

**THE WORK BOOK**

**TEMPORARY CASH ASSISTANCE**  
**FOR**  
**DISABLED CUSTOMERS.©**

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## **201 American's with Disabilities Act and Section 504 of the Rehabilitation Act**

- A.** The Americans with Disabilities Act (ADA) provides a broad definition of disability as well as providing protection from discrimination for disabled individuals . ADA also protects the family and friends of a disabled individual from discrimination. For example, an individual whose spouse has HIV/Aids cannot be denied a job because the spouse has Aids.

The broad definitions include:

1. **Impairments that substantially limit major life activities.** This definition applies to what most people think of when they think about a disabled individual, such as: seeing, hearing, speaking, walking, breathing, performing manual tasks, learning, caring for oneself, and working.
  - Individuals with epilepsy, paralysis, HIV infection, AIDS, a substantial hearing or visual impairment, mental retardation and other specific learning disabilities are covered.
  - Environmental, cultural or economic disadvantages such as lack of education or a prison record also are not impairments. For example, a person who cannot read because he has dyslexia is an individual with a disability and would be covered under the ADA. An individual who cannot read because he dropped out of school is not considered to be an individual with an impairment, because lack of education is not an impairment.
2. **The second definition includes people who have a record of disability such as but not limited to those who are recovered from cancer or a mental illness or other such illness or disease.** This also covers people in remission from a disease or those who have flare ups of diseases but otherwise can usually function well on a day to day basis.
  - This coverage includes people with illnesses such as cancer, Multiple Sclerosis or diabetes who may be recovered, in remission or currently undergoing treatment.
3. **The third definition protects individuals who are regarded as having a substantially limiting impairment even though they may not have impairment.**
  - An individual may have suffered a severe facial disfigurement in an accident or in combat. Employers may not deny employment to an individual qualified to perform a job because the employer fears the

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"negative reactions" of customers or co-workers who see the disfigurement.

**B.** ADA and Section 504 of the Rehabilitation Act outline three key requirements that protect the rights of DHR customers with disabilities. They are:

**1. Ensure equal access to all DHR programs.** The local department must offer appropriate services that allow people with disabilities to receive:

a. Individualized treatment –

i. Evaluate each customer on a case-by-case basis.

- Look at each customer's situation.
- Don't lump customers together and send them all to the same work activity.
- What does the customer want to do?
- What can the customer do now?
- What can the customer do When we help him or her get what they need to do what they want to do?

a. Assess potential based on facts and objective evidence instead of generalizations and stereotypes.

- Complete an assessment as soon as possible to determine the customer's skills, knowledge, abilities, support systems and then road blocks.
- Don't make road blocks or barriers the first thing that is assessed. Usually there is a detour or a new road around a road block, our job is to help customers find it.

b. Do not assume people with disabilities can only participate in the most rudimentary work activities. See examples below.

- There are people with Downs Syndrome who work as banks tellers, as actors, waiters and waitresses and in other areas that 20 years ago people never thought they would be able to.
- Renowned physicist, Steven Hawking has been in a wheel chair for most of his life suffering from an incurable motor neuron illness called amyotrophic lateral sclerosis.
- Nick Vujcic is a world known motivational speaker who was born with no arms or legs.

c. Effective and meaningful opportunity –

- Guarantee that customers with disabilities receive the same opportunity to fully benefit from every program aspect as customers without disabilities.

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- d. Provide “meaningful access” to all programs by offering reasonable accessibility, accommodations, auxiliary aids, communications and services.

**2. Modify practices and procedures.** Adjust, to the extent possible, the application process and procedures, training and education programs, work activities and other factors to ensure equal opportunities.

- a. Modifications do not have to be expensive and do not have to result in program alterations and administrative burdens.
- b. A telephone interview instead of a face to face interview. (We encourage telephone interviews for everyone.)
  - 1. Home visits
  - 2. On site interpreters for speakers of other languages, including sign language.
  - 3. Screen magnifiers for electronic devices and for paper applications
  - 4. Large print paper forms
  - 5. Flashing lights in the office to identify an emergency situation
  - 6. A reader or note taker for someone who has a learning disability or someone who cannot read or write
  - 7. Much like a hospital triage, LDSS offices can monitor their reception rooms and move people who self-identify with an illness or disability through faster.
  - 8. Post signs in the office that an application can be completed and left at the office, an application can be completed in SAIL and a phone interview can be completed.

**3. Provide non-discriminatory program administration.**

- a. Ensure that vendors and service providers are experienced and skilled in working with individuals who have disabilities.
- b. Assess the treatment that customers receive from contractors and vendors.
- c. Protect customers from experiencing disability-based discrimination resulting from unlawful actions by contractors and vendors.
- d. Ensure contractors and vendors are providing reasonable accommodation such as:
  - i. Hearing amplification devices, speech, or visual impairment aids
  - ii. Readers, note-takers,
  - iii. Materials in alternative formats
  - iv. TTY/TTD telephone access.
  - v. Interpreters and interpretation services for non-English speakers and for hearing and speech impaired customers.

**C. Special/Reasonable Accommodations**

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1. Customer Contact

- a. When there is customer contact with the local department regardless of who initiated the contact, the local department must ask the customer if the customer requires special accommodation because of a disability.
- b. When the local department contacts the customer about a required interview, participation in a work activity or for other reasons, the local department must advise the customer that special accommodations will be made to assist the customer.
- c. Customers who are not able to come to the LDSS or a vendor appointment because of a disability must be offered a phone interview, home visit or other accommodation.

**202 Work requirements** (See additional information in the *Work Participation* section of THE WORK BOOK.)

For Universal Engagement, all customers must be in a **federally defined work activity (FDWA) or a state defined activity (SDA)** unless an individual is:

- A. The single custodial parent of a child under age 1. They are exempt for a maximum of 12 months in the parent's lifetime.

**Note:** The child under one exemption does not apply to two parent households.

- B. A needy caretaker relative with no children of his or her own in the assistance unit;
- C. Disabled (individual with a disability of at least 12 months duration or whose medical condition will result in the individual's death, who is actively pursuing an SSI application); or
- D. Subject to sanction

**203 Disabled TCA Customers**

- A. Disabled TCA customers fall into specific groups:
  1. Adults or children determined, based on the medical form (500), to have a disability that will last 12 months or more or, if less than 12 months, will result in the individual's death;
  2. Adults or children determined to have less than a 12-month disability;

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3. Minor custodial parents determined, based on the medical form, to have a disability that will last 12 months or more;
  4. Minor custodial parents determined to have less than a 12-month disability.
- B. Adults may have a physical, learning or developmental disability, or the disability may involve the individual's mental health. However, the disability must be considered severe enough to limit:
1. Access to employment;
  2. Employment; or
  3. Learning and development, which limit access to employment.
- C. Children may also have a physical, learning, developmental or mental health disability that limits the child's daily routine activities and requires such care from the adult that it prevents the adult's employment.
1. Verify with a statement from the child's doctor that the parent is needed in the home to care for the child.
  2. The parent must complete a DHR/FIA 434 C form stating why the parent must be in the home with the child and what the child's daily activities are.

#### **204 Case Manager Responsibilities**

- A. Screen all TCA adults and children at application and recertification to determine if an adult or child in the assistance unit has an illness or disability and if the impairment will limit access to employment, daily routine activities, or educational opportunities.
- B. If impairment is claimed the LDSS case manager and the customer complete the TCA Supplemental Medical Evaluation Form – Child Only (DHR/FIA 434-C) for children.
- C. The case manager must request that the customer have a Medical Evaluation form DHR/IMA 500 completed by a licensed health care provider for any disabled person included in the assistance unit (AU).
  - The 500 must state the diagnosis and the expected length of the disability.

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D. When an applicant does not have health insurance or medical assistance to pay for a medical examination to have the form completed, the case manager should provide the customer with a DHR/FIA 312.

E. Customers who have medical assistance:

1. Should use their medical assistance to pay for the medical examination and any lab work or tests needed.
2. Should not be given a 312 to pay for medical examination and tests.

**Note:** Doctors may not bill Medical Assistance and also receive payment through the 312.

F. The **case manager** determines the length of the disability and whether the adult is mandatory for participation in a FDWA, based on the medical evaluation (500), the medical supplement (402W) and the case manager's own knowledge of the disabled person.

## 205 About the DHR/FIA 312

A. Authorizing the Exam

1. To authorize the medical exam and/or lab/test fees the case manager completes the following on the DHR/FIA312 form:
  - a. The name of the local department
  - b. Case information
  - c. Case manager signature
  - d. Check the box for Medical Examination
  - e. Check the box for Lab fees if not included in exam
2. The allowable fee amounts for an examination and lab work or tests are preprinted on the DHR/FIA 312 form. **Do not** write any fee amount in the "Cost Must Not Exceed" section at this time.

**Note:** The supervisor does not sign the DHR/FIA 312 form until after the local department receives the 500 form completed by a qualified, licensed, certified health care provider and any lab work or tests that are required are attached or the doctor states the date the lab work or test results will be available.

B. Payment Authorization



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1. When the case manager receives the completed DHR/FIA 500 form and lab work or tests results back from the doctor or lab, he or she authorizes payment to the health care provider in the amount of:
  - a. DHR/FIA 500 indicating a medical examination was completed, but with no lab work report or test results attached and no date indicated on the DHR/FIA 500 indicating when the lab work or test results will be available, and
  - b. \$40 for lab work or test results report when they are received with the completed DHR/FIA 500 or when the completed DHR/FIA 500 indicates the date the lab or test results will be available.
2. The **case manager**, based on the above allowable fees, will complete the “Cost not to Exceed” section on the DHR/FIA 312 form, and then forward the form to his or her supervisor for signature.
3. The supervisor’s signature on the DHR/FIA 312 form authorizes the local department finance office to pay for the examination and/or lab work /test results. The supervisor forwards the signed form to the local department finance office for payment.

**Note:** The DHR/FIA 312 form must have the medical provider’s federal ID number listed for payment. If the form does not list the federal ID number, contact the medical provider to obtain the number.

To be in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the local department can not forward any medical documentation of an applicant or recipient to the Finance Office.

### 206 Customers Must Apply for all Benefits

- A. It is a condition of technical **eligibility** that TCA customers **must file** for all benefits they may be entitled to receive. These include, but are not limited to unemployment insurance, child support, SSI and Social Security Disability Insurance (SSDI).
- B. A customer who has a severe illness or disability that is expected to last 12 months or more or expected to result in the customer’s death **must file** for SSI benefits at Social Security.
  1. At application, upon receipt of all required verifications including proof of the customer’s SSI application or claim status:

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- a. Code the **CARES** screens;
  - Ensure that disability codes and IAR date are entered on the DEM2 screen; and
  - Enter Application Status codes for SSA (SI) and DEAP (DE) on the UINC screen.
- b. When the customer meets technical and financial requirements, certify the case for 12 months.
2. If the customer has submitted a 500 form stating he or she has a 12 month disability and provides proof they tried to apply and SSA could not give them an appointment within the 30-day application processing time :
  - a. Approve the TCA case for 12 months.
  - b. Have the customer complete and sign the 340. Enter the disability dates and the IAR date on the DEM2 screen.
  - c. Complete a **mandatory 745** alert to follow up within 3 months to ensure that the customer has filed a claim with Social Security.
- C. If the customer does not apply for all potential benefits, **deny** the pending application or **close** the active case, after appropriate adverse action.

## 207 SSA Interim Reimbursement

- A. On June 11, 2001, the Department of Human Resources (DHR) and the Social Security Administration signed an Agreement for Reimbursement to the State for Interim Assistance Payments, Pursuant to Section 1631(g) of the Social Security Act. Under this Agreement, the Social Security Administration reimburses Maryland through the federal Interim Assistance Reimbursement (IAR) program for assistance that the State pays to individuals during:
  1. The months that their applications for Supplementary Security Income (SSI) are pending (**Initial Payment**), or
  2. The months that SSI benefits were suspended or terminated where individuals are subsequently found to be eligible for SSI benefits during the suspension or termination period (**Initial Post eligibility Payment**).
- B. At the point when the customer has applied for both cash assistance and SSI, the cash assistance funds become reimbursable. The customer's signature on the 340 form allows the state to retain the full reimbursable amount (an amount equal to the amount of assistance the customer received from the time the customer applied for both cash assistance and SSI) from the SSI lump sum or through direct payment from the customer
- C. When the **Form 340** is in effect at the Social Security Administration (SSA), the retroactive lump sum SSI benefits are sent to the local department's finance

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office.

- D. Maryland is able to collect a reimbursement for the long term disabled TCA population because they are paid out of State General funds. Federal TANF dollars are not used.

## **208 Completing the Authorization for Reimbursement of Interim Assistance (DHR/FIA 340) form**

- A. The applicant and case manager complete the lower portion of the DHR/FIA 340 form according to the following guidelines
- For local jurisdiction other than Montgomery County , check the **upper** box and enter the name of the Local Jurisdiction
  - If the local office is a district office, enter the County and District Office name (e.g.: Anne Arundel – Annapolis or Prince George’s – Camp Springs).
  - In Montgomery County, check the **lower** box alongside the heading **MONTGOMERY COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES.**
- B. Check either the **INITIAL PAYMENT ONLY** or the **POST ELIGIBILITY PAYMENT ONLY** block. (See information in Section I B below on how to complete this section) Check only one box.
- C. Enter the identifying information:
- **Customer ID Number** – Enter the CARES customer ID;
  - **AU (Assistance Unit) Number** – Enter the CARES AU number;
  - **Category** – Write out “TDAP, TCA” or “PAA”;
  - The customer’s **Social Security Number**;
  - **District/Territory** – Enter the CARES code for your Local Department Office;
  - **Federal Code** - Enter the Federal code for the State of Maryland which is always **21** (See attachment of Code Listings)
  - **County DSS Federal Code** – Enter the 3-digit code for the jurisdiction of the Local Department of Social Services (See attachment of Code Listings);
  - **Applicant’s Name** – Enter the disabled applicant’s last, first, and middle names;
  - Enter the **Applicant’s Street Address**;
  - Enter the Applicant’s **City or Town** of residence;
  - Enter the Applicants **Zip Code**;

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- Enter the Applicant's **Telephone** number;
  - Instruct the Applicant to sign on the **Signature of Recipient** line and enter the current date on the **Date** line.
  - The Case Manager signs and dates on the **Signature of State Representative** line and enters his/her telephone number.
  - **GR** (Grant Reimbursement) **Code** –Enter the 5-digit code. This code is the combination of the Federal Code and County DSS Federal Code (See attachment of Federal Code listings).
- D. Only one box for **INITIAL PAYMENT ONLY** or the **POST ELIGIBILITY PAYMENT ONLY** should be checked. Checking both boxes may void the 340. Review each customer's situation to determine which box is appropriate to check.
1. **Initial Payment Only**- the customer is filing a new SSI application and does not have an existing SSI application pending or in any stage of appeal, as verified in SVES, SOLQ, by SSA or customer's attorney's letter.
    - a. If the customer is found eligible, SSA will send the State the first retroactive SSI payment or an amount equal to the amount of reimbursable public assistance the State paid.
      - SSA may calculate what the amount of assistance was and send the State only the amount of reimbursement owed to the State, or
      - SSA may send the whole SSI amount to the State to calculate what is owed, and the State sends the balance to the customer within 10 days of the State having received it.
    - b. The State may:
      - Deduct from the first SSI payment an amount equal to the amount of public assistance the State paid to or on behalf of the customer
      - Have SSA send the State an amount equal to the amount of public assistance the State paid to or on behalf of the customer.
  2. **Initial Post Eligibility Payment Only**: The customer previously received SSI benefits but the benefits were suspended or terminated by SSA as verified by SVES, SOLQ or a letter from Social Security.
    - a. If the customer is found eligible for SSI to be resumed, SSA will send the State the first retroactive post-eligibility payment of SSI benefits
    - b. The State may:
      - Deduct from the first retroactive SSI payment an amount equal to the amount of public assistance the State paid to or on behalf of the customer

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- Have SSA send the State an amount equal to the amount of public assistance the State paid to or on behalf of the customer

**NOTE:** Retroactive SSI can be from one month to several years of benefits depending on the time SSA takes to make a determination and issue benefits to the customer. Some specific illnesses qualify the customer for presumptive eligibility from SSI which means they will receive SSI within a few months.

E. The DHR/FIA 340 form remains in effect until one of the following:

1. The Social Security Administration makes the **first payment of retroactive SSI** benefits on the customer's claim or
2. The Social Security Administration makes the **first post eligibility payment** of retroactive SSI benefits following the suspension or termination of the customer's benefits; or
3. The Social Security Administration makes **a final determination** on the claim and no timely request for review is filed; or
4. The State and the customer **agree to terminate** the authorization

## **209 340 Form Distribution**

The case manager completes and has the customer sign and date the DHR/FIA 340 form during the interview, when the customer's DHR/FIA 500 equals or exceeds 12 months or when the 500 form shows the disability is expected to result in the customer's death and:

- Gives the **Goldenrod** copy to the customer
- Scans the signed 340 form into the Onbase document imaging system
- Makes sure it is clear and readable
- Shreds the original paper 340

**Note:** As soon as the customer signs the 340 form enter the date in CARES on the customer's DEM2 screen. The same information that is on the 340 is obtained from CARES and electronically sent to SSA. **Do not send a paper 340 to SSA.**

## **210 Local Finance Department Responsibilities**

A. The local Finance Department:

- Receives an e-mail from SSA telling them the interim assistance is available for reimbursement-the customer's SSI has been approved.
- The Finance department acknowledges the e-mail
- Completes the on-line forms for accepting the reimbursement.

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- Ensures there is a signed DHR/FIA 340 in the document imaging database or the case file if the file has not been scanned yet.
- B. Receives the SSI lump sum payment
- C. Calculates the amount of the reimbursement owed to the State
- D. Sends the customer the balance of the SSI payment that is owed to the customer within 10 days of the receipt of the payment
- E. Keeps a record of any SSI reimbursement that could not be retained because the 340 was not available

The LDSS Finance offices have further instructions from SSA on processing the electronic processing of SSI reimbursements in the Finance Manual.

#### 211 Caretaker Relatives other than Parents

- A. There are two categories of needy disabled caretaker relatives other than parents:
1. Those who have children of their own included in the TCA grant, and
  2. Those who do not.
- B. **Disabled Needy caretaker relatives who do not have their own children included in the TCA benefit**
1. The children on the TCA, living with a needy caretaker relative other than their parent, are paid a "Room and Board Allowance" out of State funds.
  2. The benefit amount is one person higher than the TCA benefit for the number of children on the TCA grant.
  3. Case managers include the needy caretaker in the assistance unit as usual; the allowance will be initiated centrally.
  4. The needy non-parent caretaker relative is not subject to work requirements.
- C. **The disabled needy caretaker with his or her own children on the TCA benefit is included in the TCA benefit.**
1. The benefit is a regular TCA benefit, not a room and board payment.
  2. Follow the procedures for the customer with a disability less than 12 months or more than 12 months depending on the caretaker's medical disability.

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3. If the caretaker fails to cooperate with applying for all potential benefits or other eligibility requirements, only the caretaker and the caretaker's own children are sanctioned.

## **212 Disabled Customers < 12 months**

### **A. Customers disabled less than 12 months**

1. Customers with less than a 12-month disability receive federal TCA (TANF disabled).
2. They are placed in the State defined activity Wellness Rehabilitation (OTM) for work participation and have good cause for not participating in a federally defined work activity.
3. At redetermination, they must provide a new medical report verifying the continuation of the disability before the end of the current certification period. (If no new medical is received, the customer must meet work requirements.)
4. If the cumulative disability becomes 12 months or more, the customer must file for all potential benefits (SSI, SSDI etc.) and sign the 340 (Interim Reimbursement form). The customer is exempt from work requirements.

### **B. Training or work for disabled customers**

1. Americans with Disabilities Act of 1990 (ADA) requires us to "provide a reasonable accommodation for an individual's desire for work."
  - a. It is discriminatory to deny an individual with a disability the right to participate in or benefit from any service or aid provided to others.
  - b. Benefits and services provided to disabled individuals must be equal to the services and benefits provided to others.
  - c. Services and benefits may be different only when the differences ensure that they are as effective as those provided to others.
  - d. Accommodation must be made to individuals with disabilities without cost to the individual.

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Accommodations include, but are not limited to:

Qualified interpreters, assistive listening headsets, videotext displays, taped text, readers, materials in Braille, large text print materials and telecommunication devices for the deaf (TDDs).

2. Disabled TCA individuals (those disabled for 12 months or more) **are not required to participate** in a work or training program as part of their TCA eligibility. However, local departments of social services **must** have a screening and referral process in place for any disabled individual who wishes to be referred for work or training.
  - Local departments must make reasonable accommodation for any customer wishing to participate in a work or training activity.
3. Disabled customers and those who provide care for a disabled person should be encouraged to plan for their future.
  - Some people will never be able to work because of physical, emotional or mental disabilities. Others with appropriate training and skills development may become self-sufficient.
4. Where appropriate, case managers should encourage customers with disabilities or those caring for people with disabilities to become involved in available training activities.
  - a. Disabled customers may also be referred to the Maryland State Department of Education, Division of Rehabilitation Services (DORS).
  - b. DORS will complete an assessment of the disabled person's abilities and skills and work to place the individual in an appropriate training or work program.
5. Disabled customers receiving SSI (parents or caretaker relatives) should be encouraged to contact the Social Security Administration (SSA) about the Ticket to Work program.

### **213 Disabled 16-17 year old –not a Parent (child on the TCA)**

- A. The disabled 16-17 year old, not in school, must provide a medical report verifying a disability.



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- B. If the medical report is not provided, the 16-17 year old cannot:
  - 1. Claim good cause for not attending school, or
  - 2. Be disregarded from the WPR, and must meet work requirements.

**214 TCA Adults Caring for a Disabled Family Member**

- A. When a TCA adult is needed in the home to care for a disabled family member.
  - 1. The adult caregiver is exempt from federal work participation requirements.
  - 2. The care provided becomes the caregiver's work activity for universal engagement.
  - 3. The caregiver must provide a statement from the disabled person's physician indicating:
    - a. The caregiver is needed to care for the disabled individual.
    - b. The diagnosis and length of the disability for the disabled individual **except for those receiving SSI or SSDI.**
    - c. If the disabled individual is a child, the parent must complete the DHR/FIA 434C.
- B. The local department must evaluate each assistance unit's needs individually because if the disabled person is out of the home during the day (for school or therapy or rehabilitation for example) it may be appropriate to refer the caregiver to a different federally defined work activity.

**215 Two Able-bodied Parents Providing Care for a Disabled Individual**

- A. Families with two able-bodied parents and a disabled individual are subject to the 60-month time limits.
- B. The parent providing care for the disabled individual is exempt from work participation.
- C. The parent providing the care must have a medical statement verifying the disability and supporting the need for the parent to provide care for the disabled person.
- D. To meet work requirements
  - 1. One parent must provide care while the other parent participates in a FDWA.

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2. The parents may not share the work requirement and the care for the disabled person.
3. The disabled individual must live in the home.

#### 216 Denial of SSI/SSDI

When a customer has been denied SSI/SSDI and has exhausted all appeals or has not filed an appeal to the Social Security Administration (SSA), the customer is considered work eligible and is subject to participation in a FDWA and the 60-month time limits.

#### 217 Conciliation

- A. Customers can prevent sanctions by resolving non-compliance issues during the conciliation period.

Please refer to the Conciliation and Sanction section for information on conciliation and sanction procedures.

- B. Unless the child is disabled, there is no good cause for a child (age16-17) not being enrolled and attending school 80% of the time. If the minor has not provided a current medical indicating continued disability impose an individual sanction.
  - When an individual sanction is imposed for non-compliance with education requirements, not only is the grant reduced but also the non-compliant individual is mandatory for work participation.

#### 218 CARES PROCEDURES for DISABLED TCA CASES

- A. On the **customer's DEM2** screen enter
  1. In the **Approval Source** field enter **HO, HP, MP, PA, or VZ**
  2. In the **IAR DATE** field, enter the **month and year (MM YY)** date the 340 was signed
  3. Enter the **MM YY** of the disability in the **Begin Date** and **End Date** fields
  4. The End Date field can be changed to reflect any consecutive extension of the medical disability. The date should reflect a 12-month disability.
  5. Breaks in the disability period require a new Begin and End Date.

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- B. On the customer's **UINC** screen enter:
1. **APPL TYPE** field enter **SI** for **SSI STAT** field enter **P** for pending
  2. **DATE** field enter the date the customer applied for SSI
- C. The codes above identify the case as TCA State funded for program reporting requirements.
- D. On the **STAT** screen, the children who are not the caretaker's children on a caretaker relative other than a parent TCA case, in their relationship to the head of household and must be coded as:

<b>N/N</b>	niece or nephew,
<b>GC</b>	grandchild/great grandchild,
<b>SI</b>	sibling (brother or sister),
<b>SS</b>	sibling stepbrother or sister),
<b>FC</b>	first cousin,
<b>AU</b>	aunt or uncle,
<b>HS</b>	half sibling (half brother or sister).

## 219 SSI Approval

- A. On the customer's **DEM2** screen enter **SS** and **MM YY** for the month and year the SSI was approved in the **Approval Source** field.
- B. On the customer's **UINC** screen enter:
1. **SI** in the **Source** field
  2. The SSI amount in the **AMT 1** field
  3. **Type** of verification in the **V** field
  4. **AC** in the **Frequency** field
  5. **Change the P to an A at the bottom of the UINC screen to show SSI app is no longer pending.**
  6. **MM DD YY** the SSI was approved in the **Date** field
- C. CARES will automatically code the adult customer as **NM** and child customer as **SI** on the **STAT** screen the **Financial Responsibility** field and **203** (receiving SSI) in the **Reason** field.

## 220 SSDI Approval

- A. If the customer's SSDI application is approved:

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1. **On the customer's DEM2 screen enter RS and MM YY** (the month and year SSDI was approved) In the **Approval Source** field enter
2. On the customer's **UINC** screen enter:
  - a. **LS** in the **Source** field
  - b. The amount of the SSDI in **AMT1** field
  - c. **Type** of verification received in **V** field
  - d. **AC** in the **Frequency** field
  - e. **SA** in the **APPL Type** field
  - f. **A** in the **STAT** field
  - g. **Change the P to an A at the bottom of the UINC screen to show SSDI app is no longer pending.**
  - h. **MM DD YY** the SSDI was approved in the **Date** field

B. CARES will reduce or close the TCA case if the income exceeds the income limit with a **301**-reason code.

C. If the lump sum exceeds the income a penalty type L will appear along with a penalty end date.

**At this time CARES does not count the lump sum penalty correctly. The case manager must manually calculate the length of the lump sum penalty off line.**

1. The case manager must enter the correct lump sum amount remaining on the **MISC** screen in the **Lump Sum Remain** field.
2. On the **CAFI** screen use the **PF 13** key to add free-form text to the notice explaining the penalty to the customer.

D. If the customer reapplies for benefits at the end of the penalty on the **UINC** screen enter:

1. **SA** in the **Source** field
2. The SSDI amount in the **AMT1** field
3. **Type** of verification in the **V** field
4. **AC** in the **Frequency** field

E. For on-going months, enter only the SSDI amount and remove the remaining lump sum amount.

F. If the SSDI and other income exceeds the TCA grant amount, CARES will close the TCA with a 301 code.

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### **221 SSI or SSDI Denial and all Appeals have been Exhausted**

- A. On the **DEM2** enter **MM YY** the SSI or SSDI was denied in the **End Date** field
- B. On the **UINC** screen enter
  - 1. **SI** or **SA** in the **APPL Type** field (may be already entered)
  - 2. **D** in the **STAT** field
  - 3. **MM DD YY** the SSI or SSDI was denied in the **DATE** field
- C. The TCA counter on the DEM2 screen will begin to count in the month following the month the SSI or SSDI is denied.

### **222 Parent/Child Cases**

- A. Deny the TCA application, when a parent in the Disabled TCA case:
  - 1. Refuses to sign the Interim Payment Reimbursement Authorization form for themselves or for a disabled child
  - 2. Does not cooperate with the local department's vocational rehabilitation requirements or
  - 3. **Fails to apply for SSI or follow through on the SSI appeal process**
- B. Follow these steps in CARES
  - 1. In Option **O** on the **AMEN** screen enter the **566 (Non-Cooperation with the Eligibility Process)** code in the **AU Status RSN** field of the TCA **STAT** screen.
  - 2. Commit the interview to the database.
  - 3. Process each application month insuring that the **566** code shows in the **AU Status RSN** field of the TCA **STAT** screen.
  - 4. Finalize the pending TCA AU.
  - 5. On the **CAFI** screen, press **PF-13** and add additional lines of text as follows to the system generated notice:

“Your application for TCA has been denied because you did not cooperate with the necessary TCA Program requirements.”

### **223 Recipients-Sanction for Non-Cooperation with SSI process**

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When a TCA recipient does not comply with the TCA requirements for cooperation with the SSI process take the following actions on CARES after allowing the one conciliation period:

- A. Access the TCA AU via option **R** on the **AMEN** screen.
- B. On the TCA **STAT** screen enter the **566** code in the **AU Status RSN** field.
- C. Fast Path to the **DONE** screen.
- D. Confirm eligibility on the **ELIG** screen.
- E. Confirm eligibility on the **CAFI** screen.
- F. On the **CAFI** screen, press **PF-13** and add the following additional lines of text to the system generated notice:

“Your TCA case is being closed because you did not cooperate with TCA program requirements for cooperation with the SSI process.”

**224 Non-parent caretaker relative recipient with the caretaker’s own children in the assistance unit non-cooperation with the SSI process**

- A. When the head of household (non-parent caretaker relative) is non-cooperative with TCA program SSI application and appeal requirements and has other related children in the TCA assistance unit, eligibility continues for the other related children. The caretaker and the caretakers own children are no longer eligible.
- B. The CARES procedure for this situation is as follows:
  1. Access the TCA AU via option **R** from the **AMEN** screen.
  2. On the TCA **STAT** screen change financial responsibility to **NM** for the parent and the parent’s children.
  3. Fast path to the **DONE** screen.
  4. Confirm eligibility on the **ELIG** screen.
  5. Confirm eligibility on the **CAFI** screen.
  6. On the **CAFI** screen, press **PF-13** and add the following additional lines of text to the system generated notice:

“We cannot pay TCA for you and your children because you did not comply with TCA program requirements for SSI cooperation”

**225 Action on Associated Food Supplement Program Benefits**

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- A. When a TCA sanction occurs due to non-cooperation with TCA requirements for SSI cooperation, the associated food supplement (FS) benefits are processed in the following manner:
1. Access the FS AU via the **R** option on the **AMEN** screen.
  2. Fast path to the **UINC** screen for the case head.
  3. On the **UINC** screen enter the TCA benefit amount using code **OF** (other Unearned Income, FS Countable). If the TCA grant has been reduced use the difference between the prior grant and the sanctioned grant as income type **OF**.
  4. Follow normal CARES processing.
- B. To issue the correct Food Supplement benefit to a household with a sanctioned individual, the following procedure must be used:
1. On the CARES UINC screen for the head of household, enter the TCA benefit amount as “phantom” income using code “OF” (Other unearned income, FS countable only).
  2. This will maintain the FS allotment at the level prior to the sanction.

### **226 Medical Assistance- Sanctioned TCA recipient**

- A. If there is an individual sanction for non-compliance with work requirements, the customer remains eligible for MA (category F01) with the same end date.
- B. The eligibility for Medical Assistance must be determined for a family whose TCA application is denied because of non-compliance with an eligibility requirement.

### **NOTE: ALWAYS NARRATE THE CASE ACTION**

### **227 TCA Disabled Individuals Case Maintenance Tips**

- A. Complete and review SVES, SOLQ, or SDX for each person on the list. Review the:
  1. SSI application date
  2. Decision date
  3. Appeal date

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4. Appeal decision date.

B. The customer must verify SSI status. It is not acceptable to just accept the customer's word that they are cooperating with the SSI process. Unless accurate information is available on SDX or SVES, at least once per year the customer needs to provide verification from SSA or their representative indicating SSI status.

C. Make sure to review the SSA codes on the SVES or SDX screens customers may appear to be in pending status with SSI or SSDI when in fact the code indicates the customer is not eligible. Following are the most frequent codes seen.

1. **APPEALS DECISION and Decision Code:** A 2-position alphabetic field showing the decision rendered on an appeal. Immediately to the right of the APPEALS DECISION Code is the **APPEALS DECISION CODE DATE**.

Code	Value	Code	Value
<b>AD</b>	Dismissed/Abandoned	<b>UA</b>	Unfavorable/appealed by recipient (court case only)
<b>FA</b>	Favorable/Appeal Approved	<b>UF</b>	Unfavorable
<b>FC</b>	Fully/Partially Favorable (converted records only)	<b>UN</b>	Unfavorable/not appealed by recipient (court case only)
<b>FF</b>	Fully Favorable	<b>WC</b>	Dismissed/Withdrawn (converted records only)
<b>FN</b>	Favorable/SSA not appealed (court cases only)	<b>WD</b>	Dismissed: Withdrawn
<b>OT</b>	Closed: Other	<b>1D</b>	Dismissed: Cannot be appealed
<b>PF</b>	Partially Favorable	<b>2D</b>	Dismissed: Filed by improper requestor
<b>T1</b>	Dismissed: Claimant Deceased	<b>3D</b>	Dismissed: Filed late without good cause
<b>AD</b>	Dismissed/Abandoned	<b>4D</b>	Dismissed: Withdrawn
<b>FA</b>	Favorable/Appeal Approved	<b>UA</b>	Unfavorable/appealed by recipient (court case only)
<b>FC</b>	Fully/Partially Favorable (converted records only)	<b>UF</b>	Unfavorable
<b>FF</b>	Fully Favorable	<b>UN</b>	Unfavorable/not appealed by recipient (court case only)
<b>FN</b>	Favorable/SSA not appealed (court cases only)	<b>WC</b>	Dismissed/Withdrawn (converted records only)
<b>OT</b>	Closed: Other	<b>WD</b>	Dismissed: Withdrawn

2. **Non-Pay Status.** Indicates that claimant/recipient is not eligible for SSI/State Supplement payments or that a previously eligible recipient is not currently eligible.



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<b>Code</b>	<b>Value</b>	<b>Code</b>	<b>Value</b>
<b>N01</b>	Recipient's countable income exceeds Title XVI payment and State's payment standard	<b>N33</b>	Engaging in SGA despite impairment. No visual impairment.
<b>N02</b>	Recipient is an inmate of public institution	<b>N34</b>	Impairment is no longer severe at the time of decision and did not last 12 months. No visual impairment
<b>N03</b>	Recipient is outside U.S.	<b>N35</b>	Impairment is severe at the time of decision but not expected to last 12 months. No visual impairment.
<b>N04</b>	Recipient's non excludable resources exceed Title XVI limitations	<b>N36</b>	Insufficient or no medical data furnished. No visual impairment
<b>N05</b>	Recipient gross income from self employment exceeds Title XVI limitations	<b>N37</b>	Failure or refusal to submit to consultative examination. No visual impairment
<b>N06</b>	Recipient failed to file for other benefits	<b>N38</b>	Applicant does not want to continue development of claim. No visual impairment
<b>N07</b>	Cessation of recipient's disability	<b>N39</b>	Applicant willfully fails to follow prescribed treatment. No visual impairment.
<b>N08</b>	Cessation of recipient's blindness	<b>N40</b>	Impairment(s) does not meet or equal listing (disabled child under age 18 only). No visual impairment.
<b>N09</b>	Recipient refused vocational rehabilitation without good cause	<b>N41</b>	Slight impairment. Medical condition alone. Visual impairment or blindness
<b>N10</b>	Recipient refused treatment for drug addiction	<b>N42</b>	Capacity for SGA. Customary past work. Visual impairment.
<b>N11</b>	Recipient refused treatment for alcoholism	<b>N43</b>	Capacity for SGA. Other work. Visual impairment.
<b>N12</b>	Recipient voluntarily withdrew from a program	<b>N44</b>	Engaging in SGA despite impairment. Visual impairment.
<b>N13</b>	Not a U.S. citizen or eligible alien	<b>N45</b>	Visual impairment no longer severe at the time of decision and did not last 12 months.
<b>N14</b>	Aged claim denied for age	<b>N46</b>	Visual impairment is severe at the time of decision but not expected to last 12 months.
<b>N15</b>	Blind claim denied. Applicant not blind	<b>N47</b>	Insufficient or no medical evidence furnished of visual impairment
<b>N16</b>	Disability claim denied. Applicant not disabled	<b>N48</b>	Failure or refusal to submit to consultative examination regarding visual impairment
<b>N17</b>	Applicant failed to pursue claim	<b>N49</b>	Applicant does not want to continue development of a visual impairment claim
<b>N18</b>	Failure to cooperate	<b>N50</b>	Applicant willfully fails to follow prescribed treatment for visual impairment
<b>N19</b>	Recipient voluntarily terminated participation in the SSI program	<b>N51</b>	Visual impairment(s) does not meet or equal listing (disabled child under age 18 only).
<b>N20</b>	Recipient failed to furnish a required report	<b>N52</b>	Deleted from State rolls before 1/73 payment
<b>N22</b>	Inmate of a penal institution	<b>N53</b>	Deleted from State rolls after 1/73 payment
<b>N23</b>	Not a U.S. Resident	<b>N54</b>	Unable to locate applicant
<b>N24</b>	Convicted of felony of fraudulently misrepresenting residence in two or	<b>N55</b>	Impairment due to DAA (nonvisual impairment)

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	more States		
<b>N25</b>	Claimant is fleeing to avoid prosecution for, or custody or confinement after conviction for, a crime which is a felony under the laws of the place from which he/she flees, or is violating a condition of parole imposed under Federal or State law.	<b>N56</b>	Visual impairment due to DAA
<b>N27</b>	Disability terminated due to Substantial Gainful Activity (SGA)		
<b>N30</b>	Slight Impairment. Medical consideration alone. No visual impairment		
<b>N31</b>	Capacity for SGA. Customary past work. No visual impairment.		
<b>N32</b>	Capacity for SGA. Other work. No visual impairment.		

**3. Administrative Suspend**

<b>Code</b>	<b>Value</b>	<b>Code</b>	<b>Value</b>
<b>S01</b>	Report of death by Treasury.	<b>S09</b>	Temporary institutionalization
<b>S04</b>	System is awaiting disability determination (system generated)	<b>S10</b>	Recipient has a bank account and refuses to receive benefits via direct deposit
<b>S05</b>	SGA decision pending	<b>S20</b>	Potential rollback case or disability made prior to 7/73 (inactive)
<b>S06</b>	Address unknown	<b>S21</b>	Recipient is presumptively disabled or blind and has received three months' payments
<b>S07</b>	Returned check for other than address, payee change, or death of payee or representative payee	<b>S90</b>	PR1 change in process because SSR was established under incorrect SSN (rare)
<b>S08</b>	Representative payee development pending	<b>S91</b>	PR1 change in process because SSR was established under incorrect SSN (rare)

The information on SVES or SDX may not be totally accurate, but it is a good indicator of what is going on at SSA.

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## **Ten Most Common Disabilities Claims under ADA**

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### **ADA: The 10 Most Common Disabilities and How to Accommodate**

***By Norman H. Kirshman & Roger L. Grandgenett II***

#### **I. Introduction**

{1} The Americans with Disabilities Act ("ADA") is the most significant employment legislation in a decade. This paper discusses what constitutes a disability under the ADA and what reasonable accommodation and undue hardship mean. This paper will also analyze the ten most common disability claims and how employers accommodate these disabilities.

{2} Title I of the ADA is intended to ensure that individuals with disabilities not be excluded from job opportunities unless they are actually unable to do the job. In a nutshell, no covered entity shall discriminate against a qualified individual with a disability because of the individual's disability with regard to all aspects of employment (job application procedures, hiring and firing, advancement, training, compensation, benefits, etc.). 42 U.S.C.A. Â§ 12112(a). A covered employer must make a reasonable accommodation to the known physical or mental limitation of a qualified individual with a disability unless the employer can show that the reasonable accommodation would cause an undue hardship on the operation of its business. 42 U.S.C.A. Â§ 12112(b)(5)(A). The ADA provides some examples of reasonable accommodation and undue hardship, and these issues will be analyzed later.

#### **II. ADA DEFINITION OF DISABILITY:**

{3} Title I of the ADA protects qualified individuals with disabilities from employment discrimination. Under other employment legislation, such as Title VII or the Age Discrimination in Employment Act, whether an individual is in a protected class is a relatively simple matter. Race, color, sex, national origin and age are, in most cases, easily determined. However, whether an individual is in a protected class under the ADA is more complicated. *Disabilities in the Workplace, Â§1053 (Andrew W. Boden et al. eds., 1996)*

{4} The ADA has a three-prong definition of disability, where satisfaction of any of the three prongs constitutes a disability. The ADA's definition of disability is based

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on the definition of "handicap" found in the Rehabilitation Act. A judgment under either is precedent for the other. *Henry H. Perritt, Jr., Americans With Disabilities Handbook*, Â§ 3.3 (2d ed. 1991).

{5} The first definition of disability defines an individual with a disability as an individual who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment." 42 U.S.C.A. Â§ 12102(2).

### **A. A Physical or Mental Impairment that Substantially Limits One or More Major Life Activities**

{6} In cases where there is an issue of whether an individual has a disability, the first definition of disability is most often litigated. This definition has three subparts that must be shown by plaintiff.

#### **i. Physical or Mental Impairment**

{7} A physical impairment is defined by the ADA to include: "[a]ny physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito urinary, hemic and lymphatic, skin, and endocrine." 29 CFR Â§ 1630.2(h)(1).

{8} A mental impairment is defined by the ADA to include: "[a]ny mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities." 29 CFR Â§ 1630.2(h)(2).

{9} The ADA and EEOC regulations do not list all of the "specific conditions that constitute impairments both because of the difficulty of ensuring comprehensiveness and because new disorders might develop in the future." *Henry H. Perritt, Jr., Americans with Disabilities Act Handbook* Â§ 3.2 (2d ed. 1991). **However, examples of covered physical and mental impairments were included in the legislative history of the ADA: orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, drug addiction and alcoholism and HIV infection.** *Id.* (citing House Labor Report at 51; House Judiciary Report at 28). Serious impairments such as cancer and multiple sclerosis, however, have been held not to be disabilities.

{10} An impairment under the ADA must be a physiological or mental disorder. Tough calls like stress and depression are "conditions that may or may not be

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considered impairments, depending on whether these conditions result from a documented physiological or mental disorder" or whether they result from job or personal life pressures. Equal Employment Opportunity Commission, Technical Assistance Manual for the Americans With Disabilities Act, at II-3.

## ii. Substantially Limits

{11} The second subpart of the definition is that the impairment must substantially limit one or more major life activities. 42 U.S.C.A. Â§ 12102(2)(A). The EEOC regulations use the term "substantially limits" to characterize "the extent to which a physical or mental impairment interferes with an individual's ability to perform one or more of the major life activities." Henry H. Perritt Jr., *Americans With Disabilities Act Handbook*, Â§ 3.2 (2d ed. 1991). The regulations define "substantially limits" as:

{12} "i) Unable to perform a major life activity that the average person in the general population can perform; or

{13} ii) Significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner or duration under which the average person in the general population can perform that same major life activity." 29 CFR Â§ 1630.2(j)(1)(i) & (ii).

{14} The impairment is to be made in comparison to normal people. An example would be a person who can walk ten miles continuously, but experiences pain on the eleventh mile. Because this discomfort is typical of the population, it is not a limitation and, thus, not an impairment. *Id.*

{15} The EEOC regulations also include three factors influencing a determination of substantial limitation: nature and severity of the impairment, how long the impairment is expected to last, and whether the impairment is characterized as permanent or long-term. 29 CFR Â§ 1630.2(j)(2)(i)-(iii).

{16} These factors must be considered because **"it is not the name of an impairment or a condition that determines whether a person is protected by the ADA, but rather the effect of an impairment or condition on the life of a particular person."** Equal Employment Opportunity Commission, Technical Assistance Manual for the Americans with Disabilities Act, at II-4. **AIDS, deafness and blindness are by their nature substantially limiting, but "many other impairments may be disabling for some individuals but not for others, depending on the impact on their activities."** *Id.* An example would be where an individual has mild cerebral palsy. Although cerebral palsy may limit the major life activities of one individual, an individual with mild cerebral palsy only slightly interfering with the ability to speak and has no significant limitation on other major

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life activities is not an individual with a disability under the ADA. *Id.* at II-5.

### iii. Major Life Activity

{17} The third subpart is that one or more major life activities must be substantially limited. 42 U.S.C.A. Â§ 12102(2)(A). Major life activities are activities that an "average person can perform with little or no difficulty." Equal Employment Opportunity Commission, Technical Assistance Manual for the Americans With Disabilities Act at II-3. **Examples include walking, speaking, breathing, performing manual tasks, seeing, hearing, learning, caring for oneself, sitting, lifting, reading, standing and working.** *Id.*

{18} The major life activity of working needs to be especially analyzed, as there are many cases where disability is challenged on this matter.

{19} "It is not necessary to consider if a person is substantially limited in the major life activity of 'working' if the person is substantially limited in any other major life activity." *Id.* at II-6. Thus, if an individual is blind, there is no need to consider whether the individual is substantially limited in working. *Id.*

{20} An individual will not be considered to be substantially limited in working if he or she is only substantially limited in performing a particular job for one employer, or unable to perform a specialized job in a particular field. *Id.* The individual need not be totally unable to work. An individual, therefore, who cannot qualify as a captain of an airline flight because of a minor vision impairment, but who could qualify as a co-pilot, would not be considered substantially limited in working just because he could not perform a particular job as captain. *Id.* **A baseball pitcher who can no longer pitch because of a bad elbow is not substantially limited in working just "because he is no longer able to perform the specialized job of pitching in baseball."** *Id.* "The person must be significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes, compared to an average person with similar training, skills and abilities." *Id.* at 11-6.

### B. Record of Substantially Limiting Condition

{21} The second type of disability is intended to "include people who have recovered from physical or mental impairments, or who have been misclassified as having such impairments." *Henry H. Perritt, Jr., Americans with Disabilities Act Handbook, Â§ 3.2 (2d ed. 1991).* **Individuals with a record of mental or emotional illness, cancer, heart disease or other debilitating illness or have been misclassified or misdiagnosed as having these illnesses, are protected under the ADA, whether or not the individual is currently substantially limited in a major life activity.** 29 CFR Â§ 1630.2(k); 42 U.S.C.A. Â§

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12102(2)(B).

### **C. Regarded as Having Such an Impairment**

{22} The third type of disability includes individuals with impairments that do not substantially limit major life activities, but who are perceived as having substantial limiting impairments or an individual with an impairment that substantially limits major life activities only as a result of attitudes of others toward the impairment. 42 U.S.C.A. Â§ 12102(2)(C). This category of disability was needed, as the Supreme Court has stated, because "society's myths and fears about disability and disease are as handicapping as are the physical limitations that flow from actual impairments." *School Board v. Arline*, 480 U.S. 273 (1987).

{23} The EEOC regulations indicate three circumstances where an individual may be protected under this definition of disability: **where an individual may have an impairment which is not substantially limiting but is treated by the employer as having such an impairment, where an individual has an impairment that is substantially limiting because of attitudes of others toward the impairment, and where an individual has no impairment but is regarded by an employer as having a substantially limiting impairment.** 29 CFR Â§ 1630.2(l)(1)-(3).

{24} The ADA provides three definitions of disability. Although the ADA provides these definitions, the question of whether an individual is considered disabled under ADA is best suited to a case-by-case determination, no matter what the impairment is. *Henry H. Perritt, Jr., Americans with Disabilities Handbook*, Â§ 3.2 (2d ed. 1991). Whether one is disabled cannot be known though lists of impairments because some impairments may be a disability for one person and not for another. **The facts and circumstances of each case must be analyzed to determine whether an individual has a disability.**

### **III. WHAT DOES NOT CONSTITUTE A DISABILITY**

{25} The ADA explicitly excludes certain conditions from being disabilities: homosexuality, bisexuality, transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, other sexual behavior disorders, compulsive gambling, kleptomania, pyromania and psychoactive substance use disorders resulting from current illegal use of drugs. 42 U.S.C.A. Â§ 12211.

{26} Furthermore, "[t]emporary, non-chronic impairments that do not last for a long time and that have little or no long-term impact usually are not disabilities." Equal Employment Opportunity Commission, Technical Assistance Manual for the Americans with Disabilities Act at II-5. Broken limbs, sprained joints, concussions, appendicitis, influenza, common colds, spasms and "except in rare and unusual circumstances," obesity, are generally not considered disabilities. *Henry H. Perritt*,

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*Jr., Americans with Disabilities Handbook*, Â§ 3.2 (2d ed. 1991). However, if an individual had a temporary impairment that did not heal properly and resulted in a permanent impairment that substantially restricted the use of a limb, the individual would be considered to have a disability. EEOC, Technical Assistance Manual for the Americans with Disabilities Act at II-5.

{27} Simple physical characteristics such as eye color and hair color are not impairments. *Id.* at II-2. Moreover, personality traits, "such as poor judgment, quick temper, or irresponsible behavior" are not impairments. *Id.* at II-2. "Environmental, cultural, or economic disadvantages, such as lack of education or a prison record also are not impairments." *Id.*

{28} Courts have found the following not to be disabilities: pregnancy as it is a physical condition not the result of a physiological disorder (*Tsetseranos v. Tech Prototype Inc.*, 4 AD Cases 1635 (D.N.H. 1995); being lefthanded (*De La Torres v. Bolger*, 781 F.2d 1134 (5th Cir. 1986); chemical hypersensitivity syndrome (*McCauley v. Georgia*, 4 AD Cases 1470 (N.D. Ga. 1994); average height or strength that renders a person incapable of performing particular jobs (*Jasany v. U.S. Postal Service*, 755 F.2d 1244 (6th Cir. 1985); very muscular physique which prevented an individual from complying with employer's valid weight requirement (*Tudyman v. United Airlines*, 608 F.Supp. 739 (C.D. Cal. 1984). illiteracy (*Morisky v. Broward County*, 80 F.3d 445 (11th Cir. 1996); violent temper (*Fenton v. The Pritchard Co.*, 926 F.Supp. 1437 (D.Kan. 1996); smoking (*Matter of Fortunoff v. New York State Division of Human Rights*, 642 NYS.2d 710 (A.D. 2 Dept. 1996).

#### IV. REASONABLE ACCOMMODATION AND UNDUE HARDSHIP

{29} The ADA prohibits employment discrimination against qualified individuals with disabilities. A qualified individual is "an individual with a disability who satisfies the requisite skill, experience, education and other job related requirements of the employment position such individual holds or desires and who, with or without reasonable accommodation, can perform the essential functions of such position. 29 CFR Â§ 1630.2(m) (emphasis added).

{30} An employer must make reasonable accommodations to the known physical or mental limitation of a qualified individual with a disability unless it can show that the accommodation would cause an undue hardship on the operation of its business. 42 U.S.C.A. Â§ 12112(b)(5)(A). A reasonable accommodation is "any change in a job or work environment, or an application process that enables a qualified person with a disability to enjoy equal employment opportunities." *BNA, Americans With Disabilities Act Manual*, Â§ 20:0007. The ADA specifically lists what may constitute reasonable accommodation:



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{31} "(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

{32} (B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities." 42 U.S.C.A. Â§ 12111(9).

{33} The ADA does not provide an exhaustive list of reasonable accommodations; the list is only general guidance. *Henry H. Perritt, Americans with Disabilities Handbook, Â§ 4.14 (2d ed. 1991)*. Other examples of reasonable accommodation include "permitting the use of accrued paid leave or providing additional unpaid leave for necessary treatment of the impairment, making employer-provided transportation accessible, providing personal assistants, and providing reserved parking spaces." *BNA, Americans with Disabilities Handbook Manual, at Â§ 20:0008*. Note that employers do not need to promote a disabled employee as part of accommodation or to reallocate the essential functions of a position. *Id.*

{34} **The employer is not required to provide a reasonable accommodation that would constitute an undue hardship on the employer.** Undue hardship is defined by the ADA as action requiring significant difficulty or expense. 29 CFR Â§ 1630.2(p)(1). In determining what constitutes an undue hardship, an employer must consider:

{35} "i. the nature and cost of the accommodation needed.

{36} ii. the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

{37} iii. the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type and location of the facilities; and

{38} iv. the type of operation or operations of the covered entity, including the composition, structure, and facilities of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity." 42 U.S.C. Â§ 12111(10).

{39} An employer has the burden of establishing undue hardship. *Henry H. Perritt, Jr., Americans with Disabilities Act Handbook, Â§ 4.22 (2d ed. 1991)*. An accommodation may be an undue hardship on one employer and not another

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employer. Undue hardship, therefore, is to be determined on a case-by-case basis.

**V. TEN MOST COMMON DISABILITIES:**

{40} The ten most common disability claims under the ADA will be discussed, along with any relevant case law discussing reasonable accommodation or undue hardship and any other pertinent information or guidance.

**A. BACK\SPINAL INJURY:**

{41} The most common disability claim is a back or spinal injury. These account for 19.1% of ADA charges. *Who's Filing Charges With EEOC-And Why, Disability Compliance Bulletin (A Service of the National Disability Law Reporter)*, September 28, 1995 at 3.

{42} The accommodation most likely to be required for employees with back and spinal injuries is lifting limitations. In *Leslie v. St. Vincent New Hope, Inc.*, 5 AD Cases 1773 (S.D. Ind. 1996), the court held that the employer did not reasonably accommodate a disabled resident attendant with an injured back when attendant did not receive light duty. The plaintiff testified that she knew of another resident attendant who hurt her back and received a transfer to another unit and that plaintiff was not considered for a vacant position in another unit when she asked supervisor for light duty. *Id.*

{43} Besides lifting limitations, there are other accommodations that may be required for back injuries. In *Anzalone v. Allstate Insurance Company*, No. 93-2248 (E.La. 1995), the court held that a former insurance claims adjuster who injured his back was entitled to a trial on his ADA claim that, as a reasonable accommodation, his employer should have allowed him to work at home. The court found that most of the adjuster's duties required him to be outside the office and evidence existed that other employees had been allowed to work at home. *Id.* And in *Stewart v. County of Brown*, 5 AD Cases 1018 (7th Cir. 1996), the court held the county reasonably accommodated a deputy sheriff with neck and back pain after he was assigned to a courthouse security position. The county built a platform to raise his chair, installed mini-blinds on windows and placed film on doors of security room to minimize glare, purchased an ergonomically correct chair, lowered monitors and reduced his work schedule. *Id.*

**B. PSYCHIATRIC\MENTAL IMPAIRMENTS:**

{44} The second most common disability claim under the ADA is psychiatric and/or mental disability. Psychiatric and mental impairments account for 11.7% of the ADA claims and include such impairments as depression, psychological problems, anxiety, post-traumatic stress syndrome and bipolar disorder\manic depression. *Who's Filing Charges With EEOC-And Why, Disability Compliance*

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Bulletin (A Service of the National Disability Law Reporter), September 28, 1995 at

{45} In *Marschand v. Norfolk & Western Railway Co.*, 4 AD Cases 1099 (N.Ind. 1995), the court analyzed the reasonable accommodation required for post-traumatic stress syndrome. The court found that the railroad's efforts to find alternative employment for a locomotive engineer who developed post-traumatic stress syndrome after an accident were more than reasonable accommodation. *Id.* The employer offered him clerical positions on the condition that he pass a typing test, offered to pay for a typing class, waived the typing requirement and the engineer accepted one of the three clerical positions offered. *Id.* at 1111.

{46} In *Morton v. GTE North, Inc.*, 5 AD Cases 524 (N.D.Tex. 1996), the court held that the employer reasonably accommodated the plaintiff who suffered from severe depression. The employer directed the plaintiff to the staffing department so plaintiff could determine how to apply for a transfer, plaintiff and supervisor evaluated positions available at the time of request and did not find any position that plaintiff would accept or she could perform successfully, and plaintiff was unable to find a job she could perform. *Id.* at 531-532. Because there was no suitable vacant position available to her, employer did not have to grant plaintiff a transfer. *Id.* at 532. See also *Voytek v. University of California*, 5 AD Cases 1255 (N.D.Cal. 1994) (University reasonably accommodated director of department who had a depressive disorder by offering him a different position either at comparable salary as previous position or reduced responsibilities and salary).

{47} If an employee has a psychiatric or mental impairment that is a disability, the EEOC suggests the following reasonable accommodations: [s]chedule modifications, such as eliminating rotating shifts; extra time off at lunch or at some other time for therapy sessions; job modifications, such as reassignment of marginal tasks to other workers; or reassignment to vacant positions." Psychiatric Disabilities, Total Disability's Effect Focus of Conference, Fair Employment Practices: Summary of Latest Developments, June 17, 1996 at 69.

{48} Furthermore, reasonable accommodations may include environmental modifications for "employees who cannot tolerate noise or distractions, such as putting up partitions or providing offices with doors." *Id.*

### **C. NEUROLOGICAL IMPAIRMENTS:**

{49} Neurological impairments account for 11.7% of ADA claims. Who's Filing Charges With EEOC-And Why, Disability Compliance Bulletin (A Service of the National Disability Law Reporter), September 28, 1995 at 3. Epilepsy, severe migraine headaches and nervous system disorders are examples of neurological

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impairments.

{50} In *Pattison v. Meijer Inc.*, 4 AD Cases 997 (W.D.Mich. 1995), the court found that the employer provided reasonable accommodation to an employee with a head injury and seizure disorder when it offered two modified work schedules and two reassignments. The employee's disability precluded him from driving at night, and a flexible schedule would have allowed the employee to use alternative transportation. *Id.*

{51} However, employers do not have to provide certain accommodations for neurological impairments. In *Barfield v. Bell South Telecommunications, Inc.*, 4 AD Cases 1159 (S.D. Miss. 1995), the court held that it would be unreasonable to allow an employee with migraine headaches to work only on her "good" days because regular attendance at work is an essential job function. And in *Jacques v. Clean-Up Group*, 5 AD Cases 1594 (1st Cir. 1996), the court held that an employer was not required to accommodate an epileptic cleaning person, who could not drive, by allowing the individual to start after 10 a.m. and to split a shift with another employee. The Jacques court stated these accommodations were unreasonable, as they would eliminate the position's essential function of arriving at 8 a.m. *Id.* at 1599. The court also held that it would be an undue burden to require the employer to provide transportation for the employee and economically detrimental to hire another individual to drive the employee. *Id.* at 1600.

#### **D. EXTREMITIES:**

{52} Extremity impairments account for 8.1% of ADA charges. Who's Filing Charges With EEOC-And Why, Disability Compliance Bulletin (A Service of the National Disability Law Reporter), September 28, 1995 at 3. Hand and leg impairments and carpal tunnel syndrome ("CTS") are included under this category of impairments (CTS, however, is often successfully challenged as not being a disability under the ADA).

{53} In *Hudson v. MCI Telecommunications*, 5 AD Cases 1099 (10th Cir. 1996), a customer service representative with CTS requested unpaid leave of indefinite duration. CTS prevented the individual from typing and performing keyboard work. *Id.* at 1100. The court held that unpaid leave of indefinite duration is not a reasonable accommodation under the ADA. *Id.* Reasonable accommodations, according to the court, are accommodations which "presently, or in the near future," enable employee to perform essential job functions. *Id.* at 1101.

{54} If the only accommodation for an individual with CTS is removal of all or a significant portion of keyboard work and keyboard work is an essential job function, this accommodation is unreasonable. *Feliberty v. Kemper Corporation*, 4 AD Cases 875 (N.Ill. 1995). In *Feliberty*, the position of medical director required

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extensive work on a computer. The court held the ADA only requires "accommodations which would allow a disabled employee to perform the essential functions of his job." *Id.* at 878. Because the position required six to eight hours of keyboard work a day, the court held keyboard work was an essential job function and plaintiff, therefore, was unqualified for position. *Id.*

#### **E. HEART IMPAIRMENTS:**

{54} 4.4% of all ADA charges are heart impairment claims. Who's Filing Charges With EEOC-And Why, Disability Compliance Bulletin (A Service of the National Disability Law Reporter), September 28, 1995 at 3. When an individual has a heart defect, the accommodation required will probably be restrictions on lifting or strenuous activity.

{55} In *Keiss v. D&H Distributing*, 5 AD Cases 897 (D.Md. 1996), the court held that an employer had no duty to accommodate a kitchen installer whose heart impairment precluded him from heavy lifting. *Id.* The court found that frequent lifting of more than twenty pounds was an essential function of the kitchen installer position, and the ADA does not require an employer to restructure the essential functions of a position by pushing off heavy work to co-employees. *Id.* The employer had no vacant positions for the employee and was not required to create a position for the individual. *Id.* at 898.

#### **F. SUBSTANCE ABUSE:**

{56} Substance abuse accounts for 3.5% of all ADA claims. Who's Filing Charges With EEOC-And Why, Disability Compliance Bulletin (A Service of the National Disability Law Reporter), September 28, 1995 at 3. Substance abuse refers to both alcohol and drug abuse for ADA purposes.

{57} **The ADA specifically excludes an individual who is currently engaging in the illegal use of drugs as being a qualified individual with a disability.** 42 U.S.C.A. Â§ 12114(a). An employer cannot "exclude as a qualified individual with a disability an individual who:

{58} "(1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

{59} (2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

{60} (3) is erroneously regarded as engaging in such use, but is not engaging in such use." 42 U.S.C.A. Â§ 12114(b).

{61} The ADA does not require the employer to accommodate illegal drug use. Employers are allowed to prohibit the use of drugs and alcohol in the workplace

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and require employees not to be under the influence, permit adverse treatment of unsatisfactory performance related to drug and alcohol abuse, and require compliance with the Drug Free Workplace Act and governmental testing requirements. 42 U.S.C.A. Â§ 12114(c). Additionally, the ADA expresses neutrality on whether it encourages or prohibits drug and alcohol testing. 42 U.S.C.A. Â§ 12114(d).

{62} Most of the reasonable accommodation in substance abuse disability cases involve providing a leave of absence. In *Corbett v. National Products Co.*, 4 AD Cases 987 (E.D.Pa. 1995), the court held that the employer could have reasonably accommodated an alcoholic employee who had entered a 28-day in-patient treatment program by providing him with a leave of absence, where there was no evidence that his attempt at alcohol rehabilitation would be futile. And in *Schmidt v. Safeway Inc.*, 864 F.Supp. 991 (D.C. Oregon 1994), the court held that providing a leave of absence to obtain medical treatment for alcoholism is a reasonable accommodation if it is likely that following treatment, the recovering alcoholic would be able to safely perform his or her duties. The Schmidt court noted, however, that the employer is not required to pay for rehabilitation. *Id.*

{63} In *McDaniel v. Mississippi Baptist Medical Center*, 4 AD Cases 241 (S.D. Miss. 1995), the court held that the employer did not violate the ADA when it fired an employee for relapsing into illegal drug use. Although the ADA protects individuals who are participating in supervised rehabilitation and no longer engaging in drugs or alcohol, the court held that the plaintiff did not fall within the exception. *Id.* According to the court, the plaintiff, free of drugs for a few weeks, was not drug-free for the necessary length of time to be considered "no longer engaging" in drugs or alcohol. *Id.*

## G. DIABETES

{64} Diabetes claims account for 3.5% of all ADA claims. Who's Filing Charges With EEOC-And Why, Disability Compliance Bulletin (A Service of the National Disability Law Reporter), September 28, 1995 at 3.

{65} Diabetes is an impairment specifically listed in the legislative history of the ADA as constituting a physical impairment. *Henry H. Perritt, Jr., Americans With Disabilities Handbook* Â§ 3.2 (2d ed. 1991) (citing House Labor Report at 51; House Judiciary Report at 28). But courts in some instances have found diabetes not to be a disability under the ADA. See *Deckert v. City of Ulysses*, 4 AD Cases 1569 (Kan. 1995) (a discharged diabetic police officer was not disabled within the meaning of the ADA because no evidence of substantial limitation of work existed; an EEOC guideline stating insulin-dependent diabetes is a per se disability is invalid); *Gilday v. McCosta County*, 5 ADA 728 (W.D. Mich. 1996) (a plaintiff with diabetes was not disabled under the ADA because there was no substantial

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limitation in the major life activity of work or any other major life activity; his condition does not prevent him from caring for himself, performing manual tasks, learning or performing any other major life activity).

{66} Two recent cases have analyzed reasonable accommodation and diabetes. In *Siefken v. Village of Arlington Heights*, 4 AD Cases 1441 (7th Cir. 1995), the court held that a proposal by a diabetic ex-police officer that he be given another chance after a severe hypoglycemic episode to change his monitoring techniques is not a request for reasonable accommodation. The court held the ADA requires employers to consider changes in its work rules, facilities, terms and conditions of employment, but does not require employers to give employees second chances. *Id.* at 1442.

{67} Furthermore, in *Myers v. Hose*, 4 AD Cases 391 (4th Cir. 1995), the court held that the employer was not required to hold a job indefinitely until a diabetic ex-employee's health problems were corrected. According to the court, it would significantly burden the employer to grant an indefinite period of leave to give the employee time to control his diabetes. The court stated the employer must promptly fill positions to meet business demands and cannot be forced to keep a position open for indefinitely. *Id.*

#### **H. HEARING IMPAIRMENTS:**

{68} Hearing impairments constitute 3% of ADA claims and include complete deafness and significant hearing loss. *Who's Filing Charges With EEOC-And Why*, Disability Compliance Bulletin (A Service of the National Disability Law Reporter), September 28, 1995 at 3.

{69} In *Bryant v. Better Business Bureau of Greater Maryland*, 5 AD Cases 625 (D. Md. 1996), the court held that the employer should not have denied a hearing impaired coordinator the accommodations of a text telephone system (TTY) device to assist the coordinator with telephone calls. The court held that undue hardship was not shown by employer, despite claims by employer that the TTY would have slowed plaintiff down in her work, been awkward and created time delays for calls to be completed. *Id.*

{70} In *Schmidt v. Methodist Hospital of Indiana, Inc.* 5 AD Cases 1340 (7th Cir. 1996), a failure by the employer hospital to transfer a hearing-impaired nurse, who had problems setting up a dialysis machine because of her impairment, from hemodialysis to orthopedics did not violate the ADA. The court found the hospital offered the nurse additionally training in hemodialysis unit but he refused, and hospital offered nurse the opportunity to resign from his position and reapply for a position in orthopedics, which he declined. *Id.* at 1342. The court held the failure to

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accept these reasonable accommodations rendered him unqualified. *Id.*

**I. VISION IMPAIRMENTS:**

{71} Vision impairments account for 2.8% of ADA claims. *Who's Filing Charges With EEOC-And Why, Disability Compliance Bulletin (A Service of the National Disability Law Reporter), September 28, 1995 at 3.* Vision impairments include total blindness and serious vision problems and accommodations may range from providing reading assistants to purchasing certain equipment.

{72} In *Fink v. New York City Dept. of Personnel*, 4 AD Cases 641 (2d Cir. 1995), the court found a city personnel agency that conducted civil service examination made reasonable accommodations to visually disabled candidates. The agency provided the visually disabled with a tape recorder, a tape recording of the examination, and a reading assistant to assist with the tape recorder and to read questions and answers. *Id.* at 643. The agency also provided a private room to visually disabled candidates and allowed additional time to take the examination. *Id.* In *Courtney v. American National Can Co.*, 4 AD Cases 1583 (Iowa 1995), an employer reasonably accommodated a warehouse forklift driver's vision disability when it assigned him to a machine operator position, where his vision impairment did not affect the operation of the machine.

{73} But as is the case with other disabilities, an employer is not required to create a position for a visually impaired employee or reassign individual to another position. In *Riblett v. Boeing Co.*, 4 AD Cases 1679 (D.Kan. 1995), the court held that the ADA did not require an employer to transfer a draftsman, who had no concept of flat pattern development due to vision defects, to a different position. According to the court, reassignment to another position is not required by the ADA and plaintiff did not show employer had vacant positions for which plaintiff was qualified. *Id.* at 1684.

**J. BLOOD DISORDER:**

{74} 2.6% of ADA claims involve blood disorders, including hepatitis. *Who's Filing Charges With EEOC-And Why, Disability Compliance Bulletin (A Service of the National Disability Law Reporter), September 28, 1995 at 3.*

{75} It is important to note that an employer may refuse to assign or continue to assign an individual to a position involving the handling of food if the individual has hepatitis a or any other covered pathogen and if employer cannot eliminate the risk of transmission through reasonable accommodation. *42 U.S.C.A. Â§ 12113(d)(2).*

{76} In a Rehabilitation Act case, the court held that the U.S. Marshals Service did not have to reassign an employee with hepatitis. *Fedro v. Reno*, No. 93-1489 (7th Cir. 1994). In *Fedro*, the court found that all full-time positions available risked the



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transmission of hepatitis during a "scuffle or confrontation" and the employer was not required to combine two available part-time positions into one full-time position.