

ADA Paratransit Eligibility: How To Make Your Case

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The purpose of this handout is to assist people with disabilities to obtain an accurate and fair ADA paratransit eligibility determination. Many people with disabilities who should be eligible for paratransit services according to the Americans with Disabilities Act (ADA) are denied eligibility because transit agencies are not accurately assessing their capacities. People with disabilities can affect this process, in many cases, by carefully documenting their disabling conditions, ensuring all their disability-related impairments are assessed, and taking other steps described below.

The Americans with Disabilities Act (ADA) requires transit agencies to provide paratransit services to people with disabilities who cannot use the fixed route bus or rail service (also known as mainline service). In general, paratransit service must be provided within 3/4 of a mile of a bus route or rail station, at the same hours and days, for no more than twice the regular fixed route fare. The ADA further requires that paratransit rides be provided to all eligible riders if requested any time the previous day, within an hour of the requested time.

The U.S. Department of Transportation's ADA regulations provide three categories of paratransit eligibility:

ADA Paratransit Eligibility Category 1 = People who can't travel on the bus or train, even if it's accessible, because of a disability

This category includes people who are unable, due to a mental or physical impairment (including a vision impairment), to board, ride, or disembark from an accessible bus or train without assistance. For example:

- People with cognitive disabilities, if they do not know where to get off the bus or how to go to their destination from the bus stop.
- People with visual impairments, if they don't have the travel skills needed to navigate the route to their destination.
- A person with a visual impairment that allows him/her to see well enough to travel independently during the daytime but not at night.

ADA Paratransit Eligibility Category 2 = People who need an accessible bus or train

This category includes wheelchair users and other people with disabilities who can use an accessible vehicle but who want to travel on a route that is still inaccessible (not served by accessible buses or accessible trains and key rail stations).

ADA Paratransit Eligibility Category 3 = People who have a specific disability-related condition

This category includes people who have a specific disability-related condition that prevents them from traveling to a boarding location or from a disembarking location. Environmental barriers (distance, terrain, weather) or architectural barriers not under control of the transit agency (such as lack of curb ramps) that prevent an individual from traveling to or from the boarding or disembarking locations may form the basis for eligibility. For example:

- A person who uses a wheelchair may be able to negotiate a trip to the bus stop up a moderately sloped hill on a summer day, but not in the winter after a heavy snowfall. Then the user would be eligible for paratransit.
- A person may be eligible if architectural barriers present safety hazards on the only route to the train station or bus stop.
- A person who walks with a cane and would need to travel 3/4 mile to the bus route, but she cannot walk that great a distance.
- People with disabilities that affect them very differently over time, such as multiple sclerosis. During some periods, they are able to go to the bus stop or train station. During other periods, they are not able to do so.

All three categories include people who may be able to ride mainline transit for some trips and not for other trips.

Step One: Figure out what categories you are eligible for

For each category, provide detailed information/ documentation that explains why you are eligible for that category. Some types of documentation will support your claim in more than one category. You should consider your potential travel throughout the entire bus and/or rail system during all seasons, not just those in your immediate neighborhood or those that you normally use. For example, you may be able to get to the bus stop near your home, but not the one near your workplace or the movie theater, or near other future travel destinations. Think about your ability to deal with the variety of environments you might face across town, as well as any variable conditions that you experience due to your disability.

Step Two: Prepare your supporting documentation

The U.S. Department of Transportation's ("DOT") ADA regulations do not place any limits on the amount or type of documentation that people with disabilities may provide to support their paratransit eligibility application. This means that you can provide any information or documentation that will help you show that you are eligible because you cannot use the fixed route transit system.

To be successful, you must accurately show that you are actually unable to ride the bus or train all or some of the time, not just that it is more difficult for you.

Be sure to include information on any secondary disabilities you have, such as disorientation, fatigue, or difficulties with balance.

Documentation may include any or all of the following:

- **A detailed statement from a disability-service provider** (independent living specialist, rehabilitation counselor, travel trainer, employment-support specialist, etc.). This should explain how your disability or its symptoms/effects prevent you from using the mainline system.
- **A detailed statement from a medical professional** (physician, psychologist, therapist, etc.). Medical or disability-related information should explain how your disability or its symptoms/effects prevent you from using the mainline system.
- **A detailed personal journal/log** that documents the impact of travel on your disability, health, energy, stamina, etc. This can be as detailed as you wish, so long as it is clear. For example, one entry might read: "May 31, 2003: I went four blocks to the store this afternoon. While at the store, I needed to take 20 minutes to rest before getting the energy to shop. When I returned home, I needed to rest for two hours before I had the energy to make dinner."
- **A detailed listing of the access barriers** that prevent you from traveling to the bus stop or rail station. For example, no curb cuts on all four corners, no sidewalks, extremely busy intersection with fast "walk/don't walk" cycle, no pedestrian signals, lack of snow removal during winter months, hilly terrain, weather during portions of the year that makes negotiating the distance impossible for you, etc.
- **Information about other factors** that would prevent you from riding the mainline service, such as inadequate funding for personal assistance services that would allow you to be adequately dressed to be outside for a prolonged period of time, or inadequate funding for a power wheelchair, etc. For example: "I could use the mainline bus on cold days if I had assistance to get my coat, gloves, hat and scarf on, but current funding only allows me to hire a personal assistant to come to my home first thing in the morning and at the end of the day and I cannot wear those warm clothes indoors all day."

Step Three: Make the most of an in-person interview or functional assessment

The DOT regulations allow each transit provider to set up its own system for determining ADA paratransit eligibility. Providers may require in-person interviews, with or without functional assessments or tests. The functional assessment is a process to help determine whether you have the ability to use fixed route bus and/or rail service and, if so, under what circumstances. Functional assessments are evaluations that assess physical, visual, or cognitive ability. They may include a simulated trip to and from a bus, a simulated bus trip, boarding a bus, negotiating a curb or curb cut, crossing the street, etc. Skills evaluated may include balance, strength, coordination, range of motion, bus travel skills, community safety skills, and general orientation. Variables in the environment as well as the person's ability to perform the tasks required to use the bus may be considered.

- Be sure to discuss any secondary conditions or disabilities that may affect your ability to use the bus or train, such as fatigue, disorientation, balance, etc. Also be sure to discuss any variable disability-related conditions you experience that may change your ability to travel by fixed route transit at different times.
- Be sure the interview or assessment considers your travel throughout the entire bus and/or rail system during all seasons.

- If you use a power wheelchair or mobility device, be prepared to explain if your travel is still limited by other factors: lack of sidewalks or safe paths of travel, heat, cold, etc.
- If a functional assessment is not assessing one of your disabling conditions, mention it. Make sure it is being considered in some other manner (e.g. consideration of the information you provide, or of documentation from medical professionals, as discussed above). It is the transit agency's responsibility to know that some disabilities cannot be evaluated by a functional assessment. Examples include seizure disorders, psychiatric disabilities, and variable conditions such as multiple sclerosis.
- If you feel that some aspect of your disability's potential impact on your inability to use mainline transit is not getting due consideration, talk to a supervisor.

Step Four: Bring help if you need it

When you have an in-person ADA paratransit eligibility interview or functional assessment and you need self-advocacy help, you can bring someone with you. This person could be a friend, family member, advocate, service provider, lawyer, therapist, etc. Make sure that you discuss how the person will help you before you go to the assessment. If you need this help, you may be able to get assistance from a Center for Independent Living or other disability service agencies.

Step Five: Appeal if you are denied paratransit eligibility

If your application for paratransit services is denied (or you are denied recertification), you may file an appeal, as long as you don't wait too long (you must be allowed at least 60 days within which to file your appeal). To assist you in your appeal, you should review the list of suggestions in "Step Two" and think about what new documentation you could provide. The eligibility denial letter you received is required to state specifically the reason for the denial. Consider closely the reason(s) given in your denial letter and be sure you address them during your appeal.

The ADA requires that the appeal process include an opportunity to be heard and to present information and arguments. The decision on the appeal must be made by someone uninvolved with the initial decision to deny eligibility. Written notification of the result must be provided, with reason(s) stated. If the transit agency has not made a decision within thirty days of the completion of the appeal process, paratransit service must be provided until and unless a decision to deny the appeal is issued.

Step Six: If your appeal is denied, and you don't think the ADA paratransit eligibility process was fair, you can...

File a complaint with the FTA Office of Civil Rights

The Federal Transit Administration (FTA) Office of Civil Rights is responsible for civil rights compliance and monitoring, which includes ensuring that providers of public transportation properly implement Title II of the ADA, the DOT ADA regulations, and Section 504 of the Rehabilitation Act of 1973. In the complaint investigation process,

FTA looks for possible ADA violations by the transit provider. ADA violations found by FTA are presented to the transit provider for correction of the problems within a predetermined timeframe. Therefore, it is worthwhile to file a complaint.

To date, FTA has been more involved in pursuing violations of the eligibility *process* (for example, ensuring that transit agencies have a proper appeals process) than in second-guessing the content of a particular eligibility appeal decision. However, it is very important that FTA hear about problems with eligibility denials, especially serious problems and patterns (that is, when the same problem affects more than one person). Eligibility complaints to FTA may be particularly effective if important information was disregarded by the transit agency, or if multiple complaints are submitted by several people against the same transit agency, especially if all are submitted together.

- To file a complaint in writing, you should either fill out the FTA's Complaint Form or send a letter to: Director, FTA Office of Civil Rights, 400 7th Street, S.W., Room 9102, Washington, D.C. 20590. Include as many details as possible. The FTA's ADA website is http://www.fta.dot.gov/civilrights/civil_rights_2360.html and the FTA ADA complaint form is on that website at http://www.fta.dot.gov/civilrights/ada/civil_rights_3889.html. You may also contact the FTA by e-mail at: ada.assistance@fta.dot.gov.

Contact your local Center for Independent Living (CIL), Protection & Advocacy (P&A) agency, or other disability advocacy agency

You may find out that other people have had similar experiences when attempting to obtain ADA paratransit eligibility. An organized effort to address problems with a transit provider may result in an improved, fair process for everyone. Some P&A agencies may be able to provide legal advice or even a lawyer to represent you in court.

- To find the CIL nearest you, call the National Council on Independent Living at 877-525-3400 (V/TTY) or go to www.ncil.org. Also, find it by clicking on your state at the website of Independent Living Research Utilization (ILRU) at <http://www.ilru.org/jump1.htm>.
- To find the Protection and Advocacy agency for your state, contact the National Association of Protection & Advocacy Systems at 202-408-9514 (voice), 202-408-9521 (TTY), e-mail: info@napas.org or www.napas.org.

File a lawsuit in Federal Court

The ADA requirements for paratransit eligibility are not optional and can be enforced by filing a lawsuit, if necessary. If you cannot get legal assistance from your state's P&A or another legal assistance agency, you can contact your local bar association for referral to a lawyer or you can file a lawsuit yourself, without a lawyer ("pro se").

- To find out more about obtaining a lawyer, contact the American Bar Association at 202-662-1000 or 800-285-2221 (voice), askaba@abanet.org or www.abanet.org