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To cite this article: John T. Pardeck (2002) An Overview and Comments on Recent Americans With Disabilities Act Court Rulings, Journal of Social Work in Disability & Rehabilitation, 1:1, 5-14, DOI: [10.1300/J198v01n01_02](https://doi.org/10.1300/J198v01n01_02)

To link to this article: http://dx.doi.org/10.1300/J198v01n01_02



Published online: 12 Oct 2008.



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John T. Pardeck

ABSTRACT. The American with Disabilities Act (ADA) is designed to protect persons with disabilities from discrimination in nearly every aspect of American life. This commentary focuses on a number of recent United States Supreme Court decisions that help to clarify the intent of the ADA. It is critical for social workers to be aware of these recent court rulings because they affect social work practice and have important policy implications. [Article copies available for a fee from The Haworth Document Delivery Service: 1-800-HAWORTH. E-mail address: <getinfo@haworthpressinc.com> Website: <<http://www.HaworthPress.com>> © 2002 by The Haworth Press, Inc. All rights reserved.]

KEYWORDS. ADA, American with Disabilities Act, civil rights, court rulings, definition of a disability, discrimination

On July 26, 1990, President George Bush signed the Americans With Disabilities Act (ADA) into law. The ADA covers over 40 million Americans with disabilities. Both government and private industry have had to make significant modifications in their treatment of people with disabilities. These modifications include changes ranging from hiring practices to making buildings and programs accessible for people with disabilities.

The ADA has five titles; these titles prohibit discrimination against persons with disabilities in the area of employment, government activi-

Journal of Social Work in Disability & Rehabilitation, Vol. 1(1) 2002

<http://www.haworthpressinc.com/store/product.asp?sku=J198>

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ties, public services and accommodations, transportation, and telecommunications. The ADA provides a comprehensive national mandate aimed at the elimination of discrimination against persons with disabilities in nearly every aspect of American life including social service delivery. The ADA also calls for attitudinal and behavioral changes toward persons with disabilities. It has influenced a new language for describing persons with disabilities. For example, the word “handicapped” is now seen by many to be an inappropriate word describing a person with a disability (Pardeck, 1998). Writers such as Shapiro (1993) also suggest that persons with disabilities no longer want to simply receive subsidies from the government; they want to work. It has been well documented that the employment rate of persons with disabilities has been persistently low for the last several decades. A major policy goal of the ADA is to move persons with disabilities into the workplace (Pardeck, 1998).

DEFINING DISABILITY

For an individual to be defined as disabled under the ADA, he or she must meet one or more of the following descriptions (The Americans With Disabilities Act P.L. Law 101-336, 1990, p. 6):

1. Has a physical or mental impairment that substantially limits one or more of the major life activities, or
2. Has a record of such an impairment, or
3. Is regarded as having such an impairment.

Major life activities include but are not limited to walking, speaking, seeing, hearing, breathing, learning, working, reproduction and caring for oneself (Pardeck, 1998).

The ADA does not offer a specific list of disabilities that it covers. The reason for not offering a list is noted in a 1989 report (The Americans with Disabilities Act of 1989, p. 22) from the United States Senate:

It is not possible to include in the (ADA) legislation a list of all the specific conditions, diseases, or infections that would constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of such a list, particularly in light of the fact that new disorders may develop in the future. The term in-

cludes, however, such conditions, diseases and infections as orthopedic, visual, speech, and hearing impairment, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, infections with the human immunodeficiency virus (HIV), cancer, heart disease, diabetes, mental retardation, emotional illness, and specific learning disabilities.

Defining a disability under the ADA is an extremely complex process. Furthermore, traditional stereotypes for disabilities have been challenged by the definition of disability under the ADA; many professionals including social workers view a disability as simply a visible physical impairment (Pardeck, 1998). Under the ADA, however, a disability is also defined as a person with a record of an impairment or being regarded as having an impairment. The second and third prongs of the definition of a disability involve extremely complex legal issues that call for training and education of professionals working with people with disabilities (Pardeck, 1998). Research concludes that a record of a disability or being regarded as having a disability can result in discrimination (Pardeck, 1998). For example, one study reported that up to 50 percent of cancer survivors reported experiencing job discrimination (Pardeck, 1998). The ADA is designed to protect people from this type of job discrimination.

ADA AND PUBLIC SUPPORT

A Harris Poll in 1999 reported that the American people overwhelmingly support civil rights for persons with disabilities. The poll found that the vast majority of Americans support the ADA.

The following briefly summarizes the findings from the Harris Poll (1999):

1. Nine out of ten adults who are aware of the ADA support it.
2. Two-thirds of all adults are aware of the ADA.
3. Seventy-five percent of all adults think that the benefits to people with disabilities are worth the additional costs mandated by the ADA to businesses and government.
4. Over eighty percent of adults felt creating opportunities for those with disabilities will decrease welfare roles and increase employment opportunities.

5. Ninety-four percent of the sample felt that employers should not discriminate against any qualified candidate with a disability.
6. Eighty-five percent of the respondents agreed that employers with more than 15 workers should make reasonable accommodations for employees with disabilities.
7. Ninety-one percent of the sample wanted to see public transportation made accessible to disabled people.
8. Ninety-five percent of the respondents in the poll agreed that public places such as hotels, restaurants, theaters, stores, and museums must not discriminate against visitors with disabilities.
9. Eighty-six percent of the sample felt that government must offer home care services that allow more people with disabilities to live at home instead of in nursing homes.

The ADA has been national policy for over a decade; the 1999 Harris Poll suggests that the majority of Americans support this law.

SIGNIFICANT COURT RULINGS AND THE ADA

HIV Infection

Bragdon v. Abbott (1998) resulted in an important ruling by the United States Supreme Court concerning persons who have HIV infection. The Court ruled that a person with HIV infection, even though it has not yet progressed to the so-called symptomatic phase, is disabled under the ADA. The Court also affirmed that patients infected with HIV posed no direct threat to the health and safety of dentists. One could generalize this ruling to health care providers in general.

In the *Bragdon v. Abbott* case, Sidney Abbott, an HIV infected patient seeking dental treatment from Dr. Randon Bragdon in 1994, disclosed her HIV infection on the patient registration form. Dr. Bragdon refused to treat her in his office. He did, however, offer to perform the dental treatment needed in a hospital facility. Ms. Abbott refused the treatment and filed a lawsuit against Dr. Bragdon alleging that Dr. Bragdon's refusal to treat her in his dental office was a violation of her civil rights under the ADA. A Federal court ruled that Ms. Abbott was discriminated against by Dr. Bragdon under the ADA. In 1998, the Supreme Court upheld the lower court's ruling.

Corrections

In the *Pennsylvania Department of Corrections v. Yeskey* (1997), the United States Supreme Court held that state prison systems must provide reasonable accommodations to prisoners under the ADA. Ronald R. Yeskey was an inmate sentenced to serve 18 to 36 months in a Pennsylvania correctional facility. The sentencing court recommended that Mr. Yeskey be placed in Pennsylvania's Motivational Boot Camp for first-time offenders; completing the camp would have led to his release on parole in just six months. However, because of his medical history of hypertension, he was refused admission to the first-time offender's program. Mr. Yeskey alleged that exclusion from the Boot Camp because of his hypertension violated the ADA.

Mr. Yeskey filed suit in federal court against the Pennsylvania correctional system. The correctional system argued that prisoners are not protected under the ADA. The lower court ruled that Mr. Yeskey was discriminated against under the ADA and that the Pennsylvania correctional system violated Title II of the ADA which covers state run programs, services, and activities including prisons. The United States Supreme Court upheld the lower court's decision in 1998.

Social Security Benefits (SSDI) and the ADA

In *Cleveland v. Policy Management* (1997), the United States Supreme Court reversed a lower federal court decision that held an applicant filing for or receiving SSDI does not automatically bar an individual from filing an ADA lawsuit. The plaintiff in this case, Carolyn Cleveland, was employed by Policy Management System Corporation in a position that required her to perform background checks on job applicants. She experienced a stroke in January 1994; the stroke impaired her concentration, language skills and memory. Several weeks after her stroke she filed an application for SSDI, in which she indicated that she was disabled and not able to work.

After filing for SSDI, her condition improved and she returned to work. Cleveland reported to the Social Security Administration that she had returned to work; her benefits application was then denied. Three months after returning to work, however, she was fired by her employer because she "could no longer do her job because of her condition." After termination, Cleveland asked the Social Security Administration to reconsider her SSDI application.

Cleveland was approved for SSDI benefits one year after her reapplication; she received benefits retroactive to the day of her stroke. A week before receiving her SSDI benefit award, however, she filed an ADA lawsuit contending that her employer terminated her without reasonably accommodating her disability by offering additional training and time to complete her work. A federal court ruled in favor of her employer. The lower court concluded that an application for or the receipt of SSDI benefits creates a rebuttable presumption that the claimant is not a qualified person with a disability under the ADA.

Cleveland's case was appealed to the United States Supreme Court. Addressing the similarities and differences between the Social Security Act and the ADA, the Supreme Court observed that both laws help individuals with disabilities in different ways. The Social Security Act provides monetary benefits to people who have a disability, while the ADA seeks to eliminate unwarranted discrimination against persons with disabilities. In other words, the fact that a person applies for or receives SSDI benefits does not automatically mean he or she loses ADA rights. Under the ADA, each case must be assessed on the case's own merits; this process was lost when the lower federal court ruled that Carolyn Cleveland could not file a lawsuit under the ADA because of her application for SSDI benefits.

Defining a Disability Under the ADA

The United States Supreme Court has attempted to clarify the definition of a disability under the ADA with three rulings that include *Sutton v. United Air Lines* (1997), *Murphy v. United Parcel Service Incorporated* (1998), and *Albertsons Incorporated v. Kirkingburg* (1998).

In *Sutton v. United Air Lines*, twin sisters on the basis of poor eyesight were denied pilot positions. They had 20/20 corrected vision and had considerable experience as commercial pilots with regional airlines. United Airlines requires pilots to have at least 20/100 vision in each eye without any corrective measures. The sisters claimed that they were covered under the ADA, since without corrective measures their eyesight was weak enough to substantially limit a major life activity, seeing. The airline countered that because their sight was normal with corrective measures, they did not have a disability under the ADA. A lower federal court ruled in favor of United Airlines; the Supreme Court upheld this lower court decision.

Murphy v. United Parcel Service Incorporated involved Vaughn Murphy who worked as a mechanic with United Parcel Service. He be-

gan working for United Parcel in 1994 as a mechanic. As a mechanic, Murphy was required to have a Department of Transportation (DOT) health card because he needed to drive large trucks for road checks. Murphy's initial physical exam cleared him to work and he was granted a DOT health card and commercial driver's license. A month later, a blood pressure reading showed his blood pressure to be above DOT guidelines; his employer fired him because of his blood pressure level. Murphy claimed he had a disability under the ADA because without medication he would be unable to do major life activities. He argued that United Parcel should allow him to adjust his medication in order to lower his blood pressure to a level acceptable to the DOT health guidelines as a reasonable accommodation. A lower court ruled in favor of the employer, United Parcel. The court held that Murphy was terminated because his blood pressure exceeded the DOT's requirement and therefore he was not a qualified person with a disability. The Supreme Court upheld the lower federal court's ruling.

The final employment case involved Albertsons Incorporated v. Kirkingburg (1998). In 1990, Kirkingburg, a truck driver, passed the necessary tests for a license despite impaired vision in one eye. Kirkingburg was erroneously certified by the Department of Transportation and given his commercial truck driver's license. When Kirkingburg was correctly assessed in 1992, he was told that he had to get a waiver from the DOT's waiver program. Albertsons, however, fired him for failing to meet the DOT vision standards and refused to rehire him after receiving a waiver. Kirkingburg filed a job discrimination lawsuit under the ADA against Albertsons. A lower federal court ruled that Kirkingburg was not a qualified person with a disability because he did not meet the DOT vision standards and that the waiver program did not alter those standards. An appeals court ruled that Kirkingburg had established that he was a person with a disability under the ADA by demonstrating that the manner in which he sees differed significantly from the regulations in setting a job-related vision standard. Furthermore, Albertsons could not use compliance with the DOT regulations to justify its behavior because the waiver program was a legitimate part of the DOT regulatory scheme.

Albertsons Incorporated v. Kirkingburg was appealed to the United States Supreme Court; the Supreme Court reversed the Appeals Court ruling. The Supreme Court held that an employer's right to set safety guidelines or adhere to federal guidelines was seen as enough reason to refuse to hire or fire an employee. Furthermore, even if the DOT waived the sight guidelines, employers do not have to waive their safety standards.

In *Sutton v. United Airlines* (1997), *Murphy v. United Parcel Service* (1998), and *Albertsons v. Kirkingburg* (1998), the United States Supreme Court ruled against the plaintiffs in all three cases. In the *Sutton* case, the Supreme Court found that whether an individual has a disability as defined by the ADA depends upon the effect of one's condition or impairment "in reference to the measures that mitigate the individual's impairment." This means that individuals should be evaluated on the basis of their condition with the use of medication or assistive devices when determining whether their disability substantially limits major life functioning. The United States Supreme Court used the same line of reasoning in *Murphy v. United Parcel Service* and *Albertsons v. Kirkingburg*.

Olmstead v. L. C.

Olmstead v. L. C. (1998) has implications for persons with disabilities receiving services from state and local government. The plaintiffs in this case were two intellectually and emotionally impaired clients who were institutionalized in the state of Georgia. The plaintiffs claimed that they were denied services in the most integrated setting because they were placed in a state operated institution. They claimed that institutionalization segregated them from the larger society. The doctors for the plaintiffs found that community based services were more appropriate for their treatment needs.

A lower federal court ruled in favor of the plaintiffs, finding that when the state confines an individual with a disability in an institutional setting when a community placement is more appropriate violates a core principle underlying the ADA, that being to integrate persons with disabilities into the larger society. *Olmstead v. L. C.* was appealed to the United States Supreme Court; the Court ruled that the institutionalization of persons with disabilities is a form of discrimination and that the state of Georgia violated the ADA.

Board of Trustees of the University of Alabama v. Garrett

The *Board of Trustees of the University of Alabama v. Garrett* (2001) is an important civil rights case. Garrett, an employee of the University of Alabama, had to take a four-month leave for treatment of her breast cancer. After returning to work, Garrett complained that her employer made negative comments about her disability, cancer, and required her to take a lower paying position. She sued for money damages in Federal Court; her case was ultimately appealed to the Su-

preme Court. The Court ruled that state employees couldn't recover money damages because the employment provisions of the ADA, Title I, are unconstitutional under the Eleventh Amendment of the U.S. Constitution. What this ruling means is that the rights of the state government prevailed over the rights of an individual citizen, Patricia Garrett.

One of the most important technical aspects of the Garrett case was for her to prove that state governments have shown a clear pattern of discrimination against persons with disabilities. Even though Justice Breyer, who dissented from the majority opinion, argued that Congress found widespread discrimination against persons with disabilities by state governments when it enacted the ADA, Chief Justice Rehnquist concluded that there is no such evidence.

State employees with disabilities can, however, continue to file job discrimination under The Rehabilitation Act of 1973. The Rehabilitation Act prohibits job discrimination based on disabilities. State governments have a strong incentive to comply with the Rehabilitation Act because flagrant violation of this national policy can result in losing federal funding.

PGA Tour Inc. v. Martin

The Professional Golfer's Association (PGA) Tour Inc. v. Martin (2001) case involved a professional golfer named Casey Martin. Martin was born with a circulatory disorder that disrupts the flow of blood between his right leg and his heart; the condition is called Klippel-Trenaunay-Weber Syndrome. Martin requested a golf cart under Title III of the ADA as an accommodation because his disability makes it difficult to walk. The PGA did not dispute the fact that Martin has a disability, but instead argued that the game would be changed if Martin was allowed to ride in a cart during tournaments. The 9th United States Circuit Court of Appeals ruled that Martin should be allowed to use the cart and that its use did not fundamentally change the game of golf. The PGA appealed to the United States Supreme Court; the Court ruled 7-2 that Martin must be allowed to use a golf cart. What this ruling tells us is that under Title III of the ADA, private entities must provide reasonable accommodations to persons with disabilities.

SUMMARY OF MAJOR COURT CASES

Recent court rulings have helped to clarify a number of important issues related to the ADA. People who are HIV positive are clearly pro-

tected under the ADA. Furthermore, state correctional systems must provide reasonable accommodations to inmates. If someone applies for SSDI it does not mean that he or she forfeits his or her rights under the ADA. States, which place persons with disabilities in institutional settings, may be violating the ADA's intent to integrate persons with disabilities into the larger society. Under the ADA, people are evaluated on the basis of their condition "with the use of medication or assistive devices" when determining whether their disability substantially limits major life functioning. Lastly, the Eleventh Amendment gives immunity to states from monetary damages under Title I of the ADA. State employees with disabilities continue to have protection from job discrimination from the federal level under the Rehabilitation Act of 1973. It is very clear from the Casey Martin ruling that private entities must provide accommodations under Title III of the ADA. These recent court rulings have important implications for social workers and other professionals working in social services. The editor will continue to update readers on significant court rulings related to the ADA in future issues.

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Received: June 16, 2001

Revised: July 19, 2001

Accepted: July 27, 2001