Disability evaluations: represent most common nontherapeutic evaluations requested of psychiatrists; adults with serious mental illness have unemployment rate of ≤80%; definition of disability varies considerably depending on type of evaluation being performed

American Medical Association (AMA) guidelines (sixth edition): letters appointing psychiatrist to perform disability evaluation often request use of AMA guidelines

AMA definitions: impairment — “significant deviation, loss, or loss of use of any body structure or body function”; disability — how limitation affects or limits activities; eg, if evaluating professional athlete, disability would describe result of impairment in terms of how it affected ability to play sport

Rating severity: guidelines assign specific percentages to specific injuries (eg, injury to elbow can represent ≤4% disability, but knee injury qualifies for ≤15%); maximum medical improvement — describes point at which patient has received maximum amount of treatment, and no further recovery can be anticipated; physical vs mental disorders — physical disorders take precedence; physical disorders described in all-inclusive ratings, while mental disorders fall into only 3 categories (mood disorders, anxiety disorders, psychotic disorders); AMA guidelines exclude several mental disorders and require use of specific rating scales; psychiatric impairment can account for only ≤50% disability

World Health Organization Disability Assessment Schedule (WHODAS) 2.0: Diagnostic and Statistical Manual of Mental Disorders (Fifth Edition; DSM-5) no longer requires scale for measuring disability (eg, previously used Global Assessment of Functioning scale); instead, DSM-5 mentions, but does not require, WHODAS; many concerns exist about use of WHODAS, and it has been not universally adopted; in particular, asks patients how disabilities affect 6 different domains, but without differentiating between physical and mental or emotional disabilities; therefore, evaluators may have difficulty knowing cause of disability in specific domain (eg, if patient with paralysis and depression reports difficulty moving around home, may be caused by tiredness and fatigue associated with depression, or solely by physical aspect of impairment); also does not include screen for malingering (patients can easily report high degree of disability in all domains)

Social Security Evaluations and Benefits

Supplemental Security Income (SSI) vs Social Security Disability Income (SSDI): SSDI — provides payments for workers who become disabled; SSI — provides payments for individuals who have never worked; eligibility and amount of payment means-tested; indigent and blind individuals may be eligible; provides only minimum income

Social Security definition of disability: inability to engage in any substantial, gainful activity (not necessarily one’s previous job) by reason of “medically determined impairment”; includes disorders expected to result in death or last >12 mo; definition of medically determined impairment — must result from some sort of abnormality shown by acceptable clinical or laboratory techniques; should be shown by evidence other than self-report alone (eg, collateral information); key components — medically determined impairment; inability to work; inability to perform any job available in substantial numbers; other factors may be considered (eg, education, work history, other medical factors)

Mental disorders: Social Security has 9 qualifying categories for children and 11 for adults; as of 1997, substance- and alcohol-related disabilities no longer covered, although independent disorders caused by substance or alcohol abuse (eg, permanent brain damage organically caused by substances) still receive coverage

Paragraphs: paragraph A — medical findings substantiating disorder; paragraph B — functional limitations; paragraph C — additional factors

5. Describe how various court decisions and amendments to the ADA have altered and expanded its protections.

Faculty Disclosure

In adherence to ACCME Standards for Commercial Support, Audio Digest requires all faculty and members of the planning committee to disclose relevant financial relationships within the past 12 months that might create any personal conflicts of interest. Any identified conflicts were resolved to ensure that this educational activity promotes quality in health care and not a proprietary business or commercial interest. For this program, members of the faculty and planning committee reported nothing to disclose.
Test of functional limitations: 4 domains — activities of daily living; social functioning; concentration, persistence, and pace (in employment and other activities); episodes of decompensation

Residual Functional Capacity: work-related abilities that remain in spite of impairment

Private disability insurance: coverage varies significantly (eg, for physicians, ranges from inability to perform specific function of present job to inability to perform specific function or aspect of work as general physician); must be aware of relevant language for definition of disability

Disability and the Law

Rehabilitation Act of 1973: first legislation in history written to prevent discrimination against disabled individuals in workplace; applies to federal government, postal service, and all federal contractors and subcontractors; included definitions of “handicapped individuals” — physical or mental impairment substantially limiting ≥ 1 major life activities; record of substantially limiting impairment (ie, had in past but no longer); regarded as having impairment (ie, actual impairment does not exist, but individual perceived as impaired by others [and thus subject to discrimination])

School Board of Nassau County, Florida v Aline (1987): involved elementary school teacher who was fired from her job after experiencing relapses of tuberculosis; Supreme Court ruled that contagious diseases covered by Rehabilitation Act; even if Aline did not have active tuberculosis, “regarded” as having it and being infectious; case remanded to lower courts in order to determine whether her medical history constituted direct risk to schoolchildren

Americans with Disabilities Act (ADA, 1990): prohibits discrimination against individuals with disabilities; requires employers to provide reasonable accommodations to employees with disabilities; exceptions — accommodations would create undue hardship; individual with disability poses direct threat to workplace; definition of disability — copied from Rehabilitation Act of 1973 (eg, physical or mental impairment, record of impairment, regarded as impaired)

Interpreting definitions in ADA: Equal Employment Opportunity Commission (EEOC) frequently must interpret ADA, so have produced many guidelines and definitions; specific exclusions — transgender status; gender dysphoria; exhibitionism; pathologic gambling; pyromania; parent-child problems; substance use — current substance dependence and use do not qualify as disability under ADA, although alcohol dependence receives protection; past history of substance use or current treatment for substance abuse receives protection (eg, employees must be allowed time to attend substance counseling program, and failure to provide such scheduling accommodation could result in lawsuit); however, none of these protections apply if employee’s issues represent direct threat; personality disorders — qualify for protection under ADA; however, personality traits in and of themselves do not count

Corrected disability: ie, when treatment can almost normalize individual’s disability; Sutton v United Airlines (1999) — plaintiffs rejected from employment as pilots due to their uncorrected vision (although their vision was fine with corrective lenses, airline required normal eyesight without lenses); court held that once vision corrected with glasses, plaintiffs no longer had substantial limitation on major life activity (requirement for disability protection);

decision had unintended consequences, as it caused individuals to lose ADA protection after treatment for, eg, hypertension or mood disorder

Americans with Disabilities Act Amendments Act (ADAAA; 2009): intended to rectify unintended consequences of Supreme Court decision and prevent discrimination against individuals who should qualify under ADA; impairments must be considered in their unmitigated or untreated state; however, use of glasses and contact lens still special exceptions (making law consistent with outcome of Sutton v United Airlines)

Evaluating meaning of “substantially limits” based on 2011 guidelines from EEOC: avoid narrow view of how disability limits activity (keep broad perspective); compare limitation to ability of “most people”; do not consider mitigating effects; episodic disorders (eg, bipolar disorder) can count as substantial limitations; disability counts even when persisting for <6 mo

Expanding “major life activities”: originally limited to basic activities that most individuals could perform without expending significant energy (eg, walking, speaking); Bragdon v Abbott (1998) — plaintiff with human immunodeficiency virus (HIV) sued dentist who refused to treat her in outpatient setting; court held HIV specifically protected as disability under ADA and reproduction added to list of major life activities potentially affected by disability; case remanded to lower court to determine whether plaintiff’s disease constituted direct threat; working — not originally specified as major life activity under ADA, but added with passage of ADAAA; general activities — under ADAAA, scope and definition of major life activities expanded beyond basic activities to encompass many areas of life; includes single specific life activities, such as ability to interact with others

Definition of “qualified individual with disability”: individual must have skills required to perform job and capability to perform essential job functions; individuals who cannot perform specific job or lack requisite background not entitled to accommodations under ADA

Reasonable accommodation: “modification or adjustment” of “way things are customarily done”

San Francisco v Sheehan (2015): case filed by mentally ill woman who survived being shot by police multiple times while she was brandishing knife; because law enforcement had been informed of her mental illness beforehand, case hinged on whether ADA requires officers to provide special accommodations for her condition and whether her fourth amendment rights (protecting against unreasonable search and seizure) had been violated when police failed to offer accommodation before entering her room; outcome — due to criticism and controversy raised by, eg, patients’ rights advocates, representatives of police withdrew their position that police do not owe accommodation to individuals with mental illness Supreme Court held that officers had immunity and had not violated plaintiff’s constitutional rights (rights not having been established)

Conduct problems related to disabilities: employers may discipline individuals who violate standards of workplace conduct if standard of conduct related to job; accommodations take effect prospectively and have no bearing on discipline problems experienced beforehand

Step-by-step analysis of ADA cases: does individual have qualifying mental illness? does mental illness substantially
limit ≥1 major life activities? is individual qualified to do job? can person perform job functions (either with or without accommodation)? what accommodations might help? would employer’s attempts to provide accommodation represent undue hardship or pose direct threat to workplace?  

**Case example:** attention-deficit/hyperactivity disorder increasingly common presentation; represents qualifying impairment under ADA; diagnosis heavily reliant on self-report; common tests (eg, Conners Comprehensive Behavior Rating Scales, computer tests) do not distinguish malingered ADHD  

**Summary:** definitions of disability vary; evaluators must review collateral records; ADA evaluations require ongoing current understanding of federal law  

Suggested Reading


**Acknowledgments**

Dr. Scott spoke at the Forensic Psychiatry Review Course 2015, held October 19-21, 2015, in Ft. Lauderdale, FL, and sponsored by the American Academy of Psychiatry and the Law. To learn about the next Forensic Psychiatry Review Course, scheduled for October 24-26, 2016, in Portland, OR, please visit aapl.org. The Audio Digest Foundation thanks Dr. Scott and the sponsors for their cooperation in the production of this program.

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<td>Take pretest</td>
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1. Which of the following best represents the American Medical Association’s (AMA’s) definition of a disability?
   (A) Significant deviation, loss, or loss of use of any body structure or body function
   (B) The way in which an individual’s limitations affect activities
   (C) Inability to perform a specific job-related function
   (D) Limitations that cannot be fully corrected or mitigated, only accommodated

2. Under guidelines issued by the AMA, psychiatric impairment can account for a maximum of:
   (A) 100% disability
   (B) 75% disability
   (C) 50% disability
   (D) 25% disability

3. Which of the following is an INCORRECT statement about Supplemental Security Income?
   (A) Eligibility is means-tested
   (B) Blind and indigent individuals may be covered
   (C) Individuals who have never worked may be covered
   (D) Workers who become disabled on the job may be covered

4. Which of the following describes the primary qualification for disability according to definitions of the Social Security Administration?
   (A) Inability to perform previous occupation(s)
   (B) Inability to perform occupation consistent with education and work history
   (C) Inability to perform work consistently
   (D) Inability to perform any job that is available in substantial numbers

5. Which of the following does the Social Security Administration consider as a category of mental disorder qualifying a person for benefits?
   (A) Disability related to current alcohol abuse
   (B) Disability related to current abuse of substances other than alcohol
   (C) Disorder such as permanent brain damage caused by substance or alcohol use
   (D) All the above

6. Which of these laws established protections for individuals who face discrimination because of a perception that they are impaired, even if they do not have an actual disability?
   (A) Rehabilitation Act of 1973
   (B) Americans with Disabilities Act (1990)
   (C) Americans with Disabilities Act Amendments Act (2009)
   (D) All the above

7. Which of these conditions is eligible for protection and accommodation under the ADA?
   (A) Pathologic gambling
   (B) Current substance dependence
   (C) Current alcohol dependence
   (D) All the above

8. The ADAAA stipulates that an individual’s impairments must be evaluated:
   (A) At peak severity
   (B) In the context of preimpairment functioning
   (C) In a decompensated state
   (D) In an unmitigated or untreated state

9. Which of the following groups is explicitly excluded from protections under the ADAAA (which makes the law consistent with a previous Supreme Court decision)?
   (A) Transgendered individuals
   (B) Individuals in recovery from substance dependence
   (C) Wearers of corrective lenses
   (D) Exhibitionists

10. Which of these functions are included in the list of “major life activities” that, when limited by an impairment, may contribute to a patient’s disability?
    (A) Social interaction
    (B) Reproduction
    (C) Working and employment
    (D) All the above

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