at page 3). Instead, a housing provider may only determine if the specific assistance animal in question poses a direct threat to the health and safety of others. This determination of a "direct threat" must be based on "individualized assessment that relies on objective evidence about the specific animal's actual conduct." (FHEO Notice: FHEO-2013-01 at page 3). It may not be based on fears about a certain type of animal or evidence from damage done by previous animals of the same type. For example, if a dog has been previously declared a dangerous dog, this may indicate that the dog poses a direct threat in an individualized assessment. However, breed alone will not result in this determination. This reasoning by HUD has been upheld in at least two U.S. district courts, which can be accessed [here](#).

An issue sometimes arises where a housing provider/landlord's insurance company has restrictions on breeds of dogs in the insured's policy. The insurance company may label certain breeds of dogs as "dangerous" in the policy. A memorandum issued by the Office of Fair Housing and Equal Opportunity (FHEO) issued some guidelines to directors on how to handle this issue in cases of discrimination. The memo

reiterates that each reasonable accommodation determination must be made on a case-by-case basis. An accommodation is considered unreasonable if it imposes an undue financial and administrative burden on a housing provider's operations. The memo then states:

If a housing provider's insurance carrier would cancel, substantially increase the costs of the insurance policy, or adversely change the policy terms because of the presence of a certain breed of dog or a certain animal, HUD will find that this imposes an undue financial and administrative burden on the housing provider.

This claim must then be substantiated with the insurance company directly and comparable insurance coverage must be considered. According to the memo, if the insurance company has a policy that does not have an exception for assistance animal, an investigation may be launched against the insurance company for potential disability discrimination. More information on this particular issue can be found [here](#).

Pets

Animals that are not service animals or support animals are pets.

The housing provider may charge a fee or deposit, subject to state and local law, for pets—but not for service or support animals.

Disclosure: This Knowledge Base article is accurate as of the last update. Laws and policies are subject to change. If you have any questions, please call the office. [Click here for contact information.](#)



Questions? We're Here to Help!

Monday - Friday, 9:00 a.m. - 4:00 p.m. (616) 454-3385

- [Suggestion Box](#)
- [Contact Us](#)
- [Find Us](#)
- [Affiliates](#)
- [Community](#)
- [Government Affairs](#)
- [Terms of Use](#)
- [Bylaws & Code of Ethics](#)

[facebook](#) [twitter](#) [instagram](#) [linkedin](#) [pinterest](#) [youtube](#)



Specializing in vacant and rental home insurance

Call for a free quote today

616-797-9988

www.insuranceinmichigan.com

Home
auto
commercial

rental
vacant
habitational



All Content Copyright © 2013-2014 Rental Property Owners Association. All Rights Reserved.