Disability Evaluation – Disability or Malingering?

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Epidemiology

2014: http://www.disabilitystatistics.org/
2013: http://www.disabilitycanhappen.org
An estimated 12.8% of the U.S. population (including Puerto Rico) is on disability. This is approximately 41 Million. It was just over 30 Million in 2008.

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<tr>
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<tbody>
<tr>
<td>US population on disability</td>
<td>12.1%</td>
<td>12.6%</td>
<td>12.6%</td>
<td>12.8%</td>
</tr>
<tr>
<td>Puerto Rico (Highest)</td>
<td>21.1%</td>
<td>21.3%</td>
<td>21.4%</td>
<td>21.4%</td>
</tr>
<tr>
<td>Utah (Lowest)</td>
<td>9.3%</td>
<td>9.6%</td>
<td>9.9%</td>
<td>9.9%</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>11.4%</td>
<td>11.5%</td>
<td>11.8%</td>
<td>11.6%</td>
</tr>
</tbody>
</table>
By Sex | 2012 | 2014 | 2015 | 2016
--- | --- | --- | --- | ---
US Women | 12.3% | 12.8% | 12.7% | 12.9%
US Men | 12.0% | 12.4% | 12.5% | 12.7%
MA Women | 11.6% | 11.7% | 12.0% | 12.0%
MA Men | 11.3% | 11.4% | 11.5% | 11.3%
## Epidemiology

<table>
<thead>
<tr>
<th>By Age</th>
<th>2012</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>US Ages 21-64</td>
<td>10.4%</td>
<td>10.8%</td>
<td>10.4%</td>
<td>10.9%</td>
</tr>
<tr>
<td>US Ages 65+</td>
<td>35.8%</td>
<td>35.9%</td>
<td>35.5%</td>
<td>35.2%</td>
</tr>
<tr>
<td>MA Ages 21-64</td>
<td>9.2%</td>
<td>9.3%</td>
<td>9.2%</td>
<td>9.3%</td>
</tr>
<tr>
<td>MA Ages 65+</td>
<td>33.1%</td>
<td>33.0%</td>
<td>32.8%</td>
<td>31.9%</td>
</tr>
</tbody>
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2015: http://www.disabilitystatistics.org
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# Epidemiology

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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>US White</td>
<td>12.5%</td>
<td>13.1%</td>
<td>13.1%</td>
<td>13.4%</td>
</tr>
<tr>
<td>US Black</td>
<td>13.9%</td>
<td>14.0%</td>
<td>14.0%</td>
<td>14.2%</td>
</tr>
<tr>
<td>US Hispanic</td>
<td>8.5%</td>
<td>8.8%</td>
<td>8.7%</td>
<td>9.1%</td>
</tr>
<tr>
<td>US Asian</td>
<td>6.5%</td>
<td>6.9%</td>
<td>6.9%</td>
<td>7.1%</td>
</tr>
<tr>
<td>MA White</td>
<td>11.6%</td>
<td>11.8%</td>
<td>12.1%</td>
<td>12.1%</td>
</tr>
<tr>
<td>MA Black</td>
<td>12.8%</td>
<td>12.6%</td>
<td>13.5%</td>
<td>12.1%</td>
</tr>
<tr>
<td>MA Hispanic</td>
<td>14.5%</td>
<td>12.2%</td>
<td>10.9%</td>
<td>12.6%</td>
</tr>
<tr>
<td>MA Asian</td>
<td>5.6%</td>
<td>6.3%</td>
<td>5.8%</td>
<td>6.4%</td>
</tr>
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2016: [http://www.disabilitystatistics.org](http://www.disabilitystatistics.org)
## Epidemiology

<table>
<thead>
<tr>
<th>By Education</th>
<th>2012</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Did not complete High School</td>
<td>11.2%</td>
<td>11.1%</td>
<td>10.8%</td>
<td>11.0%</td>
</tr>
<tr>
<td>High School Education</td>
<td>18.0%</td>
<td>18.7%</td>
<td>18.8%</td>
<td>19.1%</td>
</tr>
<tr>
<td>College Degree</td>
<td>7.4%</td>
<td>8.2%</td>
<td>8.3%</td>
<td>8.5%</td>
</tr>
</tbody>
</table>
Epidemiology

Just over 1 in 4 of today's 20 year-olds in the United States will become disabled before they retire.

Studies support herd phenomena.

U.S. Social Security Administration, Fact Sheet February 7, 2013
Council for Disability Awareness, Disability Divide Consumer Disability Awareness Study, 2010
In the United States, there were over 2.2 million new Social Security Disability Insurance (SSDI) applications in 2017.

Epidemiology

Less than 5% of disabling accidents and illnesses are work related, leaving 95% of disability not covered by Worker’s Compensation.

Epidemiology

Council for Disability Awareness, Long-Term Disability Claims Review, 2012
The average individual disability claim lasts 31.6 months.

Epidemiology

### New Claims/Ongoing Claims by types of disorders

<table>
<thead>
<tr>
<th>Disorder Type</th>
<th>New</th>
<th>Ongoing</th>
</tr>
</thead>
<tbody>
<tr>
<td>MSK/Spine/Fibromyalgia</td>
<td>28.6%</td>
<td>28.7%</td>
</tr>
<tr>
<td>Injuries and Poisoning</td>
<td>10.3%</td>
<td>7.7%</td>
</tr>
<tr>
<td>“Sx, Signs, Poorly Defined” (Headaches, CFS, SAD, etc.)</td>
<td>2.8%</td>
<td>2.7%</td>
</tr>
<tr>
<td>Mental Disorders</td>
<td>8.3%</td>
<td>7.7%</td>
</tr>
<tr>
<td>Cancer</td>
<td>15.1%</td>
<td>9.1%</td>
</tr>
<tr>
<td>Cardiovascular/PVD</td>
<td>8.7%</td>
<td>12.4%</td>
</tr>
</tbody>
</table>

Council for Disability Awareness, Long-Term Disability Claims Review, 2014
The law defines disability as the inability to engage in any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months.

Definition
Definitions

Alternatively, disability is a severe medical condition that results in an inability to work at the substantial gainful activity (SGA) level, defined as earning $1,180/mo ($1,970/mo for blindness) after taxes in 2017.

Evidence must show that the condition lasted 12 months or longer or is expected to last 12 months or longer.

12 months cannot be a combination of different conditions (e.g. knee pain then back pain).

SSA.gov
Medically Determinable Impairment

Definitions
Listing of Impairments

Definitions
There are 14 recognized organ or physiological systems that are defined in the Listing of Impairments

Definitions
Definitions – Listing of Impairments

1.00 Musculoskeletal System
2.00 Special Senses and Speech
3.00 Respiratory System

4.00 Cardiovascular System
5.00 Digestive System
6.00 Genitourinary Impairments

7.00 Hematological Disorders
8.00 Skin Disorders
9.00 Endocrine Disorders

10.00 Congenital Disorders that Affect Multiple Body Systems
11.00 Neurological Disorders
12.00 Mental Disorders

13.00 Malignant Neoplastic Diseases
14.00 Immune System Disorders
1.00 Disorders of the Musculoskeletal System

Definitions – Listing of Impairments
Loss of Function – Lumbar Spine and Lower Extremities

Definitions – Listing of Impairments
Loss of Function – Cervical Spine and Upper Extremities

Definitions – Listing of Impairments
Small Joints – Not a Listing

Definitions – Listing of Impairments
Obesity

Definitions – Listing of Impairments
Maximal Medical Improvement and other Listings

Definitions – Listing of Impairments
Maximal medical improvement is derived from a course of multimodal treatment, documented longitudinally with serial physical exams, laboratory findings, and imaging over subsequent 6-month periods, and finally residual limitations.

Documentation
Longitudinal Documentation

Documentation
Eligibility and The Process of Determination
Basic requirements for Title II and for Title XVI of the Social Security Act of 1935 and Amendment of 1954

Eligibility
Under Title II
Eligibility depends on insured status. To attain insured status, one must have worked long enough and recent enough to be considered eligible. This is quantified by a credit system.

Eligibility
Eligibility

For 31 or older:

• Must have worked 5 years of the last 10 years.
• Earn 1 credit for each $1,320 earned during the year for a maximum of 4 credits per year.
• 5 years gives you 20 credits that must have been earned in the last 10 years before applying for SSDI.

For ages 24-31: 12 credits are needed.
For 24 or younger: 6 credits are needed.
Alternatively, under Title XVI there are two other broader categories under which a financially needy person can get disability benefits:

Any adult age 18 or over who is disabled

Any child under age 18 who is disabled

So basically anyone who is financially needy and who is disabled can qualify.
Eligibility

SSDI vs. other Government (e.g. Veteran’s Benefits) and private disability programs

Disability Determination Services (DDS) determines eligibility for SSDI.
Eligibility - Alternate Work
Combining SSDI with Other Government and Private Benefits Programs

- Medicare and Medicaid
- RTW incentives
- Private LTD
Obtaining SSDI benefits begins with the patient ("the claimant") submitting an application online at socialsecurity.gov or by scheduling an in-person appointment.

The Process
The Process - Roles in Determination

Who does what?

Patient
Primary care physician
Specialists
The Process - Roles in Determination

Who does what? - continued

Department of Disability Services (DDS)
Disability Examiner (DE)
Adjudicative Law Judge (ALJ)
Consultative Examiner (CE)
Claim Reviewer (CR)
Independent Medical Expert (IME)

The Process - Roles in Determination

Who does what? - continued
Treating Source
How is the disability determination made?
Rejected claims can be appealed. The first appeal is a reconsideration, which is generally a case review at the state level by an adjudicative team of the DDS that was not involved in the original determination.

Denial
Office of Disability Adjudication and Review, or ODAR. Case reviewed by Judge Hearing before an ALJ (Adjudicative Law Judge) Appeals Council Federal District Court United States Supreme Court

Denial
Denial

70.8% of initial SSDI claim applications in 2014 were either denied or kept pending by the end of the year.

Allowance rate for 2014 was 51.1% that includes allowances from applications of previous years 2008-present.
Denial

Reasons for denials in 2014: 42.6% of initial applications were denied for technical non-medical issues. Of those that satisfied the technical application requirements, subsequently:

- 25.0% denied as impairment deemed not severe.
- 4.5% denied as impairment was not expected to last 12 months
- 39.4% denied as applicant was deemed to be able to do other kinds of work
- 13.6% denied as applicant was deemed to be able to do the same kind of work

SSA.gov
Denial

Reasons for denials - continued:

17.4% denied as applicant has substance abuse issues, failed to cooperate with the process or with medical treatment recommendations, insufficient medical evidence, stopped pursuing their disability claim, found work, or failed to substantiate their claim at the higher hearing levels.
Payout

SSDI ranges from just over $100/mo to just over $4900/mo

Very complex formula
https://www.ssa.gov/planners/retire/AnypiaApplet.html
The SSA assumes that disability claims are temporary.

**Monitoring and Termination**

www.disabilitysecrets.com
Monitoring and Termination

For SSDI, termination of benefits can occur in 3 ways:

Recovery from medical impairment – regular monitoring via disability reviews

Performing gainful activity and exhaustion of several Return-to-Work (RTW) incentives

Automatic conversion to Social Security Normal Retirement Age (SSNRA)

http://www.disabilityadvisor.com
Functional Capacity Evaluation Form
Value of the FCE Form

Haije Wind *et al.* found that when FCE forms were used in a follow-up reassessment of a patient, physician decision making regarding work ability changed significantly compared to reassessments without the use of the FCE form.

Value of the FCE Form

- The FCE form is an Assessment tool
- There are over 10 variations of the FCE form

Questions
- Is the FCE form predictive of return to work?
- Is the FCE form predictive of disability?
- Has the FCE form been validated?
- Is the FCE form reliable?
Functional Capacity Evaluation Form

• Isernhagen Work System (aka WorkWell System), a version of the FCE form, was found to have consistent inter-rater reliability and predictive validity, and acceptable intra-rater reliability. This is one of the more widely used forms.

- However, problems arise, for example, when acute on chronic back pain develops after the initial FCE form was filled out.


# Isernhagen Work System (WorkWell System) FCE

<table>
<thead>
<tr>
<th>Performance category</th>
<th>WWS FCE subtests</th>
</tr>
</thead>
<tbody>
<tr>
<td>Weight handling and strength</td>
<td>Lifting, carrying, pushing, pulling, grip strength</td>
</tr>
<tr>
<td>Posture and mobility</td>
<td>Overhead work, forward bending, kneeling, crawling, crouching, squatting, rotation, sitting and standing tolerances</td>
</tr>
<tr>
<td>Locomotion</td>
<td>Walking, stair climbing, ladder climbing</td>
</tr>
<tr>
<td>Balance</td>
<td>Balance board, heel-to-toe, sideways walking</td>
</tr>
<tr>
<td>Hand coordination</td>
<td>Manual manipulation</td>
</tr>
</tbody>
</table>
Problems with the FCE Form

• Discordance occurs when the FCE indicates closure of the disability claim, suspending benefits, but patient cannot return to work for other reasons:
  - Patient unwilling to return to work.
  - Fear of re-injury
  - Hates job, poor relationship with supervisor or co-workers, disability compensation adequate financially
  - Other psychosocial factors (non-financial compensation, personality disorders, attorney involvement, culture)
  - Duration out of work
  - Loss of job (termination)

Problems with the FCE Form

• Therefore, RTW depends not only on functional capacity, but also patient beliefs, perceptions, and work availability.
• Therefore, the FCE form may be a poor predictor of RTW and disability.
  - 20% of those “passing” the FCE had recurrent back pain.
  - Suspension of disability benefits after being “cleared” via the FCE lasts on average 32 days before being reinstated.

Problems with the FCE Form

- It was suggested that the FCE form should be more of a behavioral test that accounts for psychosocial aspects.

- Language on forms should not be in absolute terms and ambiguity should be removed – see below

Residual Functional Capacity Form

Patient: __________________
SS #: __________________
Date of Birth: __________________

Dear Doctor: __________________

Please respond to the following questions regarding your patients’ disability. This will be used as medical evidence for a social security disability claim or a private long-term disability claim.

Please be specific with regards to your patients’ medical ailments and how they affect his or her daily activities both at work and at home:
1. With regards to your contact with the patient, please describe the frequency and purpose:

2. Please describe the patients’ symptoms as completely as possible:

3. Please state all clinical findings and any medical test results and/or laboratory results:

4. What is your diagnosis of the patients symptoms and test results?:

5. Please describe any treatment done so far and the results of treatment:
6. What is your prognosis for this patient?:

7. Would you expect the patient's disability or impairment to last one year or more, or has it already lasted one year?:
   Yes _____ No _____

8. Does the disability or impairment prevent the patient from standing for six to eight hours?:
   Yes _____ No _____

   Can the patient stand at all, and if so for how long?

9. Does the disability or impairment prevent the patient from sitting upright for six to eight hours?
   Yes _____ No _____

   Can the patient sit at all, and if so for how long?

10. If the patient cannot stand and/or sit upright for six to eight hours, what is the reason?:

11. Does the disability or impairment require the patient to lie down during the day?
Yes _____ No _____
If the answer is yes please explain why:

12. How far can the patient walk non-stop?:

13. Please check the frequency with which the patient can perform the following activities: Percentage of Time

Rarely – 0-30% Frequently- 30-70% Consistently – 70-100%
Reach Up Above Shoulders
Reach Down to Waist Level
Reach Down Towards Floor
Carefully Handle Objects
Handle with Fingers
Possible Approach to FCEs

• Redefining Definitions
  • Anatomy – the topography of a particular body part made of a particular substance.
  • Physiology – a pathway to function
  • Target Function – the intended performance of a body part that meets expectations.
  • Impairment – the intended performance of a body part that does not meet expectations.
  • Micro Disability – when the impairment cannot be compensated for in other ways.
Functional Capacity Evaluation Form

- Redefining Definitions
  - Functional Disability – when a micro disability causes a person to become unproductive in society.
  - Functional Capacity – the maximum ability of a patient as measured objectively by an evaluator.
  - Functional performance – a measure of patient activities relative to functional capacity.
  - \( P < C \) may indicate psychosocial factors are present
  - \( P > C \) may indicate suboptimal FCE.
Physician Training

Although there is a vast amount of information available regarding disability assessments, physicians still feel uncomfortable performing them.

O’Fallon and Hillson found that physicians are more uncomfortable performing disability assessments than completing legal documents, prescribing opioids, or running a code.
Physician Training

This discomfort may be for various reasons:

- Lack of training specific for disability assessments
- No immediate oversight

Conflict of Roles:

- Role as in information provider
- Role as a treating physician
- Role as a patient advocate
- Role as a mitigator
- Role to treat pain
- Responsibility to society
O’Fallon and Hillson also found a variability in disability assessments based on the review of a case of acute back pain by 73 physicians:

8% concluded complete disability
88% concluded partial disability
4% concluded no disability
There was a high variability in disability assessments based on the review of a case of chronic back pain by 72 physicians:

22% concluded complete disability
39% concluded partial disability
39% concluded no disability
According to the National Association of Disability Examiners:

“The DE makes the initial medical-legal-vocational determination following complex and frequently changing Federal rules and regulations.”

“It takes years before an individual becomes adept at this complex task.”
Physician Training

Options to learn about Disability Evaluation

I called the office of DDS and their recommendation was to look up the requirements online.

American Academy of Disability Evaluating Physicians - CME
- Live courses
- DVDs
- Certification Exams

www.aadep.org
Physician Training

Key questions to ask yourself while assessing for disability:

1. Is the claimant engaged in gainful activity?
2. Is the claimant’s impairment severe?
3. Will the claimant’s impairment eventually lead to death or last 12 months or longer?
4. Does the impairment meet the criteria for a Listing?
5. Will the impairment prevent past relevant work?
6. Will the impairment prevent other work?

Adapted from SSA. Disability Evaluation under social security. Washington DC: SSA. 2001 SSA publication 64-039
Disabled or Deceiving?

- Perhaps an unexplored use of the FCE form.
- We now know that the FCE should include evaluation of psychosocial factors.
- We should define what Deceiving is.
- Do we allow for or address patient’s perceptions and fears?
- Do we address financial and non-financial compensation?
- Do we address attorney involvement?
- Which psychosocial factors are “allowed” and which are deemed unacceptable?

- If we allow for all psychosocial factors, then what is considered malintent?
Casualties of the Current System

The SSDI fund reserves were projected to be depleted by the end of 2016. The Bipartisan Budget Act of 2015 reallocated funds from the Old-Age and Survivors Insurance (OASI) trust fund to the Disability Insurance trust fund to ensure payment of full disability benefits into 2022.

The bill also imposes more severe penalties for fraud on the part of applicants and physicians. 5-year maximum imprisonment increased to 10 years as an example.

https://www.ssa.gov/legislation/legis_bulletin_110315.html
Conclusions

Epidemiology of disability is interesting but may not help in our daily practices of evaluating disability.

Definitions are detailed, extensive, and cumbersome, yet ambiguity continues to exist.

Disability evaluation is a complex process

- Roles of each provider are not intuitively clear
- Roles within a particular provider are in conflict
- Formal training for disability evaluation for the most part does not occur
- Assessment tools do not predict return to work or disability

- Costs are high for patients suffering with an impairment, waiting for relief, and also high for society.
Conclusions

Solutions:

- Simplify definitions and use precise language
- Streamline the process which will help the patient and professionals
- Mandatory physician training as part of residency training and not just a weekend course
- Mitigate conflicts of interest

Develop and validate FCE forms
END