

## Obtaining ADA Accommodations From DSS

### **Legal Authority:**

- §504 of the Rehabilitation Act of 1973, 29 U.S.C §794(a)
- Title II of The Americans with Disabilities Act, 42 U.S.C. §1201 *et seq.*
- US Dept . of Justice ADA Implementation Regulations, 28 CFR §§35.102-35.104
- NY State Office of Temporary and Disability Assistance (OTDA)  
Administrative Directive 06-ADM-05 Revised

### **Section 504 and ADA (Title II) both apply.**

**Section 504:** Enacted in 1973. Limited in scope. Prohibits discrimination against people with disabilities by programs receiving federal \$\$\$. Applies to state and local agencies if they receive federal funding (e.g. Medicaid and TANF), and applies to all of that agency's programs, even those that don't involve federal funding.

**Title II of ADA:** ADA, enacted in 1990. Amended in 2008 (American With Disabilities Amendments Act, ADAAA). Title II Prohibits discrimination in services, programs and activities of state and local governments and their agencies and departments. The 2008 amendments expanded the ADA's coverage by addressing the definition of "disa bled."

Title II applies to state and local programs operated in part by state and local entities' contractors.

Examples: IMA (disability assessments), Suffolk County Dept. of Labor (operates DSS' employments services (SWEP Unit).

## **Who's Covered by the ADA?**

The ADA applies to an individual with a disability. "Disability" is defined as a **physical or mental impairment that substantially limits one or more major life activities.**

**Physical and Mental Impairments** (Defined in DOJ and EEOC implementation regs):

**Physical Impairments:** Physiological disorders or conditions, cosmetic disfigurement or anatomical loss affecting one or more of the following bodily systems: neurological, musculoskeletal, special sense organs, respiratory, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin and endocrine.

**Mental Impairments:** Mental or psychological disorders such as intellectual disabilities (formerly "mental retardation"), organic brain syndrome, emotional or mental illness, and specific learning disabilities.

### **Examples of physical and mental impairments contained in the regs:**

Blindness, deafness/loss of hearing, speech impairments, cardiovascular disorders, cancer, diabetes, seizure disorders, kidney disease, infectious diseases, HIV and AIDS, cerebral palsy, muscular dystrophy, dyslexia, clinical depression, PTSD, schizophrenia, bipolar disorder, anxiety disorders.

#### **NOTE:**

(1) Not every DSM IV condition is considered a "disability" under the ADA. (See 42 U.S.C. §12211 (b) for list of excluded conditions.)

(2) A person *can* meet the ADA definition of "disabled" without meeting Social Security's definition for SSI/SSD eligibility purposes.

(3) A person *can* meet the ADA definition who do not satisfy the state law requirements for work exemptions.

ADAAA contains many statements that the ADA definition of disabled should be interpreted broadly.

## **Substantially Limits” a Major Life Activity:**

What is a Major Life Activity?

“Major” does not mean of central importance.

ADAAA defines it:

Two Types - Daily Tasks & Operations of Major Bodily Functions

Daily Tasks: Include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working.

Operation of Major Bodily Functions: Include functions of the immune system, special and sense organs and skin, normal cell growth, digestive, bowel, bladder neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions.

ADAAA makes clear this is *not an exhaustive list*.

“**Substantially limits**” is not defined in the ADAA or the regs. But, regs, do say:

- It should be construed in favor of expansive coverage of individuals.
- The impairment does not have to prevent or significantly restrict the performing of a major life activity.
- Negative side-effects of medication or treatment and burdens associated with a treatment regimen can be considered.
- Mitigating measures (or person’s refusal to use them) should not be considered in making this determination. (medication, medical appliances, prosthetics, hearing aids, assistive technology, mobility devices, low visions devices (NOT ordinary eye glasses).

**Companions** of DSS applicants and recipients interacting with the agency on an applicant’ or recipient’ behalf have same rights under the ADA.

Example: Deaf adult daughter of DSS recipient comes to help her mother complete recertification papers.

## **Substance Abuse**

Alcoholism is an ADA impairment.

Illegal Drug Use is not, *if* the person is *currently engaging* in the illegal use.

## **Reasonable Accommodations**

Title II: Public entities “shall make reasonable modifications in policies, practices, or procedures when the accommodations are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the services, program or activity.”

Reasonable accommodations are any reasonable change in the way that the agency does something, or in what they require or permit the applicant/recipient to do.

Examples:

- help completing applications and other forms;
- help finding doctor to evaluate the suspected disability;
- allowing extra time for person to submit completed forms or required documents;
- calling person in addition to sending notices re: upcoming appointments;
- third party notification (e.g. notices of upcoming appointments);
- combining appointments;
- meeting by phone instead of in person;
- meeting person at their home where necessary;
- allowing for a flexible work schedule when assigned work if needed to continue treatment;
- supports at work activity or at pre-work assignment training.
- allow the person to do a work activity that isn't countable toward to state or federal participation rates.

**Agency does not have to make accommodations that would pose an undue burden.** Cost to agency and allocation of resources are relevant factors.

Title II: An agency's denial of an accommodation based on under burden or fundamental alterations grounds must be put in writing.

Agency might be obligated to provide accommodation even if not requested.

Individual is not required to accept an accommodation that agency volunteers.

**OTDA mandates regarding ADA rights:**

- assessments
- record of person's disability and accommodations
- offering reasonable accommodations and responding to request

**Service Animals:**

Dogs (and miniature horses) trained to perform tasks for the individual must be permitted.

Therapeutic/emotional support dogs don't qualify, except in the context of federal housing.

Must be leashed (unless the leash would interfere, in which case the dog must be under the person's control).

Agency can't ask for certification/documentation of training. Agency can only ask:

Is the dog required because of a disability?

What work or task the dog trained to do?

**Effective Communication**

Title II: Agency must take appropriate steps to ensure that communications with applicants, participants with disabilities are as effective as communications with others.

Auxiliary Aids and Services

**If Accommodation Denied:**

Grievance Procedures

ADA: Agency must adopt and publish procedures for providing **prompt and equitable** resolution of complaints.

Nassau and Suffolk's ADA Compliance Officers

Nassau: Ellen Abberbock (516) 227-7779

Suffolk: John Nieves (631) 854-9983.

NY State Division of Human Rights, OCR Complaint, Litigation