

## 4th Circ. Upholds Home Healthcare Co.'s Defeat Of ADA Suit

By **Patrick Hoff**

Law360 (January 17, 2024, 7:58 PM EST) -- The Fourth Circuit won't revive a former clinical manager's lawsuit alleging a home healthcare company refused to let her skip fieldwork because of arthritis in her knees, ruling Wednesday she'd failed to show that eliminating that job duty was reasonable amid a pandemic-fueled staffing crisis.



A former clinical manager lost her bid to undo her former employer's summary judgment win in her Americans with Disabilities Act lawsuit when a Fourth Circuit panel held that her dismissal was not discriminatory. (iStock.com/seb\_ra)

In a **29-page published opinion**, a unanimous three-judge panel refused to disturb Inova Home Health LLC's summary judgment win on Laura Tartaro-McGowan's claims of disability discrimination, retaliation and failure to accommodate.

Tartaro-McGowan argued that conducting home visits wasn't an essential part of a clinical manager's job responsibilities and Inova therefore should've granted her request to be excused from fieldwork because of her arthritis.

But the panel said that while a reasonable accommodation could include the restructuring of a job, that's not required. Additionally, the judges noted Inova offered Tartaro-McGowan a different accommodation that she flat out rejected: the ability to screen patients to make sure she could meet their needs without hurting herself.

"We have never held — and Tartaro-McGowan cites no case that says — that an employer must always reallocate nonessential job functions in order for a given accommodation to be reasonable," U.S. Circuit Judge G. Steven Agee wrote for the panel. "And we will not do so now."

The appeals panel said the timing of the conversations between Inova and Tartaro-McGowan is also important: Inova had asked internal staff, including clinical managers, to conduct home visits starting in May 2020 because of staffing shortages caused by the COVID-19 pandemic, which prompted Tartaro-McGowan's accommodation request.

Considering these circumstances and the "ultimate discretion" employers have in selecting between potential accommodations, a rational jury couldn't conclude Inova acted unreasonably in denying Tartaro-McGowan's request to be completely exempt from home visits, according to the opinion.

"The undisputed evidence shows that the very reason for the internal-staff requirement was a severe lack of hands on deck to fulfill Inova Home Health's central mission — patient care," Judge Agee wrote. "It is no surprise, then, that defendants were unwilling to exacerbate its burden by wholly excusing Tartaro-McGowan, a registered nurse with over seventeen years of valuable field experience, from the internal-staff requirement and further reducing its pool of available field nurses."

Tartaro-McGowan filed her Americans with Disabilities Act lawsuit against Inova Home Health and Alternate Solutions Health Network LLC in March 2021. Inova Home Health provides in-home health services to people living in northern Virginia and is a joint venture between Inova Health System and Alternate Solutions, which has management responsibilities for the enterprise, according to Wednesday's opinion.

Tartaro-McGowan said she worked as a home health nurse for Inova Health System for 17 years until she took an office job as a clinical manager in 2017 because of arthritis resulting from two total knee replacement surgeries. When Inova Health System and Alternate Solutions created their joint enterprise in September 2018 to replace Inova's in-house home services, she remained a clinical manager and was assured that any fieldwork would be primarily supervisory, according to her complaint.

In May 2020, Inova Home Health told internal staff they would need to see patients in the field, and Tartaro-McGowan provided a doctor's note asking that she be excused from the requirement. Inova instead suggested she be allowed to screen patients ahead of time, but Tartaro-McGowan said this solution was inadequate and insisted she be exempt from fieldwork.

After several weeks of back-and-forth, Inova Home Health told Tartaro-McGowan she had until June 24, 2020, to conduct a home visit or face termination, and when she failed to comply, she was fired.

Representatives of the parties did not immediately respond to requests for comment Wednesday.

U.S. Circuit Judges G. Steven Agee, Pamela A. Harris and Toby J. Heytens sat on the panel for the Fourth Circuit.

Tartaro-McGowan is represented by Tamara L. Slater of Alan Lescht & Associates PC.

Inova Home Health and Alternate Solutions Health Network are represented by Steven E. Seasley and Andrew J. Wolf of Hahn Loeser & Parks LLP.

The case is *Laura Tartaro-McGowan v. Inova Home Health LLC*, case number 22-1825, in the U.S. Court of Appeals for the Fourth Circuit.

-- Editing by Leah Bennett.