

## **Are you requesting to saddle the camel or cut off its hump? Reasonable accommodations under disability rights laws**

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On September 18<sup>th</sup>, the Eleventh Circuit Court of Appeals decided [Schaw v. Habitat for Humanity of Citrus County](#), in a very easy to read [opinion](#) that spelled out the process for determining whether an accommodation for a disability is reasonable and necessary. U.S. Circuit Court Judge Kevin Newsom, the author of the opinion, acknowledged that the concept is a “little squishy”, and analogized that the difference between an accommodation that is required and one that is a fundamental alteration is the difference between saddling a camel and removing its hump.

In 2006, when Albert Schaw was 20, he fractured his cervical spine in a wrestling accident and became a quadriplegic. Because of his disability, he was not able to get gainful employment and received Social Security Disability Income. In 2015, Albert rented a two bedroom home for \$ 675 per month, but it was not accessible for him, to the extent that he could not even close the door of the bathroom because he used a wheelchair.

Albert decided to apply for Habitat for Humanity’s Home Ownership Program because the payment would be less than his rent, and he would have the ability to be a homeowner of a house that he could actually use. However, Habitat for Humanity’s minimum income qualification to qualify for a home was more than Albert’s income received from Social Security. Albert requested that Habitat for Humanity either take into account his food stamp payment or a \$100 per month support from his family to meet the minimum income requirement. This was refused, because Habitat for Humanity demanded assurances that the family support would not cease and requested the family set up an annuity plan or a trust. Not only would the creation of a trust be expensive, it may have also disqualified Albert from other benefits that he would have received. As a result, Albert Schaw could not qualify for a Habitat home.

Albert Schaw sued Habitat for Humanity under the Fair Housing Act. The district court judge granted judgment as a matter of law for Habitat for Humanity as the Court decided that the accommodation was based on Mr. Schaw’s lack of financial means, and not necessary because of his disability. Further, a financial accommodation would have given Mr. Schaw a better opportunity, instead of an equal opportunity to use and enjoy Habitat’s dwelling.

Lastly, the court found that even if the accommodation was based upon disability, Habitat provided Mr. Schaw a reasonable accommodation by allowing an annuity, and Mr. Schaw did not prove that an annuity would have affected his SSDI benefits. Because Habitat offered Schaw an alternative reasonable accommodation, then it satisfied its duty.

### **The Eleventh Circuit’s Opinion**

The Eleventh Circuit reversed the district court’s judgment and found that the *effect* of Mr. Schaw’s disability did not allow him to work, and as such, the accommodation was necessary because of Mr. Schaw’s disability, and the accommodation was reasonable because he was still held to the same income qualification standards as others. Lastly, the court held that it was error to consider the alternative accommodations. The importance of the decision is how the Circuit Court walked the reader through the required analysis and how the burden shifts from the person with a disability to the defendant.

**1. The burden starts with a person with a disability requesting a reasonable accommodation that is both reasonable and necessary.**

A **necessary** accommodation is one that alleviates the *effects* of a disability. A disability includes "walking, seeing, hearing, speaking, breathing, learning and working," 24 C.F.R. § 100.201(b). The provided two examples of how a necessary accommodation alleviates the *effects* of a disability:

- The accommodation of an exception to a "no pets" rule for a seeing-eye dog. "Blindness (the handicap) creates an inability to walk around safely (the effect on a major life activity) and thus a need for a waiver of the prohibition on pets (the accommodation)."
- A sober house is an accommodation for a disability created by a substance addition and was necessary to break the addition and maintain sobriety.

The Court recognized that the inability to work was a disability and then completely rejected the lower court's finding that a person with a disability cannot get an accommodation because of the financial *effects* of a disability. If person with a disability's financial state is related to his disability, an accommodation with a financial aspect—even one that appears to provide a preference—could be "necessary to afford [an] equal opportunity to use or enjoy a dwelling" within the meaning of Fair Housing Act.

However, the Circuit Court cautioned that it may be necessary to look at Mr. Schaw's pre-accident earning ability to determine whether his earning ability was effected by his disability. In the situation with Habitat for Humanity, the Circuit Court, the court acknowledged that Mr. Schaw would need to be eligible a job that earned less than minimum wage to be qualified for a Habitat for Humanity home . As such, this Court's guidance was likely targeted to future cases where the eligibility qualifications for a home are substantially higher. The confusing aspect of this analysis is that it is nearly impossible to quantify the effect that disability has on future earnings ability for a child or for a person with intellectual or developmental disability, while, at the same time, there is no question that but for the disability, there would be a higher earning potential.

The **reasonability** prong for an accommodation is an "initial threshold [that] presents a relatively low bar." The standard is whether the accommodation is reasonable on its face – "ordinarily or in the run of cases." "This Court has explained—in imaginative terms—that '[t]he difference between [an] accommodation that is required and [a] transformation that is not is the difference between saddling a camel and removing its hump.'"

**2. If a reasonable accommodation is made, the burden shifts to the defendant to establish that the request would pose a undue burden or result in a fundamental alteration of the program**

The Court stated that an accommodation requires a fundamental alteration if it would eliminate an essential aspect of the relevant activity, or, in other words, it would remove the camel's hump. For fundamental alteration, the court must evaluate the "basic purposes of the rule or policy at issue" The Eleventh Circuit gave several examples (the citations are in the [opinion](#)):

- The Professional Golf Association's walking rule was not an essential rule of competition and as such, a contestant can use a golf cart instead of walking.

- A group home is allowed in multi-family zoning rule because the quiet, safety and permanence element of a single family zoning ordinance is not an essential aspect of such multifamily zoning ordinance
- Allowing a miniature therapy horse to reside in a disabled girl's backyard wouldn't fundamentally alter the nature of a single family neighborhood.
- Requiring a nursing school to waive all clinical requirements for a deaf applicant would fundamentally alter the nature of a nursing program.
- Requiring a housing provider to participate in a federal housing program where the program entails many other requirements may be a fundamental alteration.

**3. A Court may not consider alternate accommodation until the court considers whether the person with a disability's requested accommodation is reasonable on its face.**

The Circuit Court found that the shifting the burden to Mr. Schaw when the housing provider offered an accommodation without determining the reasonability of the requested accommodation was error by the district court. The purpose of first considering and giving deference to a person with a disability is due to the fact that the person with a disability has the best knowledge of what would work for them. The issue of alternate accommodations is only relevant when the requested accommodation is not reasonable because it is an undue burden or a fundamental alteration. This obligation was detailed in the [Joint Statement of the U.S. Department of Housing and Urban Development and the U.S. Department of Justice Reasonable Accommodations Under the Fair Housing Act](#)- Question 7 to 10.

**4. Additional requirements cannot be imposed on persons with disabilities that are not placed on able-bodied persons.**

Footnotes are always a great place to find direction and guidance for future cases. In this case, the Circuit Court held that considering the alternate accommodation was error without first considering the accommodation. However, in the footnote, the court questioned the alternate accommodation of having the family contribution placed in a trust:

What Habitat asks for is essentially a guarantee that Schaw's income will continue. That's understandable enough—Habitat wants assurance that if it risks accepting an alternate form of income, it will continue to be paid. But providing "insurance" in the form of a trust or annuity costs money and takes time, and the record does not reflect that Habitat requires the same level of assurance from non-disabled applicants. ...

When a condition is not placed on a similarly situated able-bodied person, then the extra charge or condition can be deemed to be a discriminatory term or condition that would also be a violation of the fair housing act or the Americans with Disabilities act. Furthermore, [the Joint Statement](#) clarifies that housing providers cannot impose additional fees, charges, or requirements to obtain insurance as a condition to granting an accommodation.

**What's next?**

Albert Schaw's case was sent back down to the trial court to determine whether his accommodation was reasonable and, if so, whether it would cause an undue burden or fundamental alteration to Habitat for Humanity. This case will have far reaching effects on providers of housing or entities under the Americans

with Disabilities Act. For housing providers, the ability to look at other sources of income to determine eligibility requirements will expand housing opportunities for persons with disabilities. It will also require housing providers to focus more on the burdens that a requested accommodation would have on their programs or services instead of attempting to substitute their preferred accommodation from the accommodation requested by the person with a disability.