CASE REPORT

Integrating the Americans With Disabilities Act of 1990 Into Client Intervention

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Key Words: human engineering

Occupational therapists are ideally positioned to facilitate the implementation of the Americans With Disabilities Act of 1990 (ADA) (Public Law 101-336). The comprehensive educational background of the occupational therapist in the biological and behavioral sciences and in components of human performance enables him or her to make a contribution to the provision of services for persons with disabilities. The services of an occupational therapist, as an advocate for clients with disabilities, can be readily incorporated into intervention. This case study illustrates some strategies used "to assure equality of opportunity, full participation, independent living, and economic self-sufficiency" (ADA, 1990, p. 104 STAT. 329) for a qualified client with a disability.

Client History

The client is a single, 31-year-old right-handed woman who was an unrestrained front-seat passenger involved in a high-speed motor vehicle accident. The client sustained a transient loss of consciousness. Emergency vehicles transported her to a local hospital, where she complained of low back pain. Physical examination revealed an absent left knee jerk and bilateral ankle jerk deep tendon reflexes. A computerized tomography scan revealed an L-1 burst fracture with left laminar fracture and retropulsed L-1 fragments obliterating 80% to 89% of the spinal canal. Ten days later, the client underwent a Harrington rod placement from T-9 to L-4, with compression hook and screw placement from T-12 to L-2 and autologous bone fusion from T-12 to L-2. The client was considered to have an L-5 Frankel class C paraplegia. After surgery, her low back pain decreased markedly, but postoperative manual muscle testing was virtually without change from preoperative testing.

One week later, she was transferred to the spinal cord unit of the hospital for rehabilitation, where she was seen by occupational therapists and physical therapists. However, 3 weeks into her rehabilitation regimen, she underwent an anterior fusion and decompression and was managed in a body jacket. Rehabilitation continued. Two months after the accident, she was discharged to her parents' home with recommendations for outpatient physical therapy. The occupational therapy discharge summary noted that the client was independent in bed-to-wheelchair and car-to-wheelchair transfers using a stand-pivot. She required contact guard to occasional minimal assistance when transferring from a seated to a standing position. She was independent in all self-care activities.

Two years after the accident, the client has resumed living in her own apartment. Her neurological recovery has reached a plateau. The medical findings show an L-5/S-1/S-2 myotome cauda equina injury. The client is a hesitant ambulator secondary to her weakness and to her
sensory loss in the lower extremities. Her functional gait has improved since she has been fitted with a rigid-style foot orthotic, which cups the whole heel of her right foot. However, she fatigues easily after walking moderate distances (e.g., 1 block). The client has intermittent discomfort and pain in the paraspinal area above the level of the Harrington rods.

The client was highly motivated to return to work and contacted the local rehabilitation commission for assistance. She was assigned a vocational rehabilitation counselor. Prior to injury, the client worked in a leasing agency performing administrative and secretarial work. She indicated to the vocational rehabilitation counselor that she would like to return to such employment. Concurrently, the counselor arranged for job interviews and contacted me to work with the client on possible adaptations that might be needed to return to work. In addition, I, as the client’s occupational therapist, took this opportunity to provide her with information on the ADA and its implications.

It appeared that three areas of provision within the ADA could benefit the client: Title I, Employment; Title II, Public Services and Transportation; and Title III, Public Accommodations.

Employment

The ADA, Part 1630, Title I, Equal Employment Opportunity for Individuals with Disabilities Final Rule (1991) “focuses on providing qualified individuals with disabilities ... the same employment opportunities that are available to persons without disabilities” (p. 35739). That is, the “ADA seeks to ensure access to equal employment opportunities based on merit. It does not guarantee equal results, establish quotas, or require preferences favoring individuals with disabilities over those without disabilities” (Equal Employment Opportunity for Individuals With Disabilities, 1991, p. 35739). This statement clearly emphasizes that the ADA is not an affirmotive action statute.

According to the ADA, when a qualified person with a disability applies for a job, he or she has to be able to perform the essential functions of the job, not the marginal or peripheral functions. It is advisable but not required by the ADA for employers to have job descriptions developed that delineate the essential functions of the job (Part 1630). “The essential functions are those functions that the individual who holds the position must be able to perform unaided or with the assistance of a reasonable accommodation” (‘Part V, Equal Employment Opportunity Commission,’ 1991, p. 35743).

I coached the client on her employment rights under the ADA. The client was encouraged to obtain job descriptions prior to the job interview so that during the interview process the client could discuss what, if any, reasonable accommodations would be needed to perform the essential functions of the job. However, it was found that out of the 10 job openings in the leasing area, none had job descriptions. Therefore, with permission from the client, I contacted one of the potential employers to ask if she could perform a job analysis. The employer was agreeable. It was ascertained that the essential functions of the leasing administrator’s job were (a) knowledge of leasing laws; (b) computer skills; (c) telephone skills; (d) communication skills; (e) record keeping; (f) money skills; (g) filing; (h) photocopying; (i) 5 hr of sitting with intermittent walking up to 50 yd; and (j) materials handling, including files weighing up to 4 lb.

It was ascertained that the client could perform the essential functions of the job but would require some reasonable accommodations. According to the ADA, there are three categories of reasonable accommodations: (a) “accommodations that are required to ensure equal opportunity in the application process”; (b) “accommodations that enable the employer’s employees with disabilities to perform the essential functions of the position held or desired”; and (c) “accommodations that enable the employer’s employees with disabilities to enjoy equal benefits and privileges of employment as are enjoyed by employees without disabilities” (“Part V, Equal Employment Opportunity Commission,” 1991, p. 35744). Reasonable accommodations can be, but are not limited to, job restructuring, modification of work schedules, acquisition or modification of equipment or devices, and provision of readers or interpreters. An example of a reasonable accommodation for a person with cerebral palsy might be the rental of a headset phone that would allow him or her to write while talking on the telephone. The cost of this reasonable accommodation is approximately $6 per month. The cost of reasonable accommodations vary; however, according to the Job Accommodation Network (JAN), most are fairly inexpensive:

- 31% of accommodations recommended are at no cost to the employer
- 19% of accommodations recommended cost between $1 and $50
- 19% of accommodations recommended cost between $51 and $500
- 19% of accommodations recommended cost between $501 and $1,000
- 11% of accommodations recommended cost between $1,001 and $5,000
- 1% of accommodations recommended cost more than $5,000. (JAN, 1987).

The Job Accommodation Network “is an international information network and consulting resource for accommodating persons with disabilities in the workplace” (JAN, 1991 [no page no.]). This is a free service with a database of more than 20,000 possible accommodations (see the Appendix). When a person interested in job
accommodations contacts JAN by calling 800–526–7234, a human factors consultant will gather the specifics on the person’s limitations and how they relate to the tasks as defined in the job analysis. With this information, the consultant will provide possible accommodation solutions, including referral to manufacturers and distributors of equipment. For the present case study, JAN was contacted and a human factors consultant provided possible accommodation solutions similar to those mentioned in this article. In addition, the consultant provided a summary of anthropometric measurements, articles on the ergonomically designed office, and information on manufacturers who market equipment of use to the client. If needed, the consultant will discuss scheduling issues and reiterate possible accommodation ideas in a letter in the event that such a presentation is needed for potential employers.

I suggested the following reasonable accommodations:

1. Due to the client’s limited sitting tolerance and fatigue level, a modified work schedule was suggested. In addition, it was proposed that some work might be performed at home.
2. Because of the client’s physical limitations, rearrangement of the computer workstation to incorporate ergonomic strategies (e.g., raising the height of the monitor) was suggested.
3. Because the client had limited sitting tolerance, a chair with ergonomic features and a footrest was recommended.
4. To accommodate the client wearing a rigid-style foot orthotic, it was suggested that she be allowed to wear sneakers, rather than shoes, to work.

The cost of the reasonable accommodations to the employer was estimated to be between $200 and $500. The cost was dependent on the quality of the ergonomic chairs. According to the ADA, “the accommodation...does not have to be the ‘best’ accommodation possible, so long as it is sufficient to meet the job-related needs of the individual being accommodated” (Equal Employment Opportunity for Individuals With Disabilities, 1991, p. 35748).

The ADA specifies that the employer does not have to provide a reasonable accommodation if it will cause an undue hardship. Undue hardship is defined as a “significant difficulty or expense incurred” (Equal Employment Opportunity for Individuals With Disabilities, 1991, § 1630.2, p. 35736) to provide the reasonable accommodation. Factors taken into consideration to whether a reasonable accommodation would impose an undue hardship are (a) cost of the accommodation, (b) overall financial resources of the business, (c) type of operation or operations, (d) the impact of the accommodation on the operation of the facility, and (e) direct threat. “Direct threat means a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation” (Equal Employment Opportunity for Individuals With Disabilities, 1991, § 1630.2, p. 35736).

One week after the interview, the client was offered the job, however, the employer required a post-offer medical examination and “condition[ed] the offer of employment on the results of the examination” (“Part V, Equal Employment Opportunity Commission,” 1991, p. 35751). This is legal according to the ADA, “provided that all entering employees in the same job category are subjected to such an examination, regardless of disability” (Equal Employment Opportunity for Individuals With Disabilities, 1991, Section 1630.14[b]). Under Section 1630.14(b), the medical examination is “not required to be job related and consistent with business necessity.” However, the employer is only allowed to use information that relates to the essential functions of the job, and only that information can be used to withdraw an employment offer.

The employer contacted me to perform a post-offer screening. It was ascertained that the client had the ability to (a) sit for 1 hr in an ergonomic chair with a footrest, (b) stand for 30 min, and (c) walk for 10 min, at which time fatigue occurs. In addition, I was requested to perform an ergonomic analysis for an appropriate chair for the client.

All suggested reasonable accommodations were implemented by the employer, so that the client was able to begin working 2 weeks after being hired.

Public Services and Transportation

Because the client could no longer drive per the physician’s order, I explored the use of public transportation. The transportation requirements under the ADA affect primarily bus and rail transportation. “The ADA...requires public bus operators to provide supplemental demand-response paratransit to those people who, by virtue of their disability cannot use the fixed-route system” (Golden, 1991, p. 38). In the case of this client, her home was located on the public transportation route necessary to go to work; however, the bus stops were located 3 blocks from her home and 4 blocks from her place of employment. Under the ADA, the client was eligible for new bus stops to be situated ¼ block from both her home and place of employment. These modifications enabled the client to achieve independence in transportation to work and to public accommodations (e.g., restaurants and supermarkets).

Public Accommodations

Under the ADA, discrimination by public accommodations is prohibited. Public accommodations include all facilities open to the public, such as restaurants, hotels, and supermarkets. The client presented in this study was particularly concerned with being able to shop indepen-
dent at the supermarket, because she fatigues easily. After she and I met with the manager of a large chain supermarket, he readily agreed to purchase a motorized grocery cart for use by customers with disabilities (see Figure 1). Additionally, because the client no longer had a driver's license as a form of identification, she was allowed to use alternative forms of identification when writing personal checks for merchandise. Under the ADA, it is illegal for a facility to have a policy that would be discriminating against persons with disabilities, such as only accepting a driver’s license as a form of identification.

Summary

Testimony provided by Kemp (1991) before the Subcommittee on Employment Opportunities of the U.S. House of Representatives provided occupational therapists with an open invitation to become involved with the implementation of the ADA:

[Americans With Disabilities Act of 1990 is an important component to providing comprehensive services to clients. It is crucial that we as occupational therapists become sophisticated regarding the implications of the ADA and advocate for its implementation for our clients.]

Author’s Note

Title I regulations take effect for employers with 25 or more employees on July 26, 1992, for employers with 15 to 24 employees on July 26, 1994. The regulations do not apply to employers with fewer than 15 employees.

By January 26, 1992, the U.S. Equal Employment Opportunity Commission will have published a technical assistance manual. It will be a how-to resource for employers and persons with disabilities and will include guidance on reasonable accommodations and a directory of technical assistance resources for reasonable accommodations. The manual will be published in a format that can be updated with supplements and will be available to the public at a minimal cost. For more information, contact the ADA Helpline at 800-669-EEOC, 800-800-3302 (TDD).

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Appendix

Examples of Job Accommodations

- A plant worker who is hearing impaired was able to use a telephone amplifier designed to work in conjunction with hearing aids, allowing him to retain his job and not be transferred to a lower paying job within the company. Cost = $25.95.
- A clerk with limited use of her hands was provided with a “lazy susan” file holder for her desk. This prevented her from having to reach across her desk, and allowed her to remain in her job as before. Cost = $85.00.
- A person with the use of only one hand needed to be able to use a camera as part of his job. A tripod had proven to be too cumbersome. By providing a waist pod (such as is used in carrying flags), he was able to manipulate the camera and keep his job. Cost = $50.00.
- A seamstress with carpal tunnel syndrome due to repetitive wrist motion purchased a pair of spring-loaded ergonomically designed scissors. Cost = $18.00.
- A desk layout was changed from the right to the left side for a visually impaired data entry operator. Cost = $0.00.
- A person with an eye disorder in whom glare on the computer screen caused increased fatigue purchased an antiglare screen to minimize the glare. Cost = $39.00.
- A receptionist who was blind was provided with a light probe that allowed her to determine which lines on a telephone were ringing, on hold, or in use at her company. Cost = $45.00.
- A light was installed at the door of a company to alert the security guard of an approaching employee who used a wheelchair and needed assistance with the high security door. Cost = $50.00.
- A headset for a phone was rented that allowed an insurance salesperson with cerebral palsy to write while talking. Cost = $49.95.
- A one-handed person working in a food service position was able to perform all of the tasks in her position except opening cans. A one-handed can opener allowed her to be able to perform that one remaining task in her position. Cost = $35.00.

Figure 1. A motorized grocery cart.
A groundskeeper who had recovered from a stroke had limited use of one arm, yet to maintain his position he needed to be able to rake grass. The use of a detachable extension arm on the rake allowed him to grasp the handle on the extension with the hand with limited use and control the rake with his functional arm. Cost = $19.80.

References


Coming in June:

- The development of a valid, reliable measure of motor and postural skills
- Autistic disorder: A neuropsychological enigma
- Assessment of codependency behavior in occupational therapy and medical technology students
- Implementing the Americans With Disabilities Act of 1990 in higher education
- A survey of the reasons why new therapists chose occupational therapy as a profession

Turn to AJOT for the latest information on occupational therapy treatment modalities, aids and equipment, legal and social issues, education, and research.