

FAIR HOUSING AND VAWA IN THE TIME OF COVID

HOUSING HAPPENINGS EDUCATIONAL SERIES

LeadingAge Maryland & LeadingAge Ohio

April 21, 2021

COVID-19 IMPACTS

- Shelter at home
 - More wear and tear but harder to perform maintenance
- Visitors limited (if at all)
- Stress
- Social isolation – fear – sadness – loneliness – boredom
- Highlighted inequities
- Technology - connectivity
 - Learning curve and frustrations for older adults

COVID-19 IMPACTS

Coping Mechanisms

- Zoom – Facetime – Phone Calls
- Outdoor activities
- Food deliveries
- More assistance animal requests
- COVID “pods”
 - Unauthorized occupants
- Self-medication
- Violence

VAWA ISSUES

- Expired and reauthorized in fits and starts
 - VAWA Reauthorization Act of 2021, passed the House, referred to Subcommittee
- Final Rule – Nov. 16, 2016
- HUD Notice H 2017-05
- Gender neutral applicability
- Be aware of “Adverse Factors” that are the “direct result” of the violence, assault or stalking

VAWA FORMS

- HUD-5380 – Notice of VAWA Occupancy Rights
- HUD-5381 – Model Emergency Transfer Plan (very basic)
- HUD-5832 – Certification of Domestic/Dating Violence, Sexual Assault, or Stalking (and alternative documentation)
- HUD-5383 – VAWA Emergency Transfer Request
- HUD-91067 – Section 8 VAWA Lease Addendum
 - Section 202 lease addendum never finalized

VAWA BEST PRACTICES
– COVER LETTER –
CLARIFY REASON FOR VAWA OCCUPANCY NOTICE

- Simple check boxes:
 - Initial notice
 - Applicant: denial of assistance or admission
 - Tenant: eviction or termination of assistance
- 14 business days to provide VAWA Certification Form (or other documentation) to avoid an adverse action
- Owner/agent contact info
- Applicant/tenant certification

VAWA BEST PRACTICES

VAWA CONFIDENTIALITY RELEASE AND AUTHORIZED DISCLOSURE CHECKLIST

- Date, Property Name, Tenant Name, Unit (if applicable)
- Yes/No choices:
 - May leave VAWA related voicemail or leave messages with other individuals?
 - List of authorized persons to receive messages
 - May send VAWA related mail to mailing address?
 - May discuss VAWA matters with designated 3rd parties?
- Voluntary: designate a named surrogate (attorney, advocate, other secure contact)
- Effective for 60 days

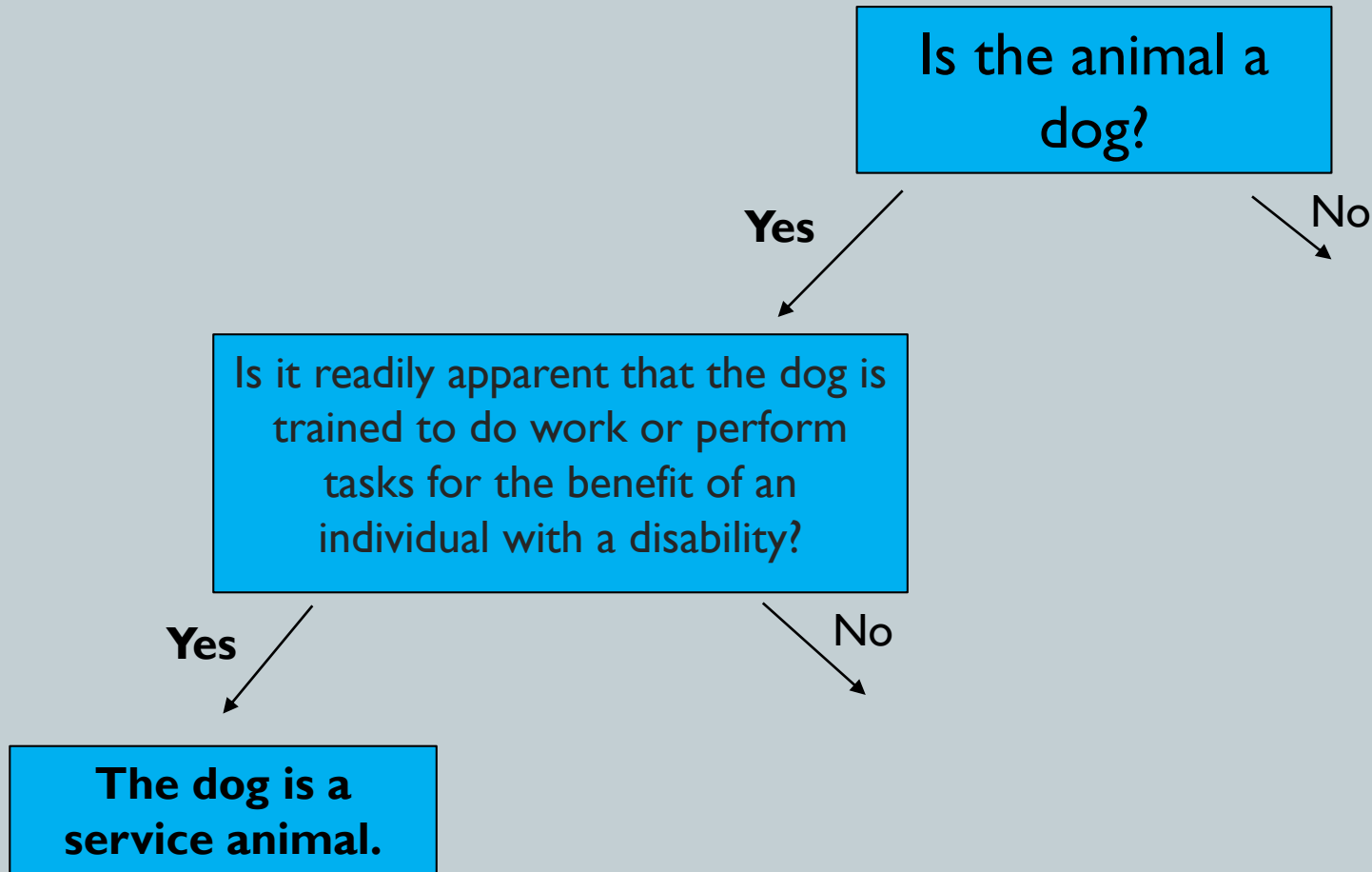
VAWA CONFIDENTIALITY

- All VAWA information maintained in confidence
- Authorized and trained employees may access ONLY
 - Secure and separate
 - Not on a shared database
- Disclosure exceptions:
 - Victim consents (written)
 - Required during eviction hearing or proceeding, or otherwise legally required
- No open conversations
- Post confidentiality notices in office and around property – train staff

SERVICE & SUPPORT ANIMALS

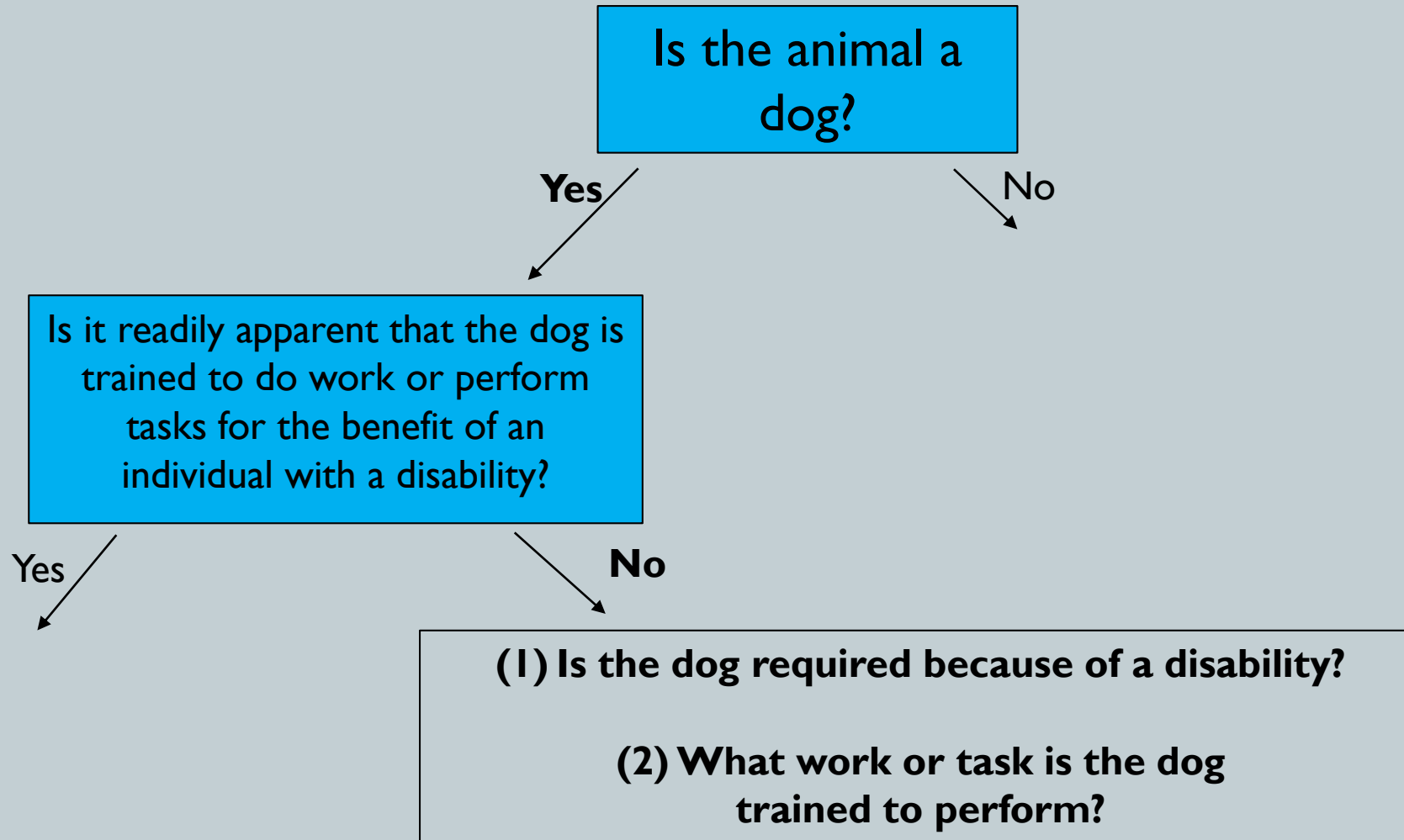
- FHEO Notice 2020-01 – issued January 28, 2020
 - “Assessing a Person’s Request to have an Animal as a Reasonable Accommodation Under the Fair Housing Act”
- All service animals are dogs, but not all dogs are service animals
- Assistance Animals – generally only common household pets
- Numerosity
- Internet forms

BEST PRACTICES: SERVICE-SUPPORT ANIMAL ANALYSIS

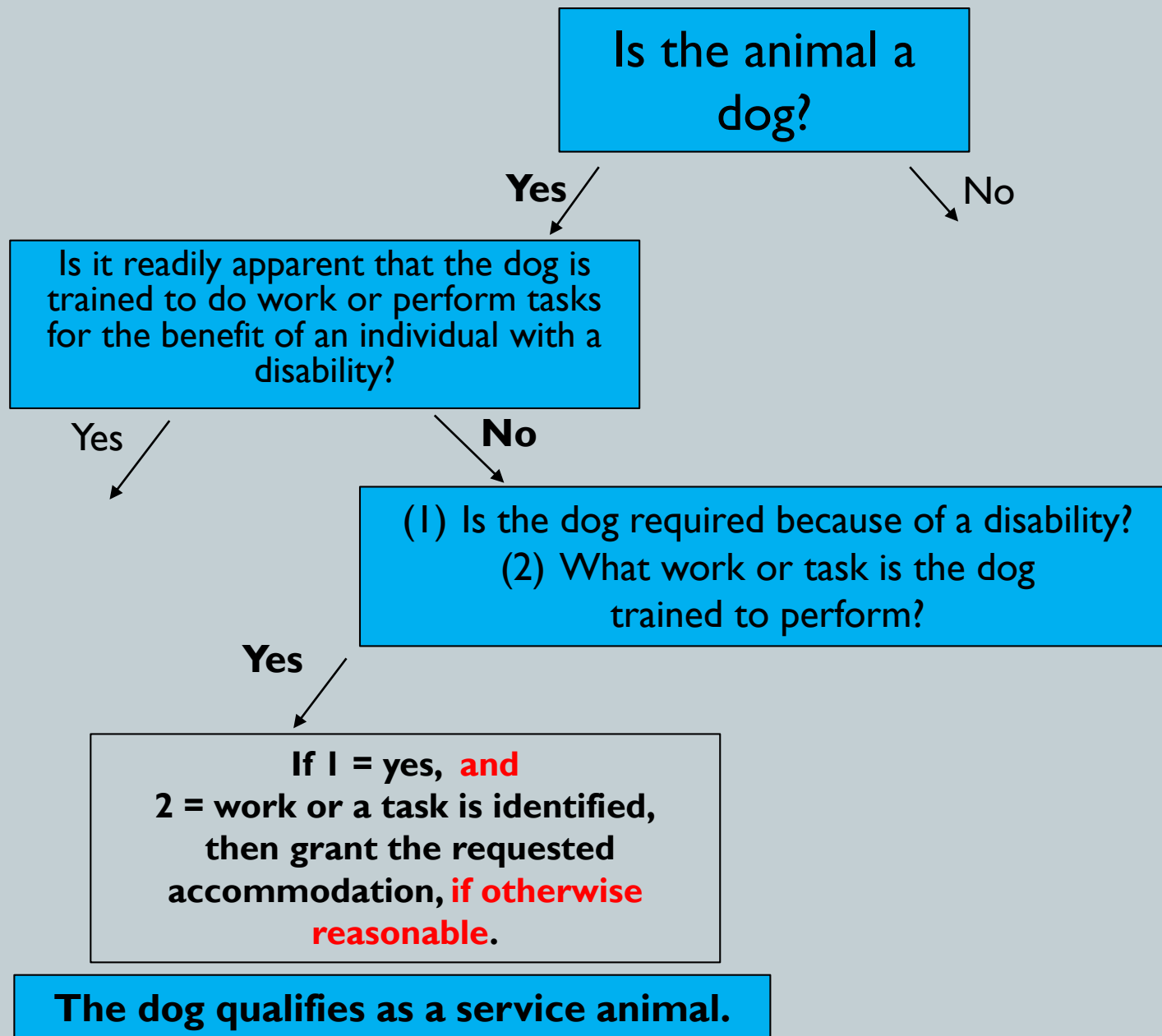


Analysis is complete

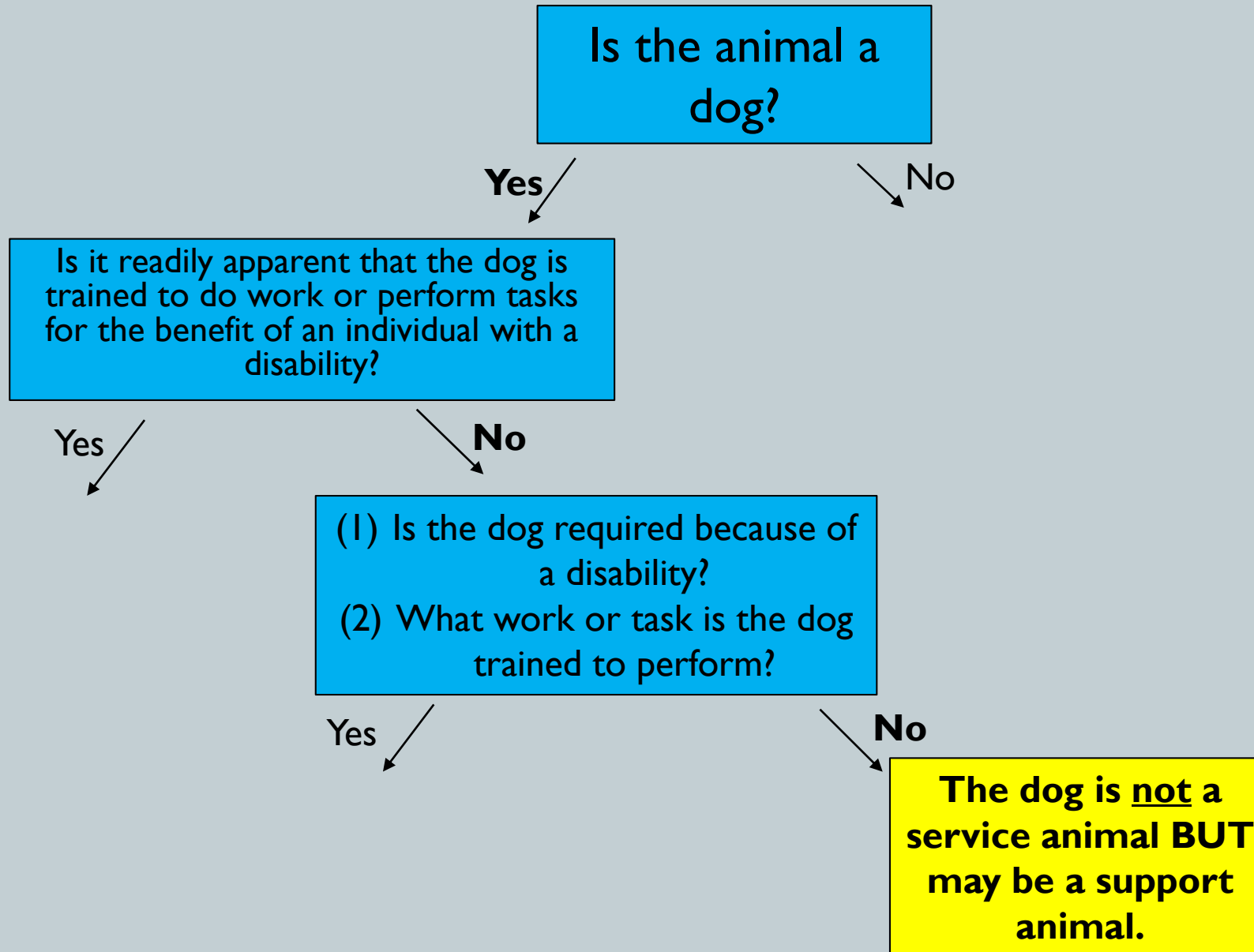
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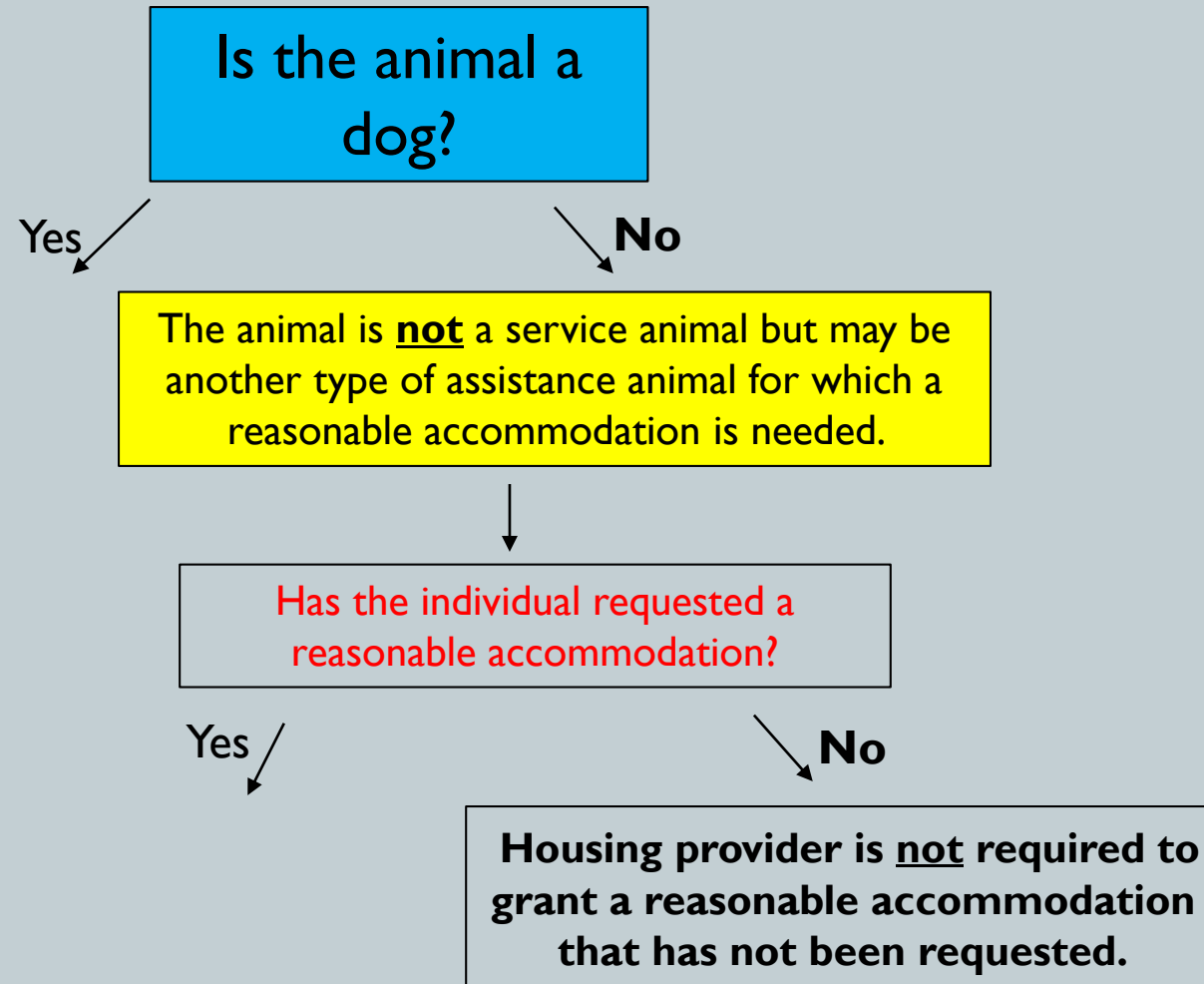
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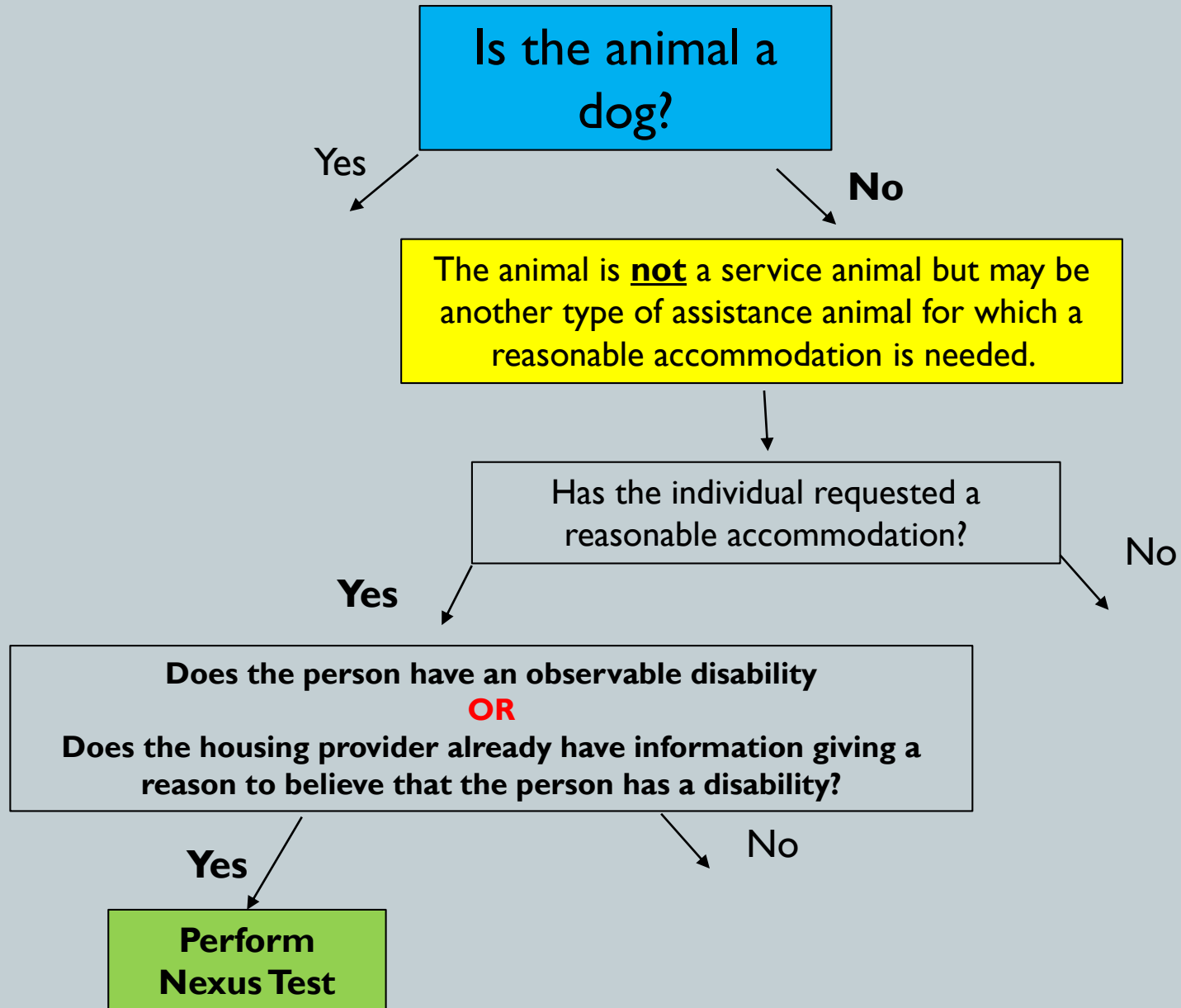


BEST PRACTICES: SERVICE-SUPPORT ANIMAL ANALYSIS



Analysis is complete

BEST PRACTICES: SERVICE-SUPPORT ANIMAL ANALYSIS



Assistance Animal Analysis

- Not a dog
- Person requested a reasonable accommodation
- No observable disability or
- Have no information to believe the person is disabled

Has the person requesting the accommodation provided information that *reasonably supports* that the person seeking the accommodation has a disability?

Yes

No

**Perform Nexus
Test**

**Housing provider is not required
to grant the accommodation.**

BEST PRACTICES: SERVICE-SUPPORT ANIMAL ANALYSIS

Nexus Test

Has the requester provided information that reasonably supports that the animal does work, performs tasks, provides assistance and or provides therapeutic emotional support with respect to the individuals disability?

Yes

No

Is the proposed animal a common household animal?

No requirement to grant accommodation unless information is provided.

Yes

No

The accommodation should* be granted.

A reasonable accommodation need not be provided.**

* Note, not mandatory – is it **reasonable** to have 5 cats?

**But note the unique animal exception (rare)

**Best Reasonable Accommodation
Documentation Practices**

1. Keep written records of all requests

- Can't require a specific form
- Write down oral requests

2. Is the disability readily apparent **or
already adequately documented?**

- **Yes** – perform nexus **and** reasonableness tests
- **No** – may request reliable documentation

Requesting Reliable Documentation

From Who

Best:
Health Care professional with
personal knowledge of
requestor

Least Reliable:
Internet forms

What to Request

Requestor has physical or mental
impairment that substantially limits
one or more major life activities

The therapeutic need
connected to the disability
is **met by the animal.**

BEST PRACTICES: SERVICE-SUPPORT ANIMAL ANALYSIS

Is the animal a dog?

Yes
Is it readily apparent that the dog is trained to do work or perform tasks for the benefit of an individual with a disability?

No
The animal is **not** a service animal but may be another type of assistance animal for which a reasonable accommodation is needed.

Yes
The dog is a service animal.

No
(1) Is the dog required because of a disability?
(2) What work or task is the dog trained to perform?

Has the individual requested a reasonable accommodation?

Yes
If 1 = yes, and 2 = work or a task is identified, then grant the requested accommodation, if otherwise reasonable.

No
The dog is **not** a service animal but may be a support animal.

Yes
Does the person have an observable disability or does the housing provider already have information giving them reason to believe that the person has a disability?

No
The housing provider is not required to grant a reasonable accommodation that has not been requested.

Yes
Nexus Test: Has the requester provided information that reasonably supports that the animal does work, performs tasks, provides assistance and or provides therapeutic emotional support with respect to the individuals disability?

No
Has the person requesting the accommodation provided information that reasonably supports that the person seeking the accommodation has a disability?

Yes
Is the proposed animal a common household animal?

No
A reasonable accommodation need not be provided.*
*But note unique animal exception (rare)

Yes
The accommodation should be granted.

No
The housing provider is not required to grant the accommodation unless this information is provided.

THANK YOU

QUESTIONS?

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