



# **Disability-Related Provisions**

## **CalWORKs, GA and Food Stamps**

LSNC WTF, April 24, 2003



# ADA and §11135



# 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**



# ADA Coverage

- ADA applies to CalWORKs 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
- *The ADA definition of disability is much broader than the CalWORKs disability exemption definition.*
  - Many more recipients have ADA protections than just those who are exempt



# ADA Entitles You To...

- Meaningful and equal access to TANF 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)



# 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



# CaIWORKs



# Discrimination Prohibitions

- Disability anti-discrimination provisions at 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 not specifically set out in regs, MPP §21-111.4 provides that CWDs may use alternative methods to make programs and activities accessible to individuals with disabilities, with 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. Such personal contact is required before aid is authorized.



# WTW Disability Provisions

- Exemptions and exempt volunteer
  - MPP §42-701.2(v)
- Disability screening and evaluations
- 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 the WTW, but chooses to do so. MPP §42-701.2(v).
- As a disabled exempt volunteer, the individual is not required to participate for the full number of hours (MPP §42-711.412), and is 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 reg, so causes problems. You get this result by:
  - Volunteers choose to participate, so are 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, and contact [Jodie](#) for state letter.



# Volunteers and Sanctions

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



# Disability Evaluations

- WTW plans for individuals with disabilities must reflect appropriate accommodations and services.
- The requirements are different, depending on the impairment: learning and medical impairments, mental health impairments, and substance abuse.



# 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 this 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 has 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 fails to make satisfactory progress/ 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 Impairments

County must refer to a disability evaluation:

- Based on info received through appraisal
  - County required to solicit “any information relevant to assign appropriate welfare-to-work activities.” MPP §42-711.552.
  - Many screen for MH issues.
- If, during assessment, “there is a concern that a mental disability exists that will impair the ability of a recipient to obtain employment.” 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 Evaluation

- 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)



# Developing WTW MH Plan

- As with LD/physical conditions, “the plan shall include appropriate employment accommodations or restrictions, supportive services, and treatment requirements.” MPP §42-711.563.
- After the evaluation, the county can refer the participant to the same list of welfare to work activities in slide 38.



# Substance Abuse-Related Impairments

- County must refer to an evaluation any time there is a “concern that a substance abuse problem exists that will impair the ability of a recipient to obtain or retain employment.” 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

- If the evaluation determines the individual has a substance abuse problem, the county must develop the participant's WTW plan based on the results of that evaluation.
  - The 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

4/24/03



# WTW S.A. Plan Options

- 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 WTW plan: County must consider whether the substance abuse problem “caused or substantially contributed to” the failure to comply.”
  - The county is required to consult with the treatment provider to make this determination. 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 is for temporary condition, not expected to last > 30 days
  - If need for accommodation is longer, more indicative of 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 within CalWORKs
  - Reasonable: Permit the 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 without 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. This would defeat the purpose CalWORKs.



# Exemption vs. Accommodation Examples

- 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

- These clients 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



# General Assistance



# General Assistance

- 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 require screening for substance abuse when there is reasonable suspicion to believe that *an individual* is dependent upon illegal drugs or alcohol.
  - The county shall maintain documentation of this finding.
- Counties may require reasonable participation in substance abuse or alcohol treatment programs for persons screened and professionally evaluated to be in need of treatment, if actually available and free.

WIC 17001.51. (a)



# Food Stamps



# Mailing Applications

- If a household contacting the food stamp office (by telephone or mail) prefers to get an application through the mail, the county must mail the form the date of the call/date request received.
- Application filing date is date completed form received by county.



# ADA v. Food Stamps

- ADA and Rehabilitation Act coverage is broader than those "disabled" under food stamp regulations



# Exemptions from Work Registration

- All people applying for food stamps must register for work, unless they are exempt.
  - Personal Disability: physical or mental problem that makes you "unfit" to work. MPP § 63-407.2.
  - Family disability: you take care of a child over six or an 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
  - An incapacitated or ill family member who temporarily needs the care of the registrant
- Temporary illness or disability
  - Pregnancy
  - An illness or injury serious enough to temporarily prevent employment.
    - Minor ailments, such as colds, will not defer

MPP § 63-407.811

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# “Unfit” to work

- County can request verification if “the unfitness is not evident to the CWD.”  
MPP §63-407.21(b).
- Verification includes:
  - receipt of temporary or permanent disability benefits issued by governmental or private sources, or
  - A statement from a physician or licensed or certified psychologist



# “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). See 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

- CWD required to tell FS applicants that it will waive the face-to-face interview (and do by telephone), where the household has a "hardship" situation. "Hardship" disability provisions include:
  - Illness
  - Care of a household member
- Face-to-face also waived if household:
  - is unable to appoint an AR
  - all members are 65+ y.o. or physically disabled
  - no earned income
  - unable to come to the food stamp office.

MPP § 63-300.43-44 and 63-300.42



# FS Certification

- California has a 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:

- You are ill
- The illness of another household member requiring 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.

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# Good Cause - Quit

Disability provisions include:

- You are exempt from having to register for work. MPP § 63-408.3.
- The job became one of the kind of jobs that you do not have to take after you started work. MPP § 63-408.4.
  - Includes if you are physically or mentally unfit to do the work. MPP § 63-407.7.
- Discrimination at work
  - Includes based on disability. MPP § 63-408.4.



# FS Disability

To be considered "disabled" for food stamp purposes, 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



# FS 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



# Cases



# Fry v. Saenz

- **ADA disparate impact**
- **CalWORKs “completion rule” terminating benefits to children who turn 18 unless are expected to complete high school by age 19 is not an “essential eligibility requirement”**
- **Remanded to trial court re: whether covering children whose disabilities preclude graduation by 19 is an cause undue financial burden**

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



# 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 (No. 97-CV-1024-JM (S.D.Cal., July 29, 1997),  
contact Clare Pastore/Dick Rothchild at WCLP 213-487-7211**



# Hunsaker v. Contra Costa County

- Challenge to AOD screening of applicants. County did not 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, HHS OCR ADA complaint 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](mailto:bflynn@gbls.org)



# Civil Rights Complaints (cont.)

- NY HHS-OCR: Psych impairment.  
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

*PENDING; similar one in Wisconsin*

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



# Informational 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
  - [www.welfarelaw.org/ada\\_manual/ada\\_manual.pdf](http://www.welfarelaw.org/ada_manual/ada_manual.pdf)
  - Training outline:  
[http://www.welfarelaw.org/disability\\_rep/adatraining2002.pdf](http://www.welfarelaw.org/disability_rep/adatraining2002.pdf)
- LD ACL 01-70
  - [www.dss.cahwnet.gov/getinfo/acl01/pdf/01-70.pdf](http://www.dss.cahwnet.gov/getinfo/acl01/pdf/01-70.pdf)