



CalWORKs Disability Provisions



Prevalence of Disabilities In TANF Population

- **Up to 40% may have learning disabilities**
- **25 to 33% have a serious mental health problem**
- **Nearly 20% have physical disabilities**
- **2 to 20 % report substance abuse problems**
- **11-15% of children chronically ill; 1/4 of mothers on welfare/not working have ill child**



Americans with Disabilities Act

[\(click to jump to CalWORKs provisions\)](#)

ADA Coverage

- ADA applies CDSS programs
 - Social Services can be covered by Title I (private employment settings)
 - Ex: job placement and OJT (such as work experience and community service)
 - Title II applies to state and local governments
 - Applies to contractors of these entities, too
- ADA disability definition is much *broader* than ...
 - CalWORKs exemption
 - Disability definition in CW, Food Stamps or Medi-Cal



ADA “Disability”

- A physical or mental impairment that substantially limits one or more major life activities
- A record (history) of having such an impairment
- Being regarded as having such an impairment
- Being in a known relationship/association with someone who has a disability, when the discrimination is based on that relationship



Major Life Activity

- Look at ability to perform the variety of tasks central to most people's daily lives
 - Not focused solely on tasks for a specific job
 - Not just effect of impairment in the workplace
 - Ex: carpal tunnel that poses a problem only at person's work, but not ability to work generally not covered

Toyota Motor Mfg. v. Williams, 122 S.Ct. 681 (2002)



ADA Doesn't Cover...

- “Sexual disorders”
- Kleptomania, pyromania, and compulsive gambling
- Current illegal drug use
- Those who are not “substantially limited” *after* the effects of corrective measures
 - Ex: legally blind, but glasses correct condition

Modifications not considered under CA law...



ADA Entitles You To...

- Meaningful and equal access to programs and services, including: job placement, education, skills training, employment
 - Equal ability to participate in or benefit from programs



ADA Prohibitions

- Discrimination and harassment
 - Intentional and “disparate impact”
 - “Criteria or methods of administration” that have a discriminatory effect, or substantially impair the goals of the program or service



Affirmative Obligations

ADA requires provision of:

- Integrated settings
- “Level playing field”
- Meaningful access
- Reasonable accommodations or modifications



ADA Key Concepts: Title II

- Qualified
 - Individual meets “essential eligibility requirements”
- Reasonable modifications
 - Modifications to practices, policies or procedures when necessary to avoid discrimination
 - Exception: if “fundamentally” alters program



ADA Key Concepts: Title I

- Qualified
 - Able to perform “essential functions” of the job
- Reasonable accommodations
 - Modifications to workplace or job to enable a disabled individual to successfully perform
 - Exception: if “fundamentally” alters job or would avoid “essential job functions”

ADA/§504 Cites

- Americans with Disability Act (ADA)
42 USC §§12101-213
- §504 of the Rehabilitation Act 29
USC §794
- 42 USC 608(d) (ADA/Rehab Acts
apply to State TANF programs)



Govt. Code §11135



Government Code §11135

- Prohibits discrimination on the basis of disability by:
 - “Any program or activity” conducted, operated, or administered by the state
 - Any state agency
 - Any entity funded directly by the state, or that receives any financial assistance from the state

§11135 vs. ADA

- Private right of action to enforce
22 CCR 98002
 - Avoids issues that have arisen w/ ADA and federal court
- Specific “anti-stereotype” provision
22 CCR 98243
 - Prohibits treating men and women differently “...on the basis of aggregate statistical characteristics ..., whether founded in fact, belief or statistical probability....”



§11135 and Disabilities

- Covered agencies required to follow:
 - The ADA
 - The federal ADA regs/rules
 - Gets you away from bad S.Ct. decisions that don't follow the EEOC regs/guidances
- CA law governs if stronger protections and prohibitions
 - Ex: CA looks at “significant limitation” without regard to “mitigating measures”



CalWORKs



Discrimination Prohibitions

- CalWORKs disability anti-discrimination provisions. MPP §§21-109 and 111
- Prohibition on employers, training sponsors, and contractors from discriminating against WTW participants based on disability. MPP §42-718.11
- Counties cannot sanction participants for refusing to participate in programs that discriminate based on disability. MPP §42-721.3.



Assisting the Applicant

- The county is responsible for evaluating the capacity of the applicants or recipients to discharge their responsibilities. MPP §40-107.1
- Counties must provide auxiliary aides and services, as needed. MPP §21-111



Mailing of Materials

- Though mailing application is not listed in regulations, CWDs may use “alternative methods” to make program accessible to individuals with disabilities. MPP §21-111.4
 - Requires prior written approval from CDSS
- County annual civil rights plans must describe how applications and materials are provided to persons w/ disabilities

Application Process

- CA-2-statement of facts
 - Parent or caretaker not required to sign if physically or mentally incapable of signing. MPP §40-128
- Face-to-face interview
 - Done with person completing the CA-2 (per above), and also with the applicant, unless the applicant is unable to participate because of his/her physical or mental condition. MPP §40-131.2
 - County determines applicant's inability to do the interview through personal contact. This contact is required before aid is authorized.

WTW Disability Provisions

- Exemptions and exempt volunteer. MPP §42-701.2(v)
- Exceptions (60-months extension). MPP §42-302.112 & .113
- Disability screening and evaluations. MPP §42-711.55-58
- Ability to modify WTW plan/program. MPP §§42-711.563, .571, .581, LD ACL 01-70
- Employers/contractors prohibited from discriminating. MPP §42-718.11
- Failure to accommodate is good cause reason to leave job. MPP 42-721.311



Disability Exemptions

- Disability of participant
 - Condition lasting > 30 days that “significantly impairs the participant’s ability to work or participate in WTW activities”
 - Good cause for non-participation if < 30 days
- Caring for disabled household member
- DV waiver provisions (overlap with disability exemption)



Exemptions/Time Clocks

- Disability-based exemptions stop BOTH the training and life-time clocks. MPP §42-710.61 & 42-.712.7
- Learning disability/failure to accommodate = resets training clock
 - Issue of people “owed” training time, but who have reached 60 month limit
 - Contact [Jodie](#) if affected clients



Exempt Volunteer

- A volunteer is someone not required to participate in WTW, who chooses to.
MPP §42-701.2(v)
- Volunteers don't have to do the full 32-35 weekly hours. MPP §42-711.412
- Exempt volunteers not subject to the 18/24-month or 60-month time limit.
MPP §42-712.51
 - Note: only exempt volunteers are “off the clock”
 - Ex: if 2nd parent volunteers, time counts



Services for Volunteers

- No specific regulation on volunteer support services, so causes problems
- You get this result by:
 - Volunteers choose to participate, thereby becoming participants
 - Participants sign WTW plans
 - WTW plans must list the needed support services
 - Participants gets support services needed to engage in WTW activities

See [ACL 03-15](#) re: support services for those in Part-time activities;
Contact [Jodie](#) for state letter.



Volunteers and Sanctions

- Exempt volunteers can stop participating whenever they want or need to. MPP §42-712.5
- They are not subject to sanctions as long as they remain exempt. MPP §42-721.42
 - If the exempt volunteer doesn't make satisfactory progress or fails to participate without good cause, the county can limit future volunteer participation by serving others WTW participants first. MPP §42-721.42



Disability Exceptions to 60-months Time Limit

- *Personal*: getting listed benefits, and disability significantly impairs ability to regularly work or to do WTW activities
 - State Disability Insurance, Worker's Compensation Temporary Disability Insurance, In-Home Supportive Services, or SSP
- *Household member*: Caring for an ill or incapacitated person living in the home, and the caretaking responsibilities impair the individual's ability to regularly work or to do WTW activities



Disability Evaluations

- WTW plans for individuals with disabilities must reflect appropriate accommodations and services
- The requirements are slightly different, depending on whether a learning and medical impairment, mental health impairment, or substance abuse issue



Physical and Learning Disabilities

- The county must refer the individual to a disability evaluation if:
 - It suspects a learning or medical problem, as indicated during *appraisal or assessment or by lack of satisfactory progress*. MPP §42-711.58
 - From a “positive” LD screening. ACL 01-70
- Evaluation to determine if the individual is “unable to successfully complete or benefit from a current or proposed program assignment”
 - If the person can participate, the evaluator “shall determine if the individual has any treatment needs”



Post-evaluation Options

- Based upon the evaluation, the county may refer the individual to:
 - Any WTW activity, including the prior activity
 - Existing special programs (not defined) that meet specific needs of the individual
 - Job search services, if the county decides the person the skills to find a job in local labor market
 - Assessment or reappraisal
 - Rehabilitation assessment and subsequent training.

MPP §42-711.581



Option List Limitations

- Statute does not specifically refer to exemptions (though says to determine if “able to participate”)
- Statute fails to refer to reasonable accommodations, so counties may think person should be reassigned
 - The LD ACL makes it clear that counties to consider reasonable accommodations post-evaluation, and that they “must not limit the range of services or WTW activities simply due to a participant’s learning disabilities.”
 - Would apply to other disabilities and impairments

Learning Disabilities Screening

- Counties must offer screening no later than assessment, and (if not previously screened) whenever suspected or person fails to make satisfactory progress or is in good cause or sanction process. [ACL 02-64](#).
 - If not offered at appraisal, must read script re: LD screen, and if requested, administer the screen.

LD ACL's: [01-70](#), [02-35](#), 02-64



Learning Disabilities

Exemptions and Accommodations

- Clarified must refer to evaluation if “positive” screen or otherwise suspect
- Clarified accommodations
 - Reduction of hours possibility
 - **Note:** See [slide 23](#) re: exemptions for Part-Timers
- Review cases and reset clocks if not accommodated
- Mentions LD can be basis for exemption

LD Good Cause

- If a person with LD does not make satisfactory progress or has participation problems, the county's good cause determination should consider whether the disability "caused or substantially contributed" to the problem. ACL 01-70
 - Presumably the same requirement would apply to medical impairments



Mental Health Evaluations

County must refer:

- Based on info received through appraisal
 - County required to solicit “any information relevant to assign appropriate WTW activities.”
MPP §42-711.552
- If, during assessment, concerned a mental disability exists that will impair the ability of a recipient to get a job. MPP §42-711.56
- If the person is not making satisfactory progress, and the county or contractor believes the person may have a mental health impairment



Mental Health Content

- The mental health evaluation shall:
 - Determine any treatment needs
 - Include the extent to which the individual is:
 - Capable of employment at the present time
 - Under what working and treatment conditions the individual is capable of employment

MPP §42-711.562(a)



WTW Mental Health Plans

- Like LD/physical conditions:
 - Plan to include appropriate employment accommodations or restrictions, supportive services, and treatment requirements.” MPP §42-711.563
 - After the evaluation, same list of welfare to work activities (see slide [38](#))

Substance Abuse-Related Impairments

- County must refer to an evaluation any time concerned a substance abuse problem exists that will impair the ability of a recipient to get/keep a job. MPP §42-711.57
- County plan required to list a plan for the provision of substance abuse treatment services. WIC §11325.8(a)

ADA covers those in drug rehab program and successful graduates who are not currently using



Substance Abuse Plans

- Post-evaluation, county must develop the participant's WTW plan based on the results of the evaluation
 - Plan may include appropriate treatment requirements, including assignment to a substance abuse program
 - The CWD must offer the individual two opportunities to receive substance abuse treatment, and may, at its option, offer additional treatment opportunities

MPP §42-711.571; 42-716.611, 42-716.612



WTW Substance Abuse Plans

- The substance abuse regulations do not list the welfare-to-work options to which the county could assign the participant



Substance Abuse Good Cause

- Failure to attend a treatment program assigned in the WTW plan
 - County must consult with the treatment provider re: whether the failure was with good cause. MPP §42-716.613
- Problem w/ another aspect of the plan:
 - County must consult with the treatment re: whether the substance abuse problem “caused or substantially contributed to” the failure to comply.” MPP §42-716.614



WTW Disability Issues

- Verification of disability
- Good Cause reduction of hours
- Part-time participation issues
- Tension between exempting and accommodating
- Difference between “special programs” and treatment or accommodations
- State refusal to extend time – “fundamental alteration” and state constitutional issues

Who Can Verify?

- To verify condition for accommodation: a “qualified professional”
- To verify for an exemption: must be “licensed by a state to diagnose/treat the condition”
 - Community college licensed to evaluate, not individuals evaluators. Unless evaluator separately maintains a state license, not qualified to verify exemption
 - County should assist in getting a diagnosis. MPP §40-107. That provider can then complete exemption verification papers.



Failure to Verify Exemption

- This is NOT a basis for sanction
- If pre-participation problem, solution is to ask to participate
- If exemption came up at sanction stage, issue notice denying exemption, and proceed with good cause/compliance plan process



Reduction of Hours Issues

- Good cause = temporary condition, not expected to last > 30 days
 - Need for accommodation longer? May be an exemption...
- If reduction of hours significantly impairs the participant's ability to benefit from training time, it should qualify as an exemption
 - **Note:** state agrees that “for now” if can't participate full-time, person is exempt. See [Jodie](#) for state letter.

Part-time Issues

- Can't do 32-35 hours = should be exempt
- Counties don't seem to exempt when:
 - Able to do 32/35 hours of activities, but reduced hours that provide substantive employment skills (ex: treatment)
 - Ex: substantial counseling or disabled services time
 - Able to do 32/35 hours, but only if counting accommodations
 - Ex: 6 vs. 12 units of school, i.e. a part-time program, but give all the rest of hours as study-time

Consult with [Jodie](#) re: ADA arguments if these problems occur.



Exemption as Accommodation

- Exemptions can be viewed as a form of disability accommodation
 - Not violate essential eligibility or “fundamentally” alter program
 - Exemptions already exist in CalWORKs
 - Reasonable
 - Permits individual to get the needed training, just without the constraints of a time-limits and sanctions



Opposition to Exempting

- Philosophy of accommodations is to integrate and participate
 - Leads to provider resistance to verifying exemptions
 - Educate re: exempt volunteer and time limits
 - Exemption as an accommodation
- County concerns re: 20% hardship cap
 - HHS TANF regs say duty is to individual
- “People will just sit at home”
 - Disabled exempt required to seek treatment
- Cost (adults stay on aid longer)



Treatment and Accommodation Issues

- The WTW disability regulations list “special programs” as a WTW activity, but give no definition
- No guidance to counties re: when “special programs” and/or MH/SA treatment should lead to exemption vs. being a WTW activity
 - If the length/ nature of these programs leaves insufficient time to get needed training, at the end of the 18-24 mos. the person will not have the job skills, defeating purpose of CalWORKs

Exemption vs. Accommodation

- Hours as “treatment”
 - An LD evaluation calls for 14 units of Disability Services, such as learning to use computer-assisted technology, memorization techniques, etc. A full-time school schedule is 14-16 units.
- Hours as “accommodation”
 - The person does 32 hours, but only 8 are in training, and the rest is a study time “accommodation”



Responses to Treatment Accommodation Problems

- The recipients are really participating part-time, and meet the disability exemption criteria
- ADA disparate impact
 - Treatment and extra study time as meeting WTW hours, without stopping the clock, limits disabled participants to shorter programs than those available to non-disabled participants



Time Extension Issues

- State determined extending training time and extension of 60-month limit, is fundamental alteration/not reasonable modification
 - EXCEPTION: LD failure to screen and/or accommodate (ACL 01-70)
 - Argue should apply for any condition/impairment
- Current alternative: exemption
- Possible alternative: legal challenge to state's fundamental alteration position



Practice problem #1

Vanessa has anxiety and claustrophobia disorders. There is a bus line near her house that takes less than 1 hour for her to get to her WTW assignment. She panics on the bus and won't take it. She told her worker, who sent her a sanction notice for not carrying out her WTW plan.

What should you do?

Answer #1

- Vanessa is a qualified individual w/ a disability in need of a program modification (of rule limiting her to reimbursement for public transportation) to allow for mileage in her case or arrange for other transportation
 - This is reasonable/not a fundamental alteration because the county provides mileage in other circumstances
 - Discuss including therapy as activity/support service



Practice problem #2

The county assigned Sung Lee to a college training program. She barely passed some her lecture classes because she had problems following the instructor. The college determined Sung Lee has a learning disability, and recommended a part-time courseload, significant study-time, computer software, note-taker.

Sung's worker tells her since she can't learn, she can't be in a training program, and must do work experience.

How do you advise Sung Lee?

Answer #2

- Tell the worker “Get thee to a training!” 😊
 - People with LD can learn!
 - Discrimination to deny her training instead of providing reasonable accommodation
- Refer to LD ACL 01-70
 - Argue to reset her training clock – failure to screen and accommodate
 - Includes “failure to benefit from” activity, not just failing
- Ask for hearing re: reassignment
- Discuss filing civil rights complaint w/ client



Problem #2-b

Same scenario, but instead of refusing to allow Sung Lee to attend training, the county determines she can continue in school. The county doesn't permit study time to count as a WTW activity and doesn't buy computer equipment, and tells Sung she'll need to make up her hours with work or another activity. If she doesn't want to do work and school, they can reassign her.

Now what do you do?

Answer #2-b

- Argue for exemption
 - Part-time participation is a “significant impairment on ability to participate”
- Argue for accommodations
 - Adaptive equipment = reasonable accommodation (in fact, it is a support service!)
 - Study time = reasonable accommodation. Disallowal of home study time is for SIPs only, and even then, this is a reasonable accommodation.
- Get training clock reset
- Ask for hearing if problems not resolved



Cases

Fry v. Saenz

- ADA disparate impact
- CalWORKs rule ending aid to 18 y.o.'s unless they are full time students expected to finish high school by 19 is *not* an “essential eligibility requirement”
- Case remanded to determine whether excluding children with disabilities that preclude graduation by 19 would cause undue financial burden

98 Cal.App.4th 256, 120 Cal.Rptr.2d 30 (2002). Contact Clare Pastore or Nu Usaha, (213) 487-7211, ext 29



Brou v. Alameda County

GA case

- ADA methods of administration and disparate impact
- County must screen for mental health impairments prior to sanctioning or discontinuing

Unpub'd settlement: call Steve Ronfeldt, (510) 891-9794 x 127



Hunsaker v. Contra Costa County

GA case

- Challenge to AOD screening of applicants. County didn't contest that recovering(ed) drug and alcohol addicts disproportionately identified as false positives
- HELD: disparate impact alone is insufficient to create a prima facie case of "harm" or impact on "meaningful access" to public benefits for purposes of ADA relief

149 F.3d 1041, 9th Cir. (Cal. 1998)



Civil Rights Complaints

- GBLS ADA TANF complaint to HHS OCR re: mental disabilities. Includes:
 - Practices screen out people with MH issues from getting exemptions/good cause
 - Staff untrained re: MH issues/ process for making accommodations/ types accommodations
 - Don't advise re: right to accommodations and to grievance process if denied
 - Failing to provide reasonable program modifications

Contact: Brian Flynn, at 617 603-1629, bflynn@gbls.org

Civil Rights Complaints (cont.)

- NY ADA TANF complaint to HHS-OCR re: mental health impairments. Includes:
 - No screen for psychiatric disabilities
 - Disability assessment process has discriminatory effect on people with psychiatric disabilities, including:
 - appointment policies
 - failure to provide reasonable modifications
 - practice of disregarding documentation from individuals' own doctors

Contact: Cary LaCheen (212) 633-6967 lacheen@welfarelaw.org

Similar complaint in Wisconsin is pending.

Resources

- HHS Guidance
 - <http://www.hhs.gov/ocr/cover.html>
 - <http://www.hhs.gov/ocr/prohibition.html#legreq>
- “Using Title II of the Americans with Disabilities Act on Behalf of Clients in TANF Programs” by Cary LaCheen
 - Manual: www.welfarelaw.org/ada_manual/ada_manual.pdf
 - Training outline: www.welfarelaw.org/disability_rep/adatraining2002.pdf
- LD ACL 01-70
 - www.dss.cahwnet.gov/getinfo/acl01/pdf/01-70.pdf



Questions?

Jodie Berger
Regional Counsel
Legal Services of No. California
1810 Capitol St.
Vallejo, CA 94590-5721
Jberger@lsnc.net
(707) 643-0054 x 302