



Disability Accommodations in CalWORKs

Pathways to Justice

May 30, 2002



Prevalence of Disabilities In TANF Population

- ◆ Up to 40 percent may have learning disabilities
- ◆ 25 to 33 percent have a serious mental health problem
- ◆ Nearly 20 percent have physical disabilities
- ◆ 2 percent to 20 percent report substance abuse problems
- ◆ 11-15% of children chronically ill; ¼ of mothers on welfare/not working have ill child
 - Covered by ADA



Sources of Law

- ◆ 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 *et seq.*
- ◆ CalWORKs (various provisions)
- ◆ Fry v. Saenz (ADA/disabled 18-19 y.o. students)
- ◆ Learning Disabilities All County Letter 01-70



Informational Resources

- ◆ “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
- ◆ HHS Guidance
 - <http://www.hhs.gov/ocr/cover.html>
 - <http://www.hhs.gov/ocr/prohibition.html#legreq>
- ◆ LD ACL 01-70
 - www.dss.cahwnet.gov/getinfo/acl01/pdf/01-70.pdf



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



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



ADA Affirmative Obligations

To provide:

- ◆ 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”



Government Code §11135

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



CaWORKs Disability Provisions

- ◆ Ability to be an exempt volunteer
 - MPP §42-701.2(v)
- ◆ 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



Learning Disabilities ACL 01-70

- ◆ All counties to offer screening no later than appraisal
 - Phase in participants
- ◆ Clarified process for referral (mandatory)
- ◆ Clarified accommodations
 - Reduction of hours possibility
- ◆ Discusses non-discrimination
- ◆ Mentions exemptions
- ◆ Review cases and reset clocks if not accommodated



CalWORKs 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
- ◆ Learning disability/failure to accommodate = resets training clock
 - Issue of people “owed” training time, but who have reached 60 month limit
 - Contact Jodie or Nu if affected clients



State Issues

- ◆ Verification of disability
- ◆ Good Cause reduction of hours
- ◆ Part-time participation issues
- ◆ Tension between exempting and accommodating
- ◆ 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 diagnose. Unless evaluator separately maintains a 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



Part-time participation issues

- ◆ “Straight” part-time = should be exempt
 - Contact Jodie
- ◆ Problem areas (counties don’t want to exempt):
 - Able to do 32/35 hours of activities, but not many hours that provide substantive/employment skills
 - 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.



Exempting vs. accommodating

- ◆ 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 regulations says duty is to individual



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/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

◆ Argument

- Vanessa is a qualified individual w/ a disability
- She needs 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

◆ Approach

- Ask for state hearing
- Try to resolve w/ supervisor/appeals officer



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 professor referred her for a disability evaluation. The college determined Sung Lee had a learning disability (auditory processing deficits), and recommended a part-time courseload, significant study-time, adaptive equipment (computer software, note-taker).

Sung's worker tells her since she can't learn, she can't be in a training program. She refers her to work experience.

What 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 worker won't count study time, 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 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, but this is a reasonable accommodation.
- ◆ Argue for exemption
 - Part-time participation is a “significant impairment on ability to participate”
- ◆ Get training clock reset
- ◆ Ask for hearing if problems not resolved



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