



Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Transitional Assistance
600 Washington Street • Boston, MA 02111


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Field Operations Memo 2009-7
February 12, 2009

To: Transitional Assistance Office Staff
From:  John Augeri, Assistant Commissioner for Field Operations
Re: Department Obligations Under the Americans With Disabilities Act (ADA)

Introduction

The Department has certain obligations towards applicants and clients under the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973. Section 504 makes it illegal for public agencies receiving federal funds to discriminate against individuals with disabilities. Title II of the ADA prohibits discrimination on the basis of disability by states and government entities. Generally, the Department must provide an individual equal opportunity to participate in or benefit from its programs. The Department's ADA regulations can be found at 106 CMR 701.390 for the cash assistance and EA programs, and 106 CMR 360.250 for the SNAP program.

Purpose of Memo

The purpose of this memo is to remind TAO staff about:

- current ADA policies;
- timelines for processing ADA accommodation requests; and
- TAO Accommodation Teams used for handling and reviewing ADA-related issues including requests for ADA accommodations.

This memo should reinforce and add to information TAO staff have received in mandatory ADA training.

Obsolete Memos This memo obsoletes Field Operations Memos 2008-20 and 2008-35.

ADA Definition of Disability

ADA defines disability as:

- a physical or mental impairment that substantially limits one or more major life activities;
- having a record of such an impairment; or
- being regarded as having such an impairment.

Major life activities include caring for oneself, walking, performing manual tasks, seeing, hearing, sleeping, reading, concentrating, thinking, communicating, breathing, learning and working.

Disability under the ADA can include “hidden” disabilities such as learning disabilities or psychological impairments.

Note: A person may be qualified for an ADA accommodation without qualifying for a disability exemption for a Department program. The ADA has different standards for determining disability than the standards used to determine exemption eligibility.

ADA and Reasonable Accommodation

DTA must provide ADA accommodations to “qualified individuals with disabilities” allowing them to meet Department requirements and to utilize Department services. Examples of ADA accommodations could be:

- arranging to hold an administrative hearing in a wheelchair-accessible room for a client with mobility limitations;
- providing special learning aids in an ESP training program for a client with a learning disability; or
- waiving face-to-face interviews for clients whose disabilities prevent traveling.

To be protected under the ADA, applicants and clients must be “qualified individuals with disabilities,” which means being able to meet all of the **essential** eligibility requirements for the Department’s programs and services, either with or without an ADA accommodation. ADA accommodations should not fundamentally alter the nature of services or activities of the affected programs.

**ADA and
Reasonable
Accommodation
(continued)**

For example, a client whose disability has resulted in a foster placement for her only child will **not** meet one of the essential elements of TAFDC which requires that the dependent child live with the parent. Nor would it be an ADA accommodation to entirely waive the housing search requirement for a disabled EA client, because to waive housing search would fundamentally alter the EA program by changing it from a temporary emergency shelter program to a permanent housing program.

Note: Agencies that contract with the Department such as shelters or ESP providers also have ADA obligations. If a DTA case manager feels that the contractor is not meeting its obligations, that issue should be raised to his or her TAO Accommodation Team.

**TAO
Accommodation
Teams**

TAO Accommodation Teams are charged with handling all aspects of ADA requests including helping the applicant or client submit an ADA request, assisting with verifications, if necessary, consulting with colleagues on how to handle requests, approving or denying ADA requests, etc. Each TAO has a TAO Accommodation Team composed of three members. There are two fixed members per office, usually the TAO director and a supervisor and a revolving member (usually the case manager assigned to the applicant or client requesting the ADA accommodation). TAO Accommodation Teams will meet on a case-by-case basis whenever necessary and appropriate.

**Recognizing an
ADA
Accommodation
Request**

Case managers should be alert to situations where it appears an applicant or client is having difficulty with a Department service, activity, rule or requirement because of a disability. If such a situation arises, they should inform the individual of the opportunity to request an ADA accommodation. They should not, however, assume an individual has a disability unless the condition is obvious, for example, an individual uses a wheel chair, or the individual has informed the case manager of the disability.

If an applicant or client communicates to the case manager that he or she has a physical or mental disability that prevents him or her from meeting Department requirements or from utilizing Department services, that individual may be requesting an ADA accommodation. The applicant or client does not need to reference “ADA” or say that “an accommodation is needed” in order to get help.

Accordingly, requests for ADA accommodations can be made either orally or in writing to the case manager, TAO Accommodation Team or Director of Equal Opportunity. An ADA accommodation may be requested **at any time**.

Thirty-Day Decision Timeline

When a case manager receives a reasonable accommodation request from an applicant or client, the TAO Accommodation Team must be informed immediately. The TAO Accommodation Team must make its decision as soon as possible, but no later than 30 days from the applicant's or client's request. If the impairment is not evident, the applicant or client will need to verify that the disability meets the ADA requirements, as well as the need for an accommodation. In these situations, the applicant or client must provide medical documentation of a physical or mental condition that substantially limits a major life activity (such as caring for oneself, walking, performing manual tasks, seeing, hearing, sleeping, reading, concentrating, thinking, communicating, breathing, learning and working) as compared to the ability of a person without a similar impairment to perform the same activity. In addition, if not obvious, the connection between the requested accommodation and the disability must also be documented. The case manager should explain to the applicant or client what is needed and offer to assist in obtaining the documentation.

Remember: The Department has an obligation to assist all applicants and clients. Case managers should always assist individuals who need help filling out applications, obtaining verifications, understanding notices and/or policies, etc., regardless of whether or not they have a disability.

The Accommodation Process

Each ADA accommodation request must be considered individually as the decision to approve or deny the request is based upon the particular facts of each case. If an ADA accommodation is warranted, deciding the particular accommodation is usually an interactive process between the applicant or client, the applicant's or client's authorized representative, the Department and possibly the applicant's or client's medical providers. Case managers and the Accommodation Team members are encouraged to discuss ADA accommodations with the Director of Equal Opportunity prior to making a determination if help is needed.

Case managers are responsible for completing the ADA-1 accommodation request form (Attachment A) as well as ensuring approved accommodations are implemented. Once a decision is reached, the case manager must document it on the ADA-1 and send copies to the TAO Accommodation Team, the Director of Equal Opportunity and retain the original in the case record.

If a requested ADA accommodation is something the case manager would and could do regardless of whether a disability exists, then the case manager does not need to submit the request to the TAO Accommodation Team for approval, but should, alone or with the supervisor, implement the accommodation, complete the ADA-1 and place it in the case record.

**The
Accommodation
Process
(continued)**

A copy of the ADA-1 must still be forwarded to the TAO Accommodation Team so it can be documented in their records as well.

Example 1: An applicant requests an afternoon appointment so she can attend therapy for her back disability in the morning. As the case manager would, and could, approve this request for a reason unrelated to disability, it should be approved without referring the matter to the TAO Accommodation Team.

Example 2: A client requests a home visit due to his agoraphobia. As the case manager would and could approve this request, it should be approved without referring the matter to the TAO Accommodation Team.

If a requested ADA accommodation is something the case manager would not normally do, or if no accommodation readily presents itself, then the case manager must submit the request on the ADA-1 to the TAO Accommodation Team to determine an appropriate response.

If the TAO Accommodation Team approves an ADA accommodation, then the case manager must document it on the ADA-1 and on the BEACON Narratives tab, inform the applicant or client and implement the approved accommodation as soon as possible.

Example 3: A client says she needs more than ten days to provide documentation needed to verify her continuing TAFDC eligibility because her depression has incapacitated her. Because she is requesting a modification of the Department's verification policy, this request should be referred to the TAO Accommodation Team. The case manager should also offer to assist the client in obtaining these verifications while the ADA request is pending.

If the ADA accommodation is denied, or a different accommodation is approved than the one requested, the applicant or client must receive **written** notice in the form of the completed ADA-1 which informs him or her of the TAO Accommodation Team's decision as well as the right to contact his or her case manager to request reconsideration of the decision. Case managers must also send the applicant or client a multi-lingual notice with the completed copy of the ADA-1.

**Approval
Documentation**

If an accommodation is granted, the case manager must:

- file a copy of the approval notice (ADA-1) (Attachment A) in the case record;
Note: a designated permanent member of the TAO Accommodation Team must also keep a copy of the notice;
 - annotate the BEACON Narratives tab, explaining the accommodation and whether the accommodation need is ongoing. When entering the Narrative, always begin the Narrative with “ADA” to ensure that the accommodation can be readily identified; and
 - create a “yellow post-it note” on BEACON noting the accommodation.
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**Decision Over
Thirty Days**

If a decision is not made within 30 days and the necessary verifications have been received, the applicant or client may choose to file his or her request directly with the Central Office Accommodation Appeal Committee for initial consideration. The case manager must inform the applicant or client of this option, and if the applicant or client elects to file directly with the Central Office Accommodation Appeal Committee, the case manager must ensure that a copy of the completed ADA-1 (Attachment A) is faxed to the Assistant Commissioner for Field Operations at (617) 348-5659 to begin the consideration process. The Committee must make its decision as soon as possible, but no later than 10 days from the date of the applicant’s or client’s request. The Central Office Accommodation Appeal Committee may require the case manager to contact the applicant or client regarding needed verifications and/or assistance.

**Late
Verifications**

If the client does not provide necessary documentation by day 30, the TAO Accommodation Team must deny the request due to lack of verification. If verifications are provided after day 30, there is no need for the client to fill out a new request form. The case manager should annotate the original request form with the date the verifications were received and treat the accommodation request as renewed.

**Reconsideration
of
Accommodation
and Appeal
Rights**

If the TAO Accommodation Team denies the ADA accommodation request, or offers an ADA accommodation different from the original request, the individual can request reconsideration by the Central Office Accommodation Appeal Committee. The case manager must ensure that a copy of the completed ADA-1 is faxed to the Assistant Commissioner for Field Operations at (617) 348-5659 to begin the reconsideration process.

If the Central Office Accommodation Appeal Committee approves the applicant's or client's original ADA accommodation request, then implementation of the ADA accommodation must begin immediately.

If the Central Office Accommodation Appeal Committee upholds the denial or upholds the ADA accommodation the applicant or client originally refused, **written** notice in the form of the ADA-2 (Attachment B) must be sent by a Central Office representative to the applicant or client stating the denial and the individual's right to a Fair Hearing. The ADA-2 also informs the individual of his or her right to file a claim with the Massachusetts Commission Against Discrimination and/or the Office for Civil Rights of the U.S. Department of Health and Human Services and must be accompanied by a multi-lingual notice.

**Timeline for
Reconsideration
Process**

If an accommodation request is denied by the TAO Accommodation Team or the approved accommodation is different from the one requested, the applicant or client has a right to have the decision reconsidered by the Central Office Accommodation Appeal Committee. This committee has 10 days to make a decision on reconsideration requests. If a decision is not made within this time frame, the applicant or client can request a fair hearing with the Division of Hearings.

**Request for
Modification**

If, after implementing an ADA accommodation, a request for modification of the accommodation is made, it must be (re)submitted to the TAO Accommodation Team for approval. A new ADA-1 must be completed indicating the applicant or client is requesting a modification of the initial ADA accommodation request. The procedures used for requesting modification of an ADA accommodation are the same used for requesting an ADA accommodation.

Questions

If you have any questions, please have your Hotline designee call the Policy Hotline.



Massachusetts Department of Transitional Assistance
REQUEST FOR AN ADA ACCOMMODATION

- Initial Request
- Modification of Initial Request

TAO

Date

Applicant/Client Name

SSN

Street Address/City/ZIP

Reason for ADA Accommodation Request

Requested ADA Accommodation

Applicant/Client Signature

Date

Case Manager Signature

Date

The Department has thirty (30) days to make a decision on your request. If a decision is not made within thirty days, you may file your accommodation request directly with the Central Office Accommodation Appeal Committee. Please see the back of this form. The Appeal Committee will have ten (10) days to make its decision.

If you have trouble reading or understanding this notice, please feel free to call Recipient Services at 1-800-445-6604. We can help explain it to you.

Decision: **Approved** **Denied**

Approved Accommodation (if any):

Reason for denial, if applicable: _____

IMPORTANT: If you disagree with the decision reached by the TAO Accommodation Team you have the right to reconsideration by the Central Office Accommodation Appeal Committee. You must make your request for reconsideration within 45 days of this decision. Please see the back of this form.

Department Representative Signature

Date

REQUEST FOR AN ADA ACCOMMODATION RECONSIDERATION

If you have trouble reading or understanding this notice, please feel free to call Recipient Services at 1-800-445-6604. We can help explain it to you.

I disagree with the decision on the reverse side of this notice and request the decision be reconsidered.

Applicant/Client Signature

Date

Return to:

**Department of Transitional Assistance
Assistant Commissioner for Field Operations
600 Washington Street, 4th Floor
Boston, MA 02111**

IMPORTANT: The Central Office Accommodation Appeal Committee will have ten days to make its decision. If the Central Office Accommodation Appeal Committee upholds the TAO Accommodation Team decision, you have the right to a Fair Hearing.



Massachusetts Department of Transitional Assistance
**CENTRAL OFFICE ACCOMMODATION APPEAL
COMMITTEE REVIEW FORM**

Attachment B

If you have trouble reading or understanding this notice, please feel free to call Recipient Services at 1-800-445-6604. We can help explain it to you.

TAO

Date

Applicant/Recipient Name

SSN

Street Address/City/ZIP

This is to inform you that the Central Office Accommodation Appeal Committee has reviewed your request for a Reasonable Accommodation and have:

Approved an ADA Accommodation as described below.

Denied your request for an ADA Accommodation.

If approved, description of ADA Accommodation: _____

If denied, reason for denial _____

If you disagree with the decision reached by the Central Office Accommodation Appeal Committee you have the right to a Fair Hearing. The reverse side of this notice contains important information about your hearing rights. You must request this Fair Hearing within 90 days. To request a hearing, complete the reverse side of one copy of this notice. You also have the right to file a claim with the Massachusetts Commission against Discrimination and/or the Office for Civil Rights of the U.S. Department of Health and Human Services. You may also contact your local legal services office for more information about your rights.

Accommodation Team Representative Signature

Date



Notice of Request for a Fair Hearing
Massachusetts Department of Transitional Assistance
Division of Hearings
P.O. Box 167, Boston, Massachusetts 02112-0167

If you have trouble reading or understanding this notice, please feel free to call Recipient Services at 1-800-445-6604. We can help explain it to you.

YOUR RIGHT TO APPEAL: If you disagree with any action or inaction taken by the Department of Transitional Assistance (DTA), you have the right to appeal and receive a fair hearing before an independent referee. DTA must receive your request for a fair hearing no later than 90 days from the date on this notice. Exceptions to the 90-day time limit are: (1) you have 21 days to request a hearing on Emergency Assistance (EA) shelter benefits, (2) you have 30 days from the date of mailing of the notice by the Department of Revenue to request a hearing regarding the intercept of your state tax refund, (3) you may appeal the amount of your Food Stamp (FS) benefits at any time during your FS certification period, if you think you are not receiving the correct amount, (4) you have up to 120 days if DTA fails to act on your request for services, and (5) you have up to 120 days to appeal alleged coercive action or otherwise improper conduct or up to one year under certain specified circumstances.

HOW TO APPEAL: If you wish to request a fair hearing, send this page with the bottom section completed to: **DTA, Division of Hearings (DOH), P.O. Box 120167, Boston, Massachusetts 02112-0167 or fax to (617) 348-5311.** Please keep the copy for your own records.

IF YOU ARE CURRENTLY RECEIVING BENEFITS, READ THIS SECTION: Your benefits will be continued until a decision is made on your appeal if DOH receives your appeal request within 10 days from the date on this notice. If you are appealing a FS issue, and your FS certification period ends before your appeal is decided, you will continue to receive the same FS benefits only until the end of your certification period. If you receive benefits during your appeal, but lose your appeal, DTA can recover the benefits to which you were not entitled. If you receive TAFDC time-limited benefits during an appeal, which you then lose, the months for which you have received benefits will count toward your time-limited benefits. If you do not wish to continue to receive benefits during your appeal, check Box A below. If you do not receive benefits during your appeal, and you win your appeal, DTA will promptly correct any underpayment.

WHEN THE HEARING WILL BE HELD: You will be given at least 10 days notice prior to the fair hearing of the date, time and place of the hearing to permit you time to prepare your case. If you wish to have a fair hearing scheduled sooner, check Box B below. Fair hearings on EA shelter benefits are expedited; you will be given at least two days notice prior to the fair hearing of its date, time and place. If you have good cause for not being able to attend the fair hearing, please contact DOH at (617) 348-5321 or 1-800-882-2017 (TTY (617) 348-5337 or 1-800-532-6238 for the Deaf or hard-of-hearing), before the hearing date, so that your hearing can be rescheduled. Failure to appear at the fair hearing without good cause may result in the dismissal of your appeal, except for the first scheduled hearing involving any aspect of the FS Program where good cause for rescheduling need not be demonstrated.

YOUR RIGHT TO BE ASSISTED AT THE HEARING: If you cannot speak English or understand it well or if you are Deaf or hard-of-hearing and wish to have DOH provide an interpreter, please write that on this appeal request or call DOH at (617) 348-5321 or 1-800-882-2017, (TTY (617) 348-5337 or 1-800-532-6238) at least a week before the hearing. At the hearing, you may be accompanied by an interpreter, attorney, or other representative at your expense. You may wish to contact a local legal services office or community agency for assistance. Information about local legal services offices and other services provided by community agencies in your area can be obtained by contacting your local office. These agencies may provide advice or representation at no cost to you.

You or your representative may subpoena witnesses, present evidence and cross-examine witnesses. The referee must make a decision on all evidence presented at the fair hearing. You or your representative will be permitted to see your case file before the hearing. If you want to review your case file, schedule an appointment with your worker before the hearing.

NONDISCRIMINATION NOTICE FOR CLIENTS: Under federal and state law the Massachusetts DTA does not discriminate on the basis of race, color, sex, sexual orientation, national origin, religion, creed, age or disability. If you have any questions or concerns, we encourage you to contact the Director of Equal Opportunity, DTA, 600 Washington Street, Boston MA 02111, Tel. (617) 348-8490 (TTY (617) 348-5532 for the Deaf or hard-of-hearing).

I, _____, hereby request a fair hearing before a referee of DOH.

- A. I do not wish to continue receiving the disputed amount of benefits during the appeal process.
- B. I request an expedited hearing.

The reason I wish to request a fair hearing is _____

Your Name (Print) _____ SSN _____

Address _____ Telephone () _____

City/ZIP _____ Date _____

Your Signature _____

My authorized representative is: Name _____ Title _____

Address _____ City/ZIP _____

Telephone () _____