Mental Illness and Changing Definitions of Disability Under the Americans With Disabilities Act

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The Americans With Disabilities Act (ADA) prohibits employment discrimination on the basis of disability. Originally, an assessment of whether a person had a disability and thus was protected by the ADA examined the person's impairment in its uncorrected state. Thus it was comparatively easy for people with mental illness to meet the threshold requirement for having a disability. However, in 1999 the U.S. Supreme Court issued three decisions holding that, for the purposes of the ADA, disability had to be assessed in its corrected state. Since those decisions were issued, the courts have increased the burden on individuals, including people with mental illness, to prove that they have a disability. In several cases, courts ruled that people with serious mental illnesses do not have a disability and are not protected by the ADA. This article discusses these cases and their implications for people with mental illness and for practitioners. (*Psychiatric Services* 52:626–630, 2001)

The Americans With Disabilities Act (ADA) bars discrimination in the workplace on the basis of disability (1). This statute is particularly important for people with mental disabilities, who often face difficulties in finding and holding jobs, partly because of stigma. Research suggests that although mental illness can lower productivity at work, treatment may enhance productivity, reducing the workplace costs associated with mental illness (2–4). Also, in recent years considerable attention has been given to providing work skills to individuals with serious mental illness; such individuals constitute a group that has had great difficulty finding meaningful employment (5–8). Of particular interest is the success of supported employment in enabling people with mental illness to gain competitive employment (9).

Since the ADA became effective in 1992, the U.S. Supreme Court generally has been supportive of individuals pursuing ADA claims—for example, ruling that inappropriate psychiatric institutionalization may constitute illegal discrimination in violation of the statute (10). However, in its 1999 term, the court issued three decisions that fundamentally altered the determination of disability in employment cases under the ADA. Since the court's decisions, it has become more difficult for an individual to prove a disability under the ADA. These decisions have significant implications for individuals with mental illness and for psychiatrists and other mental health professionals who perform assessments under the ADA and who work with people with mental illness who have work-related problems. In this article we discuss this change in the definition of disability and its implications.

ADA definition of disability

According to the ADA definition, an individual has a disability if he or she has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is perceived as having such impairment (11). "Impairment" is defined broadly in the regulations that implement the ADA. A mental impairment includes "any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities" (12).

However, an impairment is not considered to be a disability unless it "substantially limits" a "major life activity." The Equal Employment Opportunity Commission's regulations suggest that a person is substantially limited if he or she is unable to perform a major life activity in the same manner as an average person can. The regulations suggest that, when evaluating whether an impairment is substantially limiting, the decision maker should consider the nature and severity of the impairment, the duration or expected duration of the impairment, and the permanent or long-term impact of the impairment (13).

The regulations that implement the ADA define major life activities as "functions such as caring for oneself, performing manual tasks, walking,

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seeing, hearing, speaking, breathing, learning, and working" (14). As noted below, courts have also ruled that sexual reproduction, thinking, and interacting with others constitute major life activities.

A person who meets these criteria must also be a "qualified individual"—that is, he or she must meet the minimum qualifications for the job and be able to perform the "essential functions" of the job with or without reasonable accommodation (15).

The intent of the ADA is to create a statutory framework for enabling people with disabilities to obtain work. Therefore whether a person has a disability is a core threshold issue of obvious importance. In this determination of disability, a critical question is whether disability is measured in its corrected or uncorrected state. For example, if an individual is diagnosed as having schizophrenia, should the assessment of disability consider the potential effects of medication on the person's ability to perform major life activities, or not? The Equal Employment Opportunity Commission determined that disability would be assessed "without regard to mitigating measures such as medicines, or assistive or prosthetic devices" (16). This determination was based on the assumption that Congress intended to create a broad gate into the ADA's coverage to effectuate the congressional intent of enabling people with disabilities to find gainful employment. Most courts concurred with this interpretation. As a result, the initial finding of disability could be made with comparative ease in many cases (17).

However, in its 1999 term the U.S. Supreme Court ruled in the case of *Sutton v. United Airlines* that an individual's disability is to be assessed in its corrected state (18). The court rejected the ADA claims of two sisters with severe myopia who had applied for positions as commercial airline pilots. Because of the myopia, the sisters did not meet the airline's requirement of a specified level of uncorrected vision. They argued that myopia in its uncorrected state is a disability and that the airline was obliged to provide "reasonable accommodation" that might permit them to be granted the jobs for which they had applied. However, the court found that consideration of whether those vision problems constituted a disability had to occur after the sisters had taken corrective measures—in this case, wearing eyeglasses. Once corrective measures had been adopted, these women were no longer considered to be disabled under the ADA, because the substantial limitation on the major life activity of seeing had been removed.

Because the airline's standards required that applicants' vision meet certain standards without the use of eyeglasses, the sisters did not meet the qualifications for the job. The court also rejected claims that the sisters' vision problems substantially limited the major life activity of work, because the sisters qualified for other types of jobs, and a failure to qualify for a particular job was not considered to be substantially limiting. The court reached similar conclusions in cases involving hypertension corrected by medication (19) and vision impairment corrected by adjustments made by the impaired individual (20).

Since three Supreme Court rulings in 1999, it has become more difficult for an individual to prove a disability under the Americans With Disabilities Act.

The court conceded that some types of corrective measures could themselves be disabling, noting specifically that antipsychotic medication could cause "neuroleptic malignant syndrome and painful seizures" and that drugs for Parkinson's disease and for epilepsy could have disabling adverse effects. In other words, corrective measures might result in adverse effects that would constitute a disability under the ADA. A dissenting opinion took the majority to task for what it considered to be an unduly mean-spirited reading of the statute.

Cases after *Sutton*

Even before the Supreme Court's rulings, people with mental illnesses often fared less well than people with physical disabilities in pursuing employment claims under the ADA (21,22). Since *Sutton*, the courts have been much more searching in their assessment of disability under the ADA, even for conditions that most laypersons probably would characterize as disabilities. There have been two major changes in judicial analysis of ADA employment claims. First, the courts now examine the effect of corrective measures on the impairment. Second, the focus now rests squarely on whether the impairment, in its corrected state, substantially limits a major life activity. In cases in which such limitation might have been presumed under a legal rule that considered disability in its uncorrected state, the courts now conduct a more focused inquiry into the specific ways in which an individual impairment limits major life activities. This approach appears to have increased the burden on people with disabilities, including mental illness, to meet statutory requirements.

For example, a federal court of appeals recently ruled that a police officer with severe depression did not have a disability for the purposes of the ADA (23). The plaintiff, who was taking fluoxetine, argued that his illness substantially limited his ability to work by making him more irritable, less able to concentrate, and more prone to fatigue than the average police officer. The court of appeals, upholding a jury verdict against the plaintiff, found that his impairment did not substantially limit him, noting his good performance record over his 20 years as a police officer and his acknowledgment that fluoxetine controlled his symptoms so that he could perform his job duties adequately.

Therefore he was not considered to have a disability under the ADA.

In another case involving major depression, Wal-Mart won summary judgment against an employee who claimed that she had lost her job because of her mental illness. A federal court of appeals upheld the award, ruling that the plaintiff, who had visited a psychotherapist and was taking fluoxetine, did not have a disability for the purposes of the ADA (24). The court rejected the plaintiff's claims that her depression substantially limited the major life activities of sleeping and thinking.

In another case in which an employee suffered from major depression, a court of appeals upheld summary judgment for the employer, ruling that the employee had difficulty at work only when working for a particular supervisor and that her depression therefore did not substantially limit her ability to work. The employee had asserted that her depression resulted from stress at work, but the court found that conflicts with a particular supervisor did not qualify the employee for protection under the ADA (25).

The three cases described here stand in contrast with pre-*Sutton* cases, in which courts found more routinely that depression was a disability for the purposes of the ADA because, as one court said, "depression is a misleadingly mild term for an extraordinarily debilitating illness" (26).

Other federal courts of appeals have ruled that plaintiffs should at least receive factual hearings on the question of disability. For example, one court ruled that a plaintiff who suffered from panic disorder and anxiety attacks could attempt to prove that those impairments substantially limited the major life activities of sexual relations, interacting with others, and sleeping. The plaintiff claimed substantial limitations despite medication, producing evidence that the medication impeded his ability to engage in sexual relations and significantly disrupted his sleep patterns, causing drowsiness while he was at work (27).

A federal district court reached a similar decision in a recent case in which the plaintiff argued that her bipolar disorder substantially limited the major life activities of interacting with others and sleeping (28). Courts have also split on the issue of whether epilepsy is a disability under the ADA. In making this determination, courts examined whether the person's epilepsy substantially limited major life activities despite the use of medications and other treatments (29,30).

Since *Sutton,* at least one court has endorsed the notion that medication taken to control the symptoms of mental illness can have adverse effects that are themselves disabling according to the definition in the statute. The plaintiff, a secretary to a school principal for 20 years, suffered from bipolar disorder that first manifested itself around the time a new principal was assigned. The plaintiff was hospitalized, and lithium was prescribed. After she returned to work, the secretary had several work-related difficulties and began receiving disciplinary notices. She was eventually discharged despite an excellent work record before these events.

Certain conditions no longer automatically qualify as disabilities. Rather, the employee must show that a disability exists even when corrective measures—for example, medication—have been adopted.

The secretary brought an ADA claim, asserting that she had a disability and that the school system had not appropriately responded to her requests for reasonable accommodation. A federal court of appeals reversed a grant of summary judgment to the defendant, permitting the case to go to trial (31). The court found that the plaintiff's bipolar disorder substantially limited the major life activity of thinking. The chronic nature of the disorder played a role in the court's decision, as did the severity and duration of the illness. The court also characterized lithium's adverse effects as disabling, quoting from the *Physicians' Desk Reference* to substantiate its conclusion. The court noted the plaintiff's claims that she had suffered nausea, impaired concentration, and memory problems that had substantially limited her thinking (32). The court also found it significant that the plaintiff, even while she was medicated, had incurred substantial out-of-pocket costs for treatment with a therapist—this was seen as substantiating the claim of a serious illness.

Another question that has emerged since *Sutton* is whether a person with an impairment must take corrective measures. In a case involving asthma, a federal court ruled that a person who refused to take medication that would control her symptoms could not bring a claim under the ADA (33). The court ruled that because asthma was correctable with medication and because the plaintiff voluntarily refused to take the medication, the asthma did not substantially limit any major life activity. This case may have implications for people with mental illnesses, as noted below.

Discussion

The level of disability that a person with mental illness must experience before he or she qualifies as being disabled under a federal statute has been a subject of long debate. Beginning in the 1980s, the federal government insisted on increasingly more serious levels of disability before a person would qualify for Social Security Disability Insurance (34,35). However, the underlying policies of the Social Security laws and the ADA appear to support a more lenient standard for assessing disability under the ADA, because the stated purpose of the ADA is to enable even people

with severe mental disabilities to work, whereas people who are so disabled that they cannot work are considered to be entitled to disability benefits (36).

In addition, disability was defined broadly under the ADA in part to give life to the principle of reasonable accommodation; if the person does not meet the threshold definition of disability, the opportunity to discuss reasonable accommodation never arises. To impose an equally severe standard for assessing disability under the ADA and Social Security laws would undercut the legislative philosophy behind the ADA.

Several other conclusions can be drawn from *Sutton* and its progeny. First, it may no longer be assumed that certain conditions automatically qualify as disabilities. Rather, the employee must show that a disability exists even when corrective measures—for example, medication—have been adopted. Employees who formerly would have been found to have a disability under the ADA now might not meet the statutory definition, which could reduce the effectiveness of the ADA as a vehicle for providing employment for people with disabilities.

Second, an employee may have to emphasize the negative impact of an impairment to meet the statutory threshold for having a disability. This requirement could cause the employee to reveal information that he or she would rather have kept private. In the context of mental health treatment, the presence or absence of confidentiality protections may affect a person's willingness to seek treatment (37). It is possible that an individual who must balance privacy concerns with the disclosure necessary to prove disability in an employment setting would decide to forgo employment opportunities to protect his or her privacy.

Third, the ruling that the ADA does not protect an individual who forgoes corrective treatment for scientifically unsound reasons has potentially serious consequences for people with mental illness. Individuals with mental illness often fail to adhere completely to prescribed medication regimens (38) for many reasons, including the subjective experience of adverse effects (39,40). Although newer medications are associated with fewer noxious side effects, they do sometimes carry significant risks, and the cost may impede access to these medications (41,42). In the past, adverse effects were often so serious, and individual autonomy was considered so important, that people in state custody have had a constitutional right to refuse medication. Were a court to rule that an individual with mental illness must take prescribed medications in order to pursue an ADA claim, the individual would be placed in the unfortunate position of having to choose between his or her ADA claim—and taking medication that is unwanted, perhaps for a variety of reasons—and forgoing other legal rights to autonomy.

Fourth, these cases have implications for psychiatrists and other mental health professionals who provide evidence in ADA cases or advise individuals in treatment about employment-based issues. The finding that an individual has an impairment for the purposes of the ADA is comparatively simple; in many cases, a diagnosis will suffice. However, whether that impairment, in its corrected state, substantially limits a major life activity—thereby qualifying the person for protection under the ADA—is more complex. As we have noted, major life activities include activities listed by the Equal Employment Opportunity Commission in its regulations—for example, walking and eating—as well as activities named by the courts—sexual reproduction, interaction with others, and thinking. These activities are not immutable.

For example, the *Sutton* majority questioned, without making a decision, whether working is a major life activity, and several justices dissented from another court ruling that reproduction is a major life activity (43). Mental health professionals must be clear about which major life activities are affected by the impairment and, if they are affected, how. Whether the impairment substantially limits the major life activity is affected by a variety of factors, including the severity, duration, and long-term impact of the impairment. For example, courts have ruled that short-term situational depression is not a disability for the purposes of the ADA because it does not have a long-term effect on a major life activity (44,45). Therefore the mental health professional must determine with some specificity the nature of the limitation the individual is experiencing.

Psychiatrists and other mental health professionals who are considering the status of individuals in the post-*Sutton* era can also play a role in broadening the inquiry into the effect of efforts to correct a disability. Medication should be an important but not exclusive focus of examinations of mental disability in its corrected state. As at least one post-*Sutton* case (31) suggests, the limits of medication in controlling symptoms and the effects of the medications themselves may be important determinants in the assessment of a disability under the ADA. Certainly psychiatrists can play a key role in advising decision makers about the corrective effect as well as any disabling effects of medication. However, medication alone, even when successfully controlling symptoms, might not correct the underlying mental disability.

For example, an individual might still experience significant and disabling stress in some situations—for example, in a work environment—that could substantially limit major life activities. If the correction of mental illness is reduced simply to the effects of medication, an individual could be considered to be no longer disabled—because symptoms are controlled—and therefore not be protected by the ADA, even when that individual is still in a tenuous situation in terms of long-term recovery. A mental health professional can play an important role in explaining such issues in employment disputes that fall within the scope of the ADA.

Finally, psychiatrists may be particularly helpful in explaining that there are many reasons that individuals do not always take their prescribed psychotropic medications, including subjective reasons that may lack scientific validity.

Conclusions

The U.S. Supreme Court has altered significantly the assessment of disability under the ADA. Although in

Sutton the court was presented with a claim of disability for a condition—myopia—for which many people might not be sympathetic, the court's ruling also applies to serious conditions and increases the burden on the individual who is seeking the ADA's protection. Even the most serious mental illness might not be presumed to be a disability under the ADA. Instead, the individual must demonstrate specifically how the illness in its corrected state substantially limits major life activities. Psychiatrists or other mental health professionals providing assessments under the ADA or treatment to mentally ill individuals with work-related problems must be cognizant of these changes and their consequences. Such professionals can also provide critical information to decision makers about mental illness and its treatment in the context of the ADA. ♦

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