Criteria 8: Mental-Behavioural Impairment – the Four Domains Revisited

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The psychologist or psychiatrist ("the M/B assessor") identifies (a) DSM diagnosis(es) and associated mental/behavioural impairments that are not expected to resolve.

The M/B assessor collects and examines functional data (often with the help of an occupational therapist) to determine the level of functional impairment in four domains.

The M/B assessor determines the extent of identified functional impairment in the four domains that can be accounted for by bona fide mental/behavioral impairment and assigns ratings for each of the four domains.

The psychologist or psychiatrist considers issue of causation in regard to diagnosis(es), mental/behavioural impairment, and level of functional impairment.
The psychological or psychiatric assessment should be multi-modal in nature – it requires the collecting of multiple sources of data and a critical analysis of convergences and discrepancies between sources of data.

- Behavioural presentation
- Self-reports at interview
- Information derived from the medical brief
- Information from co-assessors on a multidisciplinary team
- Collateral information from family, friends, co-workers, etc.
- For psychologists, psychological testing data
- Surveillance data if applicable

All sources of data should be examined in the context of other sources of data.
Synthesis of data

- Assess consistencies between symptoms, signs, test scores (if any), file review, and common patterns of psychopathology
- Hypothesize about discrepancies
- Do objective data support subjective complaints?
- Understanding the impact of psychological impairments given the backdrop of their personality, social environment and pre-existing strengths and vulnerabilities.
Summary: The MB Assessor must:

- Rate permanent impairments (at two year mark or later, case law tells us they can be considered permanent)
- Exclude physical impairments
- Provide separate ratings for each of:
  - Activities of Daily Living
  - Concentration, Persistence and Pace
  - Social Functioning
  - Adaptation to Work or Work-Like Stressors
- Determine the extent to which functional impairment can be attributable to psychological/mental disorders
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Domain 1: Activities of Daily Living

- Activities of Daily Living: (Guides page 294)

  - “include ... self-care, personal hygiene, communication, ambulation, travel, sexual functioning, sleep, social and recreational activities.”
    - Limitations in these activities must relate to mental disorder and not factors such as a lack of transportation, a lack of money or disability stemming from a fracture

  - “… judged by their independence, appropriateness, effectiveness, and sustainability.”
    - Assess the degree to which the individual is capable of initiating and participating in activities without supervision or prompting

  - “not simply the number of activities that are restricted, but the overall degree of restriction …”
Domain 1: Activities of Daily Living

- Activities of Daily Living:
  - The Guides comment on Marked impairment: “a person who can cook and clean might be considered to have marked restriction of daily activities if he or she were too fearful to leave the home to shop or go to the physician’s office.”

- Implies that the Marked (Class 4) threshold is attained by mental impairment of most ADLs, or a mental impairment that causes a particularly widespread functional restriction. (Best example: severe agoraphobia)
EXAMPLE OF FUNCTIONAL DATA -- Ambulation and Travel

- Community assessment
- E.g. If applicable, assess individual’s ability to research bus routes/schedules and plan a bus trip to a given destination OR have individual arrange a taxi and take taxi to a given location
  - Assess initiation, signs of stress and decompensation, execution, safety
  - Look for signs of pedestrian and/or passenger anxiety
  - Observe social skills in community & ability to maintain concentration
- E.g. Observe individual driving to given destination, or riding as passenger
  - Look for signs of anxiety, road safety, road rage
EXAMPLE OF FUNCTIONAL DATA – Communication, Social, Recreational

- Observe communication & social functioning with assessor- Overall demeanor; appropriate versus poor awareness of social norms (eye contact, cursing, personal space..); low frustration tolerance and/or easy to anger; range of affect; do they offer information without prompting..
- Observe social functioning in community, with members of broader community
- If appropriate, design a test related to a pre-accident recreational interest-building/construction; gardening; Yoga
- Look for signs of participation in leisure activities (in a workshop, exercise room, table with puzzles or games)
- Gather collateral information
Domain 2: Social Functioning

- Social Functioning: (Guides page 294)

"... refers to an individual's capacity to interact appropriately and communicate effectively with other individuals."

- Positive:
  - Getting along with family, friends, neighbors, grocery clerks, landlords, etc..
  - Initiating Contact with others
  - Interacting and actively participating in group activities
  - Cooperative behavior
  - Awareness of others’ feelings and sensitivities
  - Responding appropriately to person’s of authority
Domain 2: Social Functioning

- Social Functioning:
  - Negative:
    - A history of altercations, evictions, firing from work
    - Fear of strangers, social isolation
    - Hostile, angry, uncooperative behaviors
    - Clarity of communication, impairment in affect regulation, capacity for empathy

- Implication: do not rate according to actual extent or degree of ongoing social activities, but according to what the observed social functioning implies about the underlying capacity to socialize.
Domain 2: Social Functioning

- Social Functioning:

- “It is not only the number of aspects in which social functioning is impaired that is significant, but the overall degree of interference…”

- E.g – An individual may be tolerated by a local store owner and neighbors despite being hostile and uncooperative, but would have a Marked restriction in social functioning because such behaviors and attitudes are not socially acceptable in the workplace or other social contexts

- Implication: Marked threshold can be attained not only by impairment in capacity that affects functioning in most social contexts, but also by impairments with pervasive or serious social consequences.
EXAMPLE OF FUNCTIONAL DATA

- Observe the individual socializing and interacting with the assessor, family members and members of the broader community, where possible
- Consider the quality and appropriateness of the interactions and look for signs of anxiety, poor social norms, frustration and consideration
- If unable to observe individual interacting with various people, can design a test that involves telephone communication (e.g. researching and comparing information from multiple sources with a requirement to gather the data using the telephone)
- Obtain collateral information
Domain 3: Concentration, Persistence and Pace

- Concentration, Persistence, Pace: (Guides page 294)
  - “The ability to sustain focused attention long enough to permit the timely completion of tasks commonly found in work settings. In activities of daily living, this may be reflected in terms of ability to complete everyday household tasks.”

- What does concentration mean? What causes impairment in concentration? What causes deficiencies in pace and persistence?

- Some would say deficiencies are best noted from previous work attempts or observations in work-like settings (e.g., incentive work programs, volunteer programs)

- Can be assessed through psychological tests, or mental status exams but, “..psychological test data alone should not be considered adequate to describe fully the patient’s concentration and sustained ability to perform work tasks”

- “Strengths and weaknesses in mental concentration may be described in frequency of errors, the time it takes to complete the task and the extent to which assistance is required to complete the task”
Domain 3: Concentration, Persistence and Pace

- Concentration, Persistence, Pace:

  - No direct comments on what constitutes Marked impairment

  - However, the (only) Guides example on Page 302: “Once she initiated a task, she was able to complete it in a timely manner.” = Moderate (Class 3) impairment.

  - Implies that Marked impairment can be revealed by the inability to complete most tasks requiring sustained concentration in a timely manner.
Domain 3- Concentration Persistence and Pace

EXAMPLES OF FUNCTIONAL DATA

- Gather information about previous attempts to return to work and the reasons for poor success (difficulties with task completion, meeting deadlines, making errors vs other factors)

- Utilize tests / activities that require sustained concentration
  - Complex scheduling test
  - Construction Activity
  - Compare and Contrast Activity (E.g. comparing inventory over 2 years- identify and calculate differences in numbers of many different products ordered, sold, discontinued, etc…)
  - Researching and planning activity (E.g. planning a party, a trip, a move…)
  - Simulation of work tasks (Printing and copying; filing; data entry; dealing with phone calls all in a given timeframe)
Domain 3- Concentration, Persistence and Pace

- MB and Functional assessors need to consider:
  - The time taken for completion
  - The frequency of errors
  - Whether any assistance was needed
  - Whether breaks were needed and the degree to which the individual persisted
Domain 4: Adaptation to Work and Work-Like Settings

- Adaptation to Work and Work-like Settings (Page 294-295):
  
  - “... refers to the repeated failure to adapt to stressful circumstances. In the face of such circumstances the individual may withdraw from the situation or experience exacerbation of signs and symptoms of a mental disorder.”:

  - Adaptation is NOT synonymous with employability, but considers stresses common to most work environments, like attendance, making decisions, scheduling, completing tasks and interacting with supervisors and peers

  - Employability defined separately in AMA Guides.
Domain 4: Adaptation to Work and Work-Like Settings

- Adaptation to Work and Work-like Settings:
  - No specific guidance on what constitutes Marked (Class 4) threshold.
  - However, example on Page 302: during two periods when the person was employed, she became overwhelmed by the pressures of work deadlines, stopped taking medication, and needed intensive treatment. But she handled well some changes in her environment. Rated as Moderate (Class 3).
  - Indicates that inability to consistently remain in employment does not necessarily imply Marked (Class 4) impairment.
Domain 4: Adaptation to Work and Work-Like Settings

- Situational Assessment

  - Consider the individual’s ability to cope with stress, their reactions in the face of stress and the presence of an exacerbation of signs and symptoms of a mental disorder, in the context of:

    - Work or Work-like settings
    - Maintaining activities of daily living
    - Continuing Social Relationships
Domain 4: Adaptation to Work and Work-Like Settings

Situational Assessment

- Consider independent, routine and consistent task initiation – based on client report, collateral data and direct observation
- Consider previous attempts to return to the workforce or work-like settings – if unsuccessful, did individual become overwhelmed by pressures of work (deadlines, volume of work, time management, difficulties interacting and collaborating)
- During times of stress, has individual demonstrated decompensation in mental / behavioral functioning (e.g. social withdrawal, task avoidance) and need for additional treatment (in/out patient, pharmacological..)
Domain 4: Adaptation to Work and Work-Like Settings

- Situational Assessment

  - Examples of Tests / Activities
    - Work simulation tasks (Printing and copying; filing; data entry; dealing with phone calls all in a given timeframe)
    - Complex research and planning activities
    - Community Assessment

  - Need not mimic individual’s previous job
  - If possible, observe individual’s reaction to environments, tasks, or situations that are likely to be stressful as indicator of how they may react in other stressful situations (e.g., for client who was pedestrian struck in parking lot with documented pedestrian anxiety, can walk in large parking lot during community outing)
Things to Consider for all four domains

- Include a detailed interview of the individual’s pre-accident and post-accident functioning, along with perceived reasons for changes in functioning. Consider what they are capable of doing, not necessarily what they are and are not doing at the present time.

- Include collateral information from family, caregivers, treating doctors and therapists and/or or other relevant parties

- There is overlap between the four domains

- Choose tests and activities that simultaneously assess functioning in more than one domain
“(2) For the purposes of this Regulation, a catastrophic impairment caused by an accident is,

(f) subject to subsections (4), (5) and (6), an impairment that, in accordance with the American Medical Association's Guides to the Evaluation of Permanent Impairment, 4th edition, 1993, results in a class 4 impairment (marked impairment) or class 5 impairment (extreme impairment) due to mental or behavioural disorder.

O. Reg. 34/10, s. 3 (2).”
Section 3.1(1):

8. “Subject to subsections (3) and (5), an impairment that, in accordance with the American Medical Association’s Guides to the Evaluation of Permanent Impairment, 4th edition, 1993 results in a class 4 impairment (marked impairment) in three or more areas of function that precludes useful functioning or a class 5 impairment (extreme impairment) in one or more areas of function that precludes useful functioning, due to mental or behavioural disorder.”
And So:

- Same methodology
- The threshold by which someone will be designated as having sustained a Catastrophic Injury increases significantly
- One marked Impairment: GAF in the high 40s
- Three marked impairments: GAF of 40 or lower (major impairment in several areas of functioning)
- It is likely that this will result in a drastic reduction in people found to be catastrophic based on Mental/Behavioural alone. Hard to know how much of a reduction exactly at this point.
- No rationale has been offered to justify such a reduction
• Determine the degree of functional impairment

• Determine the degree of psychological impairment

• Determine to what degree functional impairment can be attributable to psychological/mental impairment and rate functioning in four domains using an ordinal scale
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Some Problems with Chapter 14 Methodology

- Lack of text anchors
- “Useful functioning” vs “functioning” – lack of guidance → this is key
- Insufficient guidance on how to rate Pain related impairment.
- Contradictory examples of what “Extreme” means
Important for M/B Assessors to:

- Exclude physical impairments and pain-related impairments when appropriate
- Have a good understanding of the definitions of each functional domain. Example: Adaptation does not mean employability
- Use functional data from situational/in-home assessments and/or from office-based comprehensive assessment to assign ratings
- Consider all available functional data
Class 3 (Moderate) – impairment levels are compatible with some but not all useful functioning

Class 4 (Marked) – impairment levels significantly impede useful functioning

A key question: Is there an element or elements of their functioning in the assessed domain that is indeed meaningfully substantive, productive and useful?
The Guides are not entirely clear on what constitutes Extreme impairment (precludes useful functioning).

“Extreme impairment in carrying out activities of daily living implies complete dependency on another person for care. In the sphere of social functioning, extreme impairment implies that the individual engages in no meaningful social contact, as with a person in a withdrawn, catatonic state.” (so someone who cannot live independently)

BUT: The Guides go on to say, “in the ordinary individual, extreme impairment in only one class would be likely to preclude the performance of any complex task, such as involving recreation or work” (suggesting that simple tasks would still be possible).
Case Law Updates

- No new case law has resulted in a significant shift in how we understand Criterion 8

- Cumberbatch Appeals decision reaffirms that the ratings of the four domains lie on a continuum, and that one should consider pre-accident vs post-accident functioning

- O’Brien vs State Farm – Arbitrator C. Matheson (August 28, 2017) notes “In my view, when reading the Guides, an assessment of impairment must look at ‘useful function’ in all four domains, but must also take into account chronic pain (when diagnosed, as in this case), and its effects on useful functioning as well. In my view, chronic pain is not the same pain that is rated in Chapters 3 to 13 of the Guides. Therefore it is appropriate to combine Chapters 14 and 15 when making this assessment as ‘double counting’ is not occurring. When calculating where an Applicant fits best (Class 3 vs Class 4) one must expect that there is some level of useful functioning in more than one domain otherwise the applicant would be in Class 5. I point out that the definition wording of a Class 4 impairment...notes the following: ‘Class 4 impairment levels significantly impede useful functioning’ The word ‘all’ has not been included within that statement. For these reasons I find the Applicant has sustained a catastrophic impairment due to the MVA.”
Why should the stand-alone MB catastrophic determination require a MUCH higher level of functional impairment than a physically determined catastrophic determination would result in?