

The Americans With Disabilities Act Amendments Act of 2008: Implications for the Forensic Psychiatrist

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The Americans With Disabilities Act Amendments Act of 2008 (ADAAA) significantly modifies the 1990 Americans With Disabilities Act. As a result of this legislation, more Americans are likely to qualify as disabled and to be further protected from discrimination under the ADA. The ADAAA also effectively overturns key rulings in the U.S. Supreme Court cases of *Sutton v. United Air Lines, Inc.* and *Toyota Motor Manufacturing v. Williams*. This article summarizes important changes resulting from the ADAAA legislation that psychiatrists and psychologists must understand when evaluating ADA disability claims.

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On September 25, 2008, President George W. Bush signed into law the Americans With Disabilities Act Amendments Act of 2008 (ADAAA).¹ The ADAAA modifies important language embedded within the 1990 Americans With Disabilities Act (ADA) and effectively nullifies two U.S. Supreme Court rulings that interpreted ADA language. As a result of the 2008 ADAAA, a substantially larger number of Americans now qualify as disabled and eligible for protection under the ADA. This article reviews background information regarding the ADA, landmark Supreme Court cases that have interpreted it, key findings from the ADAAA, and the potential impact and implications for forensic psychiatrists evaluating psychiatric disabilities under this new legislation.

Background

Section 504 of The Rehabilitation Act of 1973 was the first civil rights legislation in the United States designed to protect persons with disabilities from discrimination in workplace environments that

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received federal financial assistance. The exact language from this important legislation reads:

No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or the United States Postal Service.²

In 1974, Congress expanded the definition of “handicapped individual” within the meaning of Section 504 of the 1973 Rehabilitation Act to include three prongs described as follows:

[A]ny person who (i) has a physical or mental impairment which substantially limits one or more of such person’s major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.³

According to this definition, individuals could qualify as handicapped if they had a current impairment, a history of impairment, or were regarded by others as having an impairment, even if they did not. This third prong was included by Congress to prevent discrimination against those persons who were falsely perceived by others as being impaired. Such protected groups might include persons incorrectly assumed to have a contagious disease or a mental disorder.

Although Section 504 of the Rehabilitation Act of 1973 represented a giant step forward in preventing discrimination against disabled employees in a fed-

eral workplace, it did not provide protection to the disabled from discrimination by employers, by public accommodations in the private sector, or by publicly funded programs. In 1990, Congress passed the Americans With Disabilities Act (ADA) to address these deficiencies. The ADA was signed into law by President George H. W. Bush on July 26, 1990. The definition of disability was the same definition previously used to define a handicapped individual. To reiterate, the ADA defined a disability as a “physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.”⁴

The ADA did not define the terms “physical or mental impairment.” However, subsequent Equal Employment Opportunity Commission (EEOC) regulations provided the following guidance:

1. Any 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; or
2. Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.⁵

The ADA expressly excluded the following conditions as a qualifying impairment: psychoactive substance use disorders resulting from current illegal use of drugs, compulsive gambling, kleptomania, pyromania, transvestism, transexualism, pedophilia, exhibitionism, voyeurism, gender identity disorder not resulting from physical impairments, and other sexual disorders.⁴

After passage of the ADA, clarifications were provided for the terms “disability,” “substantially limits,” and “major life activities” through a combination of guidelines generated by Health and Human Services (HHS) and the EEOC. Although these regulatory guidelines were important in the interpretation of the ADA, two landmark U.S. Supreme Court cases played a substantial role in disabling the ADA’s intent to protect broad classes of disabled individuals from discrimination.

The U.S. Supreme Court Interprets the ADA

In the case of *Sutton v. United Air Lines, Inc.*, the U.S. Supreme Court attempted to answer the follow-

ing question: Does a person continue to have a qualifying disability under the ADA if an intervention corrects the underlying disability? The case involved two severely myopic twin sisters who applied for the job of commercial airline pilot with United Airlines. Although their uncorrected visual acuity was 20/200 or worse, with corrective lenses, their vision was identical to that of persons without myopia. Both sisters were rejected for the job because they did not meet United Airline’s minimum job requirement of a 20/100 or better visual acuity in an uncorrected state. The sisters sued, alleging that they were not hired on the basis of their visual disability in violation of the ADA’s prohibition of discrimination against the disabled. Both the district court and the Tenth Circuit Court of Appeals held that the sisters were not actually disabled because their disability was completely corrected with glasses. Furthermore, United Airlines rejected the sisters’ job applications because they did not meet the job requirement of an uncorrected vision of 20/100. The sisters appealed the decision to the U.S. Supreme Court.⁶

In their review, the U.S. Supreme Court held that the determination of whether an individual is disabled should be made with reference to measures, such as eyeglasses and contact lenses, that mitigate the individual’s impairment. In other words, if a person’s underlying disability can be corrected, the person should be evaluated in the corrected state to determine if there is a continuing disability that would substantially limit a major life activity. The Court expressly rejected the EEOC guidelines that recommended that a person’s disability must be considered in the uncorrected state. The Court also noted that an employer’s decision to create physical criteria for a job, such as a particular visual acuity, did not violate the ADA as long as those cited attributes did not rise to the level of substantially limiting impairments.⁶

As a result of this ruling, individuals whose disabilities could be corrected or placed in remission with treatment found themselves in the curious position of no longer having a legal disability, even if they continued to have a medical one. By this logic, a woman whose diabetes was controlled with insulin would not have a qualifying physical impairment. A child with an amputated leg who could walk on a prosthetic leg would not have a qualifying physical impairment. A man whose bipolar disorder was in remission after placement on a mood stabilizer

would not have a qualifying mental impairment. Concerns arose that many disabled individuals whom Congress had intended to protect from discrimination were now eliminated from such protection.

These concerns were heightened in the subsequent 2002 case of *Toyota Motor Manufacturing v. Williams*. Ella Williams was allegedly fired because of her poor work attendance record. She subsequently sued under the ADA claiming that she was disabled as a result of carpal tunnel syndrome and related impairments. She asserted that as a result of this disability, she was unable to perform her assembly line job and that Toyota had failed to provide her a reasonable accommodation. Her carpal tunnel syndrome, however, did not prevent her from performing other non-work-related activities such as attending to her personal hygiene or doing household chores. The district court ruled that although Ms. Williams had carpal tunnel syndrome, the physical impairment did not substantially limit a major life activity; therefore, she did not qualify as disabled under the ADA. She appealed to the Sixth Court of Appeals which held that her carpal tunnel syndrome did qualify as a disability that interfered with the “major life activity” of performing manual tasks. This “class” of manual activities included gripping tools or repetitively working with her hands or arms.⁷

On appeal, the U.S. Supreme Court was asked to clarify the proper standard to use when determining what constitutes a substantial limitation of a major life activity. Does the standard involve a substantial limitation to only an isolated class of activities (such as working on a car assembly line) or must this standard include a limitation of abilities central to performing more basic activities (such as dressing or combing one’s hair)? In a unanimous decision, the U.S. Supreme Court overturned the Sixth Circuit’s holding that a person need only show that the disability resulted in a substantial limitation in a particular class of activities. In rejecting this more generous standard, the *Toyota* Court stated the following:

We therefore hold that to be substantially limited in performing manual tasks, an individual must have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people’s daily lives. The impairment’s impact must also be permanent or long-term.⁷

This holding had important implications for determining who was legally disabled under the ADA.

First, *Toyota* created a more stringent standard to be used when evaluating whether a person’s impairment resulted in a substantial limitation of a major life activity. According to the *Toyota* Court, limitations in a class of work-related activities alone were not sufficient to qualify as a major life activity; the limitation must be broader. Second, *Toyota* specifically excluded impairments that were not permanent or long-term. The message of the *Toyota* Court’s ruling was clear: more individuals would be excluded from being considered disabled under the ADA.

ADA Amendments Act of 2008

In response to the U.S. Supreme Court’s holdings that narrowed those eligible for protection under the ADA, Congress passed the Americans With Disabilities Act Amendments Act of 2008 which became effective January 1, 2009.¹ Congress passed the ADAAA to ensure that the ADA’s original intent of protecting the disabled had not been crippled by the *Sutton* and *Toyota* Court rulings. The ADAAA’s goal was to broaden eligibility under the ADA while maintaining the original definition of disability: a physical or mental impairment that substantially limits a major life activity. The ADAAA had several important provisions to help rehabilitate the original ADA.

First, the *Sutton* Court’s ruling that mitigating measures must be considered when determining whether a physical or mental impairment constitutes a disability was soundly rejected. The ADAAA specifically provides that impairments must be examined in their unmitigated state with the exception of ordinary eyeglasses and contact lenses. Congress provided multiple examples of ameliorative devices and modifications that cannot be taken into consideration when evaluating whether an impairment substantially limits a major life activity. These include: medication, medical supplies, equipment, low-vision devices, prosthetics (such as limbs and devices), hearing aids and implants, mobility devices, oxygen therapy equipment, assistive technology, reasonable accommodations or auxiliary aids (such as interpreters), and learned behavioral or adaptive neurological modifications.¹

Second, this legislation clarifies that an impairment that is episodic or in remission is a disability if it substantially limits a major life activity when active. As an example, a person with a seizure disorder

controlled by antiseizure medication would nevertheless have a qualifying impairment if the seizures substantially limit a major life activity when they occur.

Third, the ADAAA abolishes the more demanding standard articulated by the *Toyota* Court regarding what limitations are necessary to show that a person is disabled. As discussed earlier, *Toyota* held that to qualify as disabled, a person must have a physical or mental impairment that “prevents or severely restricts the individual from doing activities that are of central importance to most people’s daily lives.”⁷ The ADAAA emphasizes that this “severely restricted” standard is too high. To highlight this point, the ADAAA notes that “an impairment that substantially limits one major life activity need not limit other major life activities to be considered a disability.”¹ In other words, only one major life activity limitation is now necessary to meet this prong of the ADA standard.

Fourth, by providing two nonexhaustive lists, the ADAAA expressly expands those major life activities that qualify under an ADA analysis. The first list, “general activities,” includes, but is not limited to: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.¹ The ADAAA clearly states that working now qualifies as a major life activity, which had not been specified in the original ADA legislation.

Fifth, the ADAAA rejects any interpretation that a person “regarded as” having an impairment (when he or she does not) must also demonstrate that being regarded as impaired has resulted in a substantial limitation (perceived or real) of a major life activity. The ADAAA notes:

An individual meets the requirement of “being regarded as having such an impairment” if the individual establishes that he or she has been subjected to an action prohibited under this Act because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major activity.¹

The ADAAA specifies that those individuals pursuing an ADA claim under the “regarded as having an impairment” prong will not qualify if the perceived impairment is transitory (lasting six months or less) and minor. In addition, those persons who are regarded as having a disability (but do not)

have a right to a reasonable accommodation for a disability that they do not actually have.

Discussion

The ADAAA legislation has resulted in important changes that psychiatrists must understand when conducting ADA disability claims. First, even if an evaluatee is asymptomatic, psychiatrists should carefully examine whether the individual meets the definition of a psychological impairment when not covered by a mitigating measure. According to this legislation, psychiatric or psychological mitigating measures include medication, reasonable accommodations (such as a personal aide or other support system), and learned behavioral or adaptive neurological modifications. Second, if a person’s mental disorder is in remission at the time of the evaluation, the psychiatrist should also determine whether, when active, his symptoms substantially limited a major life activity. For instance, a man with bipolar disorder in complete remission at the time of the evaluation may nevertheless continue to qualify as disabled under the ADA if, during a manic spree, his thinking is so disorganized that he is substantially limited in the major life activity of thinking, concentrating, or working.

The psychiatrist must also be familiar with the ADAAA’s expanded list of major life activities. In particular, a substantial limitation in only one major life activity is required, to qualify under the ADA, and working now qualifies as a major life activity. Finally, the forensic psychiatrist should keep informed about modifications of EEOC guidelines that are made in accordance with this new legislation. In particular, the ADAAA instructed the EEOC to revise their guidelines to conform to changes made by this legislation. The EEOC has drafted new guidelines that are pending approval by the Office of Management and Budget (OMB). The proposed draft now defines the term “substantially limiting” as an impairment that need not severely restrict or significantly restrict performance of a major life activity. In addition, the proposed guideline adds “interacting with others” to the ADAAA list of major life activities.⁸ If these guidelines are accepted, psychiatrists will play an increasingly important role in evaluating how a person’s mental impairment substantially limits the ability to “interact with others.” The implications of the ADAAA are clear: more individuals will

be eligible for disability consideration under the ADA and more psychiatrists will be needed to evaluate these increased ADA disability claims.

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