

Disability Provisions

GA and Food Stamps

Prevalence of Disabilities

- ◆ 78% of food stamp household heads were exempt from work registration requirements.
- ◆ 29% were exempt due to physical or mental disability
- ◆ 17 % were exempt as caretakers of a child under age 6 or an incapacitated adult

-- FNS 2001 Program Characteristics



Americans with Disabilities Act

ADA Coverage [\(Jump to Food Stamp Provisions\)](#)

- ◆ 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
 - Food Stamps
 - Most county GA “employable” definitions

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

Mitigation 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"

Food Stamps

Applications by Mail

- ◆ If a household does not want to file in person, the county must mail the application on: (MPP §63-300.34)
 - The date the telephone request is received
 - The date the written request is received
- ◆ Faxed applications (and signatures) are acceptable. MPP §63-300.3
- ◆ Households can turn verification in by mail. MPP §63-300.5(i)

Exemptions from Work Registration

- ◆ All Food Stamps applicants must register for work, unless exempt
 - *Personal Disability*: physical/ mental problem makes you "unfit" to work. MPP § 63-407.2
 - *Family disability*: taking care of child over six or adult who needs help taking care of him or herself. MPP § 63-407.2
 - *AOD*: if going regularly to a drug addiction or alcoholic treatment program. MPP § 63-407.2

Temporary Work Deferment

Temporarily deferred if:

◆ Severe family crisis

- Ill/incapacitated family member temporarily needs care of the registrant

◆ Temporary illness or disability

- Pregnancy
- Illness/injury serious enough to temporarily prevent working
 - ◆ Minor ailments, such as colds, will not defer

MPP § 63-407.811

“Unfit” to work

- ◆ County can request verification if condition “not evident to the CWD.” MPP §63-407.21(b)
- ◆ Verification includes:
 - Receipt of temporary/permanent disability benefits
 - If it is “obvious” to the EW the person is unable to buy/prepare meals because of a severe physical or mental disability, even if their disability is not on the SSA list of disabilities
 - A statement from a physician or licensed or certified psychologist, if “not obvious”

MPP §63-300.5(e)(9)

"Unfitness" Factors

- ◆ Being "unfit" to work is not the same as meeting the strict food stamp definition of "disabled." (Several non-CA cases.)
- ◆ The food stamp office should consider your physical condition in relation to other relevant factors, such as your age, education, training and experience.
 - Lowe v. North Carolina Dep't of Human Resources, 323 S.E.2d 454 (N.C. Ct. App. 1984); Archuleta v. Bowen, 655 F.Supp. 1196 (D. Wyo. 1987).

EBT provisions

- ◆ EBT systems must comply with the ADA.
7 C.F.R. § 274.12(h)(4)(i)(G)
- ◆ The California EBT Act requires reasonable access to the EBT system to accommodate issues related to physical and mental disabilities, language, lack of access, or other barriers
 - If disabled, can have authorized representative act on your behalf

FS Face-to-Face interview

- ◆ Mandatory Waiver:
 - Unable to appoint an AR *and* all members are 65+ y.o. *or* physically disabled *and* no earned income, *and* can't come to the office
- ◆ Case-by-case Waiver for "hardships"
 - Includes illness of applicant or care of a household member
- ◆ Face-to-face not required for recert

MPP § 63-300.42-.44

Interview Waiver Process

- ◆ CWD required to tell applicants it will waive face-to-face for hardship
- ◆ If waived, county choice of interviewing by phone or at person's home
 - Must schedule in advance if at home
- ◆ Waiver of the face-to-face does not exempt the household from the verification
 - Can use special verification procedures, such as substituting a collateral contact for documentary verification

MPP §63-300.44

Certification

Monthly:

- ◆ CWD must help households fill out the CA-7 when adult members are all:
 - Mentally or physically disabled
 - Non-English speaking
 - Lack of literacy such that they can't complete and file the report. MPP §63-504.3

Annual:

- ◆ 2-year certification period for households when *all* household members are aged *or* disabled. MPP § 63-504.133

Good Cause For Non-participation

- ◆ Disability provisions include:
- ◆ Illness
- ◆ The illness of another household member requires the presence of the participant
- ◆ Household emergency
- ◆ Inability to read, speak, write English
 - May be disability-based
- ◆ You become exempt from workfare

MPP 63-407.51

Disability-based Good Cause Reasons

Good Cause to Quit if:

- ◆ Exempt from work registration. MPP § 63-408.3
- ◆ Circumstances beyond control, including:
 - Illness (own or household member, if requires presence of the registrant, household emergency)
- ◆ Unsuitable jobs. MPP § 63-408.4
 - Includes if you are physically or mentally unfit to do the work. MPP § 63-407.722
- ◆ Discrimination at work
 - Includes based on disability. MPP § 63-408.4

Food Stamps Disability

To be "disabled" you must receive:

- ◆ Social Security disability or blindness checks
- ◆ Public disability retirement pensions
 - if it's a disability that social security says cannot get better
- ◆ Railroad Retirement disability payments

Food Stamps Disability (cont.)

◆ Veterans' disability benefits

- Total disability of veteran (ok if not service connected)
- Veteran's or Spousal Veterans' benefits *if* VA says the veteran or spouse is permanently housebound or needs regular assistance
- Veteran's disabled child benefits *if* VA says child(ren) can never be self-supporting
- Survivor's benefits *if* the wife, husband, or child has a disability that SSA says can never get better



General Assistance

“Employables”

- ◆ Option to time-limit receipt of GA. WIC § 17000.6(f)(1- 2) and 170001.5(a)(4)
 - Limited to employables
- ◆ Right to sanction GA recipients. WIC §17001.5(a)(3)
 - Also limited to employables

GA Sanctions

- ◆ Can sanction for work program failure/refusals. WIC §17001.5(a)(3)
 - Can only be imposed if willful, or 3 or more incidences of negligent failure to participate
- ◆ Can sanction for GA program failures (other than work program). WIC §17001.5(a)(B)(5)
 - Can only be imposed if willful, or 3 or more incidences of negligent failure to participate

Substance Abuse Issues

- ◆ Counties *may* screen for substance abuse when *reasonable suspicion* to believe an *individual is dependent* on illegal drugs or alcohol.
 - The county must document this finding
- ◆ Counties may require *reasonable* participation in substance abuse or alcohol treatment programs for persons screened and *professionally* evaluated as needing treatment, if actually available and free

WIC 17001.51(a)

Cases

Brou v. Alameda County

- ◆ 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

Bradford v. San Diego

- ◆ Challenge to GA time limit policy that treated disabled GR recipients as "employable with limitations" subject to 3-mo. limit, despite evidence of inability to work. Settlement included:
 - exemption from the time limit and related work requirements, such as job search, for those with medical verification of inability to work
 - exclusion of months of disability from countable months for time limit purposes

Unpub'd, Case No. 97-CV-1024-JM (S.D.Cal., July 29, 1997).
Contact Clare Pastore/Dick Rothchild at WCLP 213-487-7211, x 24

Hunsaker v. Contra Costa County

- ◆ 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)

Jennings v. Jones

- ◆ Challenge to County GA sanction regulations for failure to distinguish between competent, healthy individuals who failed to comply, and those whose failure was due to mere negligence, inadvertence, or mental or physical disability
 - NOTE: statute now reflects negligence (allows 3x before sanction), but makes no reference to other factors, so still need to cite case if problems

212 Cal.Rptr. 134 (Cal.App. 1 Dist., 1985)

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

Questions?

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