Worker Guide

Title II of the Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973 (Section 504)

1. JOBS and the ADA/Section 504

This guide contains information about how title II of the ADA and section 504 impacts the Department of Human Services (DHS) Self-Sufficiency Programs.

For department-wide policy, go to http://www.dhs.state.or.us/policy/admin/exec/010_005.htm.

Federal law

Title II of the ADA

Title II of the ADA covers all activities of state and local government, regardless of the government entity’s size or whether it receives federal funding. Title II requires that state and local governments give people with disabilities meaningful opportunity to benefit from all of their programs, services, and activities. This requires that services provided to clients with disabilities must be as effective as those which are provided to persons without disabilities.

Section 504

Section 504 prohibits discrimination on the basis of disability and covers all entities that receive federal financial assistance from the U.S. Department of Health and Human Services, either directly or indirectly through grants, contracts or subcontracts.

Each federal agency has its own set of section 504 regulations that apply to its own programs. Requirements in these regulations include: reasonable accommodation for employees with disabilities, program accessibility, effective communication with people who have hearing or visual disabilities and accessibility to program locations. Each agency is responsible for enforcing its own regulations. Section 504 may also be enforced through private lawsuits.

Disability

The ADA and section 504 define a person with a disability as:

“A person who has a physical or mental impairment that substantially limit one or more major life activities, or has a record of such an impairment, or is regarded as having such an impairment.”

Major life activity includes:

- caring for one’s self;
• performing manual tasks;
• walking;
• seeing;
• hearing;
• speaking;
• breathing;
• learning; and
• working.

The ADA and section 504 does not specifically name all of the impairments that are covered. The question of whether a particular condition is a disability within the meaning of ADA and section 504 is determined on a case-by-case basis and may not be the same as the definition that is used for eligibility for certain programs.

Examples of disabilities:

Note: The presence of a disability does not automatically qualify an individual for protection under the ADA and section 504. The disability must limit one or more of the “major life activities” stated above.

• Narcolepsy — A disorder which causes irresistible sleep attacks; it might include sudden attacks of sleep, excessive daytime sleepiness, muscular weakness, hallucinations and sudden attacks of REM (Rapid Eye Movement – one stage of sleep).

• Classic migraine—Events include a visual aura (a warning sign), usually described as broken zigzag lines, blind spots, flashing lights or double vision. This is usually followed by a headache about 10 to 30 minutes later. Other symptoms might include speech difficulty, weakness of an arm or leg, tingling of the face or hands and confusion. The pain from this type of headache is described as intense, throbbing, or pounding; is felt in the temple, ear, jaw, around the eye or in the forehead. An attack usually lasts one to two days.

• Fibromyalgia syndrome—FMS is a complex chronic condition that causes widespread pain and severe fatigue. FMS is a syndrome because it is a set of signs and symptoms that occur together, affecting muscles and their attachments to bones. It is not a true form of arthritis and does not cause deformities of the joints. It is, however, a form of soft tissue or muscular rheumatism.

• Bipolar disorder, also known as manic-depressive illness, is a mental illness involving episodes of serious mania and depression. A person’s mood can swing from overly “high” and irritable to sad and hopeless, and then back again, with periods of normal mood in between. Bipolar disorder typically begins in
adolescence or early adulthood and continues throughout life. It is often not recognized as an illness, and people who have it may suffer needlessly for years or even decades.

- **Developmental disabilities** are severe, chronic disabilities which are attributable to a mental or physical impairment or combination of mental and physical impairments; are manifested before the person attains the age twenty-two; is likely to continue indefinitely; and results in substantial functional limitations in three or more of the following areas of major life activities:
  
  - Self-care;
  - Receptive and expressive language;
  - Learning;
  - Mobility;
  - Self-direction;
  - Capacity of independent living; or
  - Economic self-sufficiency.

A person with a disability is not exempt from participation in the JOBS program because of their disability. It is the responsibility of the JOBS program to ensure that persons with disabilities have equal access to the services and programs provided. In essence, this means that “reasonable” accommodations and/or program modifications may need to be provided to afford the “equal” access. Without such accommodations or modifications the person with a disability would not be disqualified for nonparticipation in the JOBS program.

The primary goal is to assess clients and develop and implement employability plans in a nondiscriminatory manner. The same standard of nondiscrimination under the laws applies to DHS and its contractors, subcontractors and vendors.

Client access to job placement and services must be meaningful. Meaningful access does not mean simply placing a client in a program. Rather, meaningful access means that the case manager must ensure that the client understands the job placement and services, and the services offered must be as effective as those provided to clients who do not have a disability.

**Client disclosure**

Disclosure of a disability by program applicants and participants is voluntary. Further, information about clients’ disabilities is private and confidential and must be protected and may not be disclosed without the client’s written permission. Although initial disclosure by the client about their disability is voluntary, we are not prevented from inquiring about the existence or extent of a disability. In fact, if there is an indication that
the client has a disability, we should explore the issue to determine whether their ability to participate in and benefit from proposed program assignments might be impacted. Such discussion should be done with heightened understanding and compassion.

**Accommodations and program modifications**

Policies, practices and procedures that deny equal access to individuals with disabilities must be reasonably modified. A modification that fundamentally alters the program is not reasonable. A fundamental alteration is one that substantially changes the purpose or mission of a specific program.

In effect, a fundamental alteration creates a new program.

To ensure that individuals have an opportunity to effectively participate in the program, reasonable accommodations/modifications might be needed in the application process, procedures and methods for notifying beneficiaries of their rights and the policies and procedures to aid individuals in sustaining program participation.

In all instances, however, the accommodation/modification must be reasonable and not fundamentally alter the purpose or mission of the program. Contact the TANF/JOBS ADA and Section 504 Coordinator prior to denying an accommodation or modification.

**Disqualification from JOBS**

Prior to disqualifying a client for noncooperation DHS must:

- Ensure that the failure to comply with their case plan was not caused by an aspect of a known or unknown disability. This will require that all screening processes (such as mental health, Alcohol & Drug (A&D), learning disabilities (LD) and medical) for disabilities have been or will be conducted.

- Ensure that the client’s failure to comply was not caused by DHS or a JOBS partner’s failure to provide a required accommodation or modification.

Refer clients for a formal assessment with a medical provider, treatment provider, LD provider, etc., when a screening discovers a potential for a disability. Do not apply disqualifications while waiting for the results of the formal assessment.
Formal Assessment
Flow Chart

Formal evaluation or assessment.

Disability found and documentation received for review.

No disability found.

Local Team (MRT, etc.): Determine if an aspect of the disability “caused” the noncooperation. Requires case staffing.

Consider all other “good cause” reasons prior to disqualification. If “good cause” is found, do not disqualify.

Did not cause noncooperation.

Did cause noncooperation.

Apply disqualification at appropriate level if “good cause” is not found.

Provide reasonable accommodation(s) or modification(s) and do not disqualify.
If accommodation(s) or modification(s) are required in order for the client to participate, DHS and/or our JOBS partners need to provide the accommodation(s) or modification(s). It is DHS’ responsibility to ensure that all required accommodations or modifications are provided. If a client refuses an accommodation or modification, DHS must document the client’s refusal.

Example: It is discovered through an LD assessment that a client needs a day planner and tape recorder in order to participate in a JOBS activity. The client refuses the accommodations. DHS staff would document this refusal and the client would be treated in the same manner as a client without a disability. At this point they may be disqualified and the failure to provide an accommodation or modification may not be used as “good cause” by the client. It would help to discuss the client’s refusal of the accommodation or modification with the intent to encourage them to accept the accommodation or modification.

Once all reasonable accommodations or modifications have been made, the client’s disability is not considered “good cause” for noncooperation with their plan. Remember that circumstances change and prior to applying a disqualification, the case must be reviewed.

Note: Remember that the facts in a particular case may warrant a finding of “good cause” to avoid imposing a disqualification inappropriately.

Alcohol and Drug (A&D) dependency

Alcohol dependency is considered a disability under the ADA. The fact that a client uses, abuses, or is dependent on alcohol should not be a reason for denying the client participation in JOBS activities. However, if the use of alcohol results in actions or behavior in JOBS activities that is likely to prevent employment or retention of employment, the client should be offered the opportunity to re-engage through the re-engagement process and, if good cause is not found, disqualified.

Example: An obviously intoxicated client attends a JOBS activity. The client is asked to leave the activity because they are acting inappropriately and disturbing others in the class. This behavior is likely to prevent employment or retention of employment. The client may be offered the re-engagement process and, if good cause is not found, disqualified for noncooperation.

Drug dependency is also considered a disability under the ADA. The ADA, however, does not protect current users of illegal drugs or the current illegal use of prescription drugs. This means that a client known to currently use illegal drugs or known to currently illegally use prescription drugs may be denied participation in JOBS activities based on that usage. Suspicion of illegal drug use, knowledge of prior use or current participation in a drug treatment program is not a good reason to deny the client participation in JOBS activities. If the drug use results in behavior that is likely to prevent employment or
retention of employment, the client may be offered the opportunity to re-engage using the re-engagement process, and, if good cause is not found, disqualified.

Example: While attending Life Skills activities, a client exhibits a change in behavior from hyperactivity to low energy and displays a lack of self-control, which disrupts the class. Cocaine use is suspected. The client is removed from the JOBS activity based on this behavior rather than on suspected illegal drug use. This behavior is likely to prevent employment or retention of employment. The client may be offered the re-engagement process, and, if good cause is not found, disqualified for noncooperation.

DHS or JOBS partners shall not discriminate (deny access to services and activities) on the basis of illegal use of drugs against an individual who is NOT engaging in current illegal use of drugs and one of the following is true:

- They are participating in a supervised rehabilitation program;
- They have successfully completed a supervised drug rehabilitation program;
- They have been rehabilitated; or
- They were erroneously regarded as engaging in such use.

Clients who use, abuse or are dependent on alcohol or drugs may also have another disability that is covered under the ADA. If a client who is known to be using alcohol or drugs engages in behavior that does not have to be accommodated under the ADA, such as attending a JOBS activity while under the influence of alcohol or drugs, it is very important that the underlying disability be considered at re-engagement before any level of disqualification is applied. In the same manner, if a client who is known to be using alcohol or drugs does not attend a required JOBS activity, the underlying disability must be considered at re-engagement before any level of disqualification is applied.

Example: The JOBS contractor reports that the client did not show up for their scheduled time at a sheltered work activity. The client has been diagnosed with a mental health condition that is severe enough to interfere with a major life activity. The client is also known to be using marijuana. Prior to any level of disqualification being imposed, it must be determined whether the mental health condition caused the noncompliance. If so, good cause would be given. In this case, although the client is currently using marijuana and is not covered by the ADA for the addiction because of the current use, the client is still covered by the ADA for the mental health condition. If it is determined that the mental health condition that is considered a disability under the ADA caused the noncooperation, the client should be granted good cause. If, on the other hand, it is determined that the client’s noncooperation was caused by the use of marijuana and not related to the client’s mental health condition, the client can then be offered the
opportunity to re-engage through the re-engagement process, and if no other reason to grant good cause is found, disqualified.

**Referral for A&D assessment and treatment**

Clients should be referred for an A&D screening or assessment when appropriate. Referral for an A&D screening or assessment is appropriate when:

(A) Clients behave in a manner or exhibit signs or symptoms that suggest the presence of alcohol or drug abuse or dependence. This includes physical indicators such as alcohol odor on the client’s breath and nonphysical indicators such as a client’s lack of success in their JOBS activities when there is no other explanation for the lack of success. Such behavior, signs or symptoms should be the basis of the referral for screening or assessment; and

(B) Alcohol or drug abuse and dependence is reasonably predicted to result in behavior likely to prevent employment or the retention of employment.

There may be JOBS activities in some Service Delivery Areas in which all participants, as part of the activity, are screened for alcohol or drug problems. An example is a round-robin orientation that every client in the Pre-TANF Program participates in. As part of round-robin orientation activities, each client meets with an A&D Specialist and completes the Oregon Gain - SS. Screening clients for A&D issues in this manner does not appear to violate the ADA because the sole criterion for selecting individuals for the A&D screening is disability neutral. (The selection is disability neutral because it is based on the client being in the Pre-TANF Program and is not based on a disability.)

**Exception:** The exception to the above is that urinalysis (UA) may NOT be utilized as a tool to screen all TANF applicants, TANF recipients or 100 percent of any client population applying for or receiving TANF. It is the policy of the TANF program that TANF clients may be referred for a UA only when there are behavior, signs or symptoms present that suggest the presence of an A&D issue. Behavior, signs and symptoms may include physical indicators such as obsessive picking at the face or body, bloodshot eyes, difficulty walking, etc. Nonphysical indicators include paranoia, memory loss, a client’s lack of success in their JOBS activities when there is no other explanation for their lack of success, etc.

**Additional resources**

U.S. Department of Health and Human Services
Office for Civil Rights
http://www.hhs.gov/ocr

U.S. Department of Labor
Office of Disability Employment Policy
http://www.dol.gov/odep/
2. **CAF Self-Sufficiency medical programs and ADA**

Under title II of the American with Disabilities Act (ADA) and section 504 of the Rehabilitation Act, and OAR 461-105-0190 (Discriminatory Actions), DHS is required to make reasonable modifications in policies, practices or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the modifications would fundamentally alter the nature of the service, program, or activity. For department-wide policy, go to [http://www.dhs.state.or.us/policy/admin/exec/010_005.htm](http://www.dhs.state.or.us/policy/admin/exec/010_005.htm).

If an applicant, client, OHP Standard Reservation List requester, or their representative contacts a branch office and wishes to make an ADA accommodation request related to CAF SSP Medical programs, encourage them to make the request in writing. If that presents a barrier, please gather the information for them.

The following information is helpful to include with each request:

- Name of requester, applicant, or client;
- SSN or prime number;
- Telephone number, if available;
- Disability;
- Description of the disabling condition and how it impaired the individual’s ability to follow through on a specific requirement required for eligibility. Examples of specific requirements could be: late filing of an application, making a request to be on the OHP Standard Reservation List after it closed, or returning the *OHP Standard Reservation List Application – OHP Application* (DHS 7210R) application after the 45th day. If a client, OHP Standard Reservation List requester, or their representative contacts a DHS/AAA office and wishes to make an ADA accommodation request related to CAF SSP Medical programs, including OHP-OPU, encourage the client, OHP Standard Reservation List requester, or their representative to make the request in writing;
- Medical documentation of the disability and its affect on the individual, if available. Medical documentation is not required to start the process but may be required to make the decision;

- A release of information if a representative is making a request on the behalf of the individual and wants to know the outcome of the request.

Forward the ADA request and information by fax or mail to:

CAF Self-Sufficiency Medical Program
DHS Children, Adults and Families
500 Summer Street NE – E48
Salem, OR 97301-1066
Fax (503) 373-7032