

SECTION 8

A Framework for Making “Difficult Determinations”

Introduction

Functional assessments, combined with interviews and information from applicants are valuable tools as part of the ADA eligibility determination process, but do have some limitations. Although when conducted by the correct professional and according to the highest standards they are reasonably valid predictors of ability, they are a one-time sample of ability in a given time and place. The functional assessments described in this workbook will not provide sufficient or relevant information for individuals with all types of disabilities. Keep in mind that the functional assessment tools described in this workbook must be used in the manner in which they were designed. Especially in the case of assessments that have been validated for certain populations, such as FACTS, great care must be taken to avoid inferring meaning to other populations. For example, epilepsy, many psychiatric disabilities and some other health conditions result in functional limitations which cannot always be adequately evaluated using the physical functional evaluation, or FACTS. These types of disabilities typically present the greatest challenges in making accurate eligibility decisions.

It may be difficult for the applicant to adequately explain the functional reasons that his disability prevents him from using fixed route transit. Lacking the objective measure of a functional assessment, the best source of information about travel abilities may be to get information from the applicant combined with information from professionals who are familiar with the applicant's disability and functional abilities. The following process is offered as a framework for collecting information that will help with the most difficult eligibility determinations.

Suggested Framework

Begin the process of collecting information by making sure that you are clear about what you want to know. The process starts with verifying the existence of a disability, and then determining how the disability affects the applicant's functional ability to use transit. A systematic approach to determine the what, who, how, when and why of whether the individual is prevented from using fixed route transit will yield the most relevant information.

WHAT?

The "what" question is "what is the diagnosis?" As discussed in chapter two, knowing the specific diagnosis provides you with a starting place to better understand the basic characteristics of the disability and what types of the specific functional limitations you might expect an individual to have.

Along with diagnosis, you should confirm the following additional information:

- **Date of onset.** This, combined with the diagnosis, could provide some insight into whether the individual's ability might improve. For example, someone who has had a stroke in the last three months may experience improvement over the course of the next six to nine months. However, if the stroke occurred several years ago, the individual has probably achieved the highest ability level that can be expected.
- **Extent of disability.** Two individuals with the same condition will not necessarily have the same level of functional ability. There can be a wide range of capacity within the same disability. Some diagnoses will include the extent (mild, moderate, severe, in remission, etc.) Asking to what extent the individual is affected by the condition will help to further clarify what functional limitations might be expected as a result.
- **Prognosis.** Prognosis is the professional's best estimate of the future course of the individual's condition. *The Merck Manual* usually provides a general prognosis for each condition described, which will help you understand the typical course of the condition. You can then ask the professional for the prognosis for the individual. People diagnosed with psychiatric disabilities usually have a prognosis as part of the diagnosis.
- **Medication.** Information about medications the individual takes should only be collected on a "need to know" basis. It is not typically relevant or useful in understanding functional ability, but in some cases may provide additional insight as to side effects or the potential to control a condition and improve functional ability.

WHO?

The "who question" is "Who is the right professional to ask about this individual's disability?" The right professional should be, at a minimum:

- Someone who is currently or who has very recently treated or worked with the individual regarding this particular disability, *OR*
- Someone who has access to the individual's medical information and history, if they have not seen or worked with a professional recently, *OR*
- Someone who knows what the course of the individual's condition has been over the past year

Someone who has sufficient knowledge of the individual and the condition will be able to comment on specific functional abilities, and perhaps identify conditions that trigger the condition (when appropriate).

The “right professional” is not always a physician. For someone with a psychiatric disability, it could be a psychiatrist or psychologist, but it could also be an Intensive Case Manager who has been working with the individual to improve his functioning in the community. A job coach may be able to provide valuable insight into how the individual learns new skills, and whether he can perform them independently and with consistency. For someone with epilepsy, the “right professional” is probably his or her neurologist. Confining your search to a “list” of only certain professionals limits your ability to identify and talk with a range of professionals that can provide valuable insight into how the individual functions on a day in and day out basis.

HOW?

The “How” question is the heart of the matter: “How does the individual’s disability prevent him from completing each of the tasks necessary to independently use fixed route transit?”

In order for the professional to provide the specific functional information necessary for the eligibility determination, it is important to ask the right questions. You can help the professional better understand the functional capacities necessary for the independent use of transit if you describe them as a sort of task list. You should be able to create a “task analysis” that includes all of the physical, cognitive and sensory tasks involved in getting to and from the bus and riding the bus. You can then examine each task and evaluate what skills and level of functional ability are necessary in order to complete the task.

Section 5 of this workbook and the subsequent physical functional assessment included in that section describe the physical functional tasks involved in using fixed route. The same tasks can have physical, cognitive and sensory components.

For example, getting to the bus stop one block away involves, among other things:

- the ***physical task*** of walking or pushing a wheelchair a defined distance under existing conditions (for example, is it one level block, or is there is a hill or snow, how hot or cold is it);
- the ***cognitive task*** of memory (whether you have learned the way or have just asked for directions, you must be able to remember which way to turn when you exit the building);
- the ***cognitive task*** of attention to task (you must sustain attention as you move along the sidewalk and not be distracted);
- the ***sensory and physical tasks*** of identifying and avoiding obstacles in your path; and

- the *cognitive and sensory tasks* of being able to identify the stop when you reach it (you know this is the stop, and you have a way of identifying that you are in the right place).

Once you have established the tasks that may be difficult for the individual based on what you know about the disability and what the individual has told you, you can ask specific, directed follow-up questions to establish how the individual might be prevented from accomplishing each of the tasks you have defined.

It may be appropriate to occasionally ask questions about an individual's ability in a related, but different activity of daily living. For example, if someone has a serious cardiac condition, they will almost certainly be restricted from completing more strenuous household chores such as pushing a vacuum sweeper. While these questions may provide some insight, they can also be intrusive and viewed as irrelevant. If it is necessary to ask these types of questions, they should be kept to a minimum, have a clear relationship to a functional outcome and not require the individual divulge and private or personal information.

WHEN?

The "when" question will help you establish if there are any reasonable conditions when the individual can use fixed route transit. It is important to help the professional understand that ADA paratransit eligibility is not an "in or out" process, but should reflect the range of abilities an individual has under a variety of conditions. If the person is sometimes able to complete the necessary tasks with a reasonable level of effort, the professional may be able to assist you in defining those conditions. For example,

- The individual can walk up to three blocks on a level, paved surface, but cannot negotiate any slopes.
- The individual becomes increasingly fatigued throughout the day. Her functional ability is very good until mid-day, at which time she starts to experience significant fatigue.
- The individual can find his way to and from a location if he goes there on a routine basis, but could not manage to find his way to and from a location that he will visit only occasionally.

It is often useful to leave "the bus" out of the questions, and simply concentrate on the tasks.

If the professional indicates that the individual is not able to use fixed route under any reasonable circumstances, it is appropriate to ask follow up questions about what s/he believes to be the individual's most limiting condition and what the risks are, as s/he sees them. Follow up questions can be asked in such a way that they do not challenge the professional's opinion, but help you to better understand the individual's ability.

You should also ask the professional if the applicant has the potential to improve his skills with training. Although training cannot be required as part of the ADA eligibility process, it is helpful to know which individuals might improve their ability, and what kinds of training would be most beneficial. Having the professional concur that training could be a benefit provides additional encouragement from an independent source. In a strength based model of eligibility, the goal should be to discuss with people their ability and potential, and perhaps help them understand that they have abilities they may not have realized.

WHY?

The “why” question will help to focus on why paratransit is a more suitable form of transportation for the individual. If there are any doubts about whether the professional and applicant understand the nature of public transportation and the difference between the modes, the “why” question will help to determine this.

- Why is the individual able to travel on paratransit independently, but not on fixed route?
- What is different about paratransit that make travel possible for this individual?

For individuals with severe behavioral problems, complicated medical conditions and extreme frailty, it might be appropriate to explore whether either form of public transportation is appropriate for the individual. If someone cannot tolerate a ride time that is more than 20 minutes, cannot control his aggressive behaviors, or must have a medical condition monitored during the course of the ride, the individual may require a higher level of service than either fixed route transit, or even paratransit provides.