

Does asthma or other major breathing conditions qualify as a disability?

- The 2004 Joint Statement from HUD and the DOJ define a “major life activity” as an activity of central importance to daily life. Breathing is listed as an example of a major life activity.¹ Therefore, if an individual’s asthma or other major breathing condition substantially limits his/her ability to breathe (the impairment must be long and severe), it could qualify as a disability.
- In a 1992 analysis, which is still in effect as of 2009, the General Counsel of HUD concluded that persons suffering from Multiple Chemical Sensitivity Disorder (MCS) and Environmental Illness (EI) could qualify as disabled under the Fair Housing Act. According to the analysis, MCS and EI include secondhand smoke-related illnesses and disorders.²
- In 1991, the California Court of Appeals stated: “To most people tobacco smoke is merely irritating, distasteful or discomforting. Someone who suffers from a respiratory disorder and whose ability to breathe is severely limited by tobacco smoke is, nevertheless, physically handicapped within the meaning of the [Fair Employment and Housing] Act.”³
- A transfer to another unit was considered a “reasonable accommodation” in a lawsuit brought by the DOJ against the Seattle Housing Authority (SHA). In 2001, the DOJ sued the SHA for refusing to transfer a tenant with asthma and allergies to a different unit. The tenant requested a transfer on a number of occasions after she suffered health effects from exposure to secondhand smoke drifting into her unit. The DOJ determined that the secondhand smoke “substantially limited” her ability to breathe, making her handicapped. By denying her request to move, the SHA had failed to make a “reasonable and necessary” accommodation to the tenant’s handicap.⁴

Notes

- *Donnelly v. Cohasset Housing Authority* (already addressed on the website with sufficient information about its relevance).
- *In re HUD and Kirk and Guilford Management Corp. and Park Towers Apartment* (already addressed on website with sufficient information about its relevance).

¹ Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under the Fair Housing Act*, at 4 (May 2004) [hereinafter Joint Statement], available at , <http://www.hud.gov/offices/fheo/library/huddojstatement.pdf>.

² Memorandum from Carole W. Wilson, Associate General Counsel for Equal Opportunity and Administrative Law, U.S. Dep’t of Housing and Urban Dev. to Frank Keating, General Counsel, U.S. Dep’t of Housing and Urban Dev. (Mar. 5, 1992), available at <http://www.mcs-global.org/Documents/PDFs/MCS%20Disorder.pdf>.

³ *County of Fresno v. Fair Employment & Hous. Comm’n*, 277 Cal. Rptr. 557, 563 (Cal. Ct. App. 1991)

⁴ *U.S. v. Seattle Housing Authority*, C01-1133L (W.D. Wa., 2002) (consent decree).