

**DEFINITION OF DISABILITY
UNDER THE FAIR HOUSING ACT, THE ADA, AND § 504**

**Texas RioGrande Legal Aid
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- I. Three Prongs** - The disability definition in all of the relevant statutes cited above is substantially the same. *Compare* 42 U.S.C. § 3602(h) (Fair Housing Act); 42 U.S.C. § 12102(2) (ADA); 29 U.S.C. §§ 705(9)(B) and 705(20)(B) (Rehabilitation Act); and Tex. Prop. Code § 301.003(6) (Texas fair housing act). These definitions contain three prongs:
- A. “actual” disability – a mental or physical impairment that substantially limits one or more major life activities (sometimes called an actual, or present, disability); or
 - B. “record of” disability – a record of a mental or physical impairment that substantially limits one or more major life activities (sometimes referred to as a history of a disability); or
 - C. “regarded as” disability – being "regarded as" having a mental or physical impairment that substantially limits one or more major life activities (also called a perceived disability).
- II. Three Elements** - Each prong of the definition has three elements:
- A. impairment;
 - B. major life activity; and
 - C. substantial limitation.
- III. Guidelines for Interpretation**
- A. None of these elements is defined by statute.
 - B. There are no “listed” disabilities, and probably no *per se* ones.
 - C. There is a fair amount of guidance for interpretation, although most of this guidance comes from ADA cases, and most in the employment context.

1. This guidance is relevant because the disability definition is the same. *See, e.g., Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) (ADA’s definition of disability is drawn almost verbatim from the definitions in the Rehabilitation Act and the Fair Housing Amendments Act of 1988); *Regional Economic Community Action Program, Inc. v. City of Middletown*, 294 F.3d 35, 46 (2d Cir. 2002); *Ryan v. Ramsey*, 936 F. Supp. 417, 421 (S.D. Tex. 1996) (FHA case relying on ADA and § 504 precedent finding HIV a disability).
2. Note that landlords so far appear less likely to seriously challenge whether the plaintiff has a protected disability.

IV. Impairment

- A. Under all applicable laws—the FHA (24 C.F.R. § 100.201), § 504 (24 C.F.R. § 8.3), ADA Title II (28 C.F.R. § 35.104), and the Texas FHA (40 T.A.C. § 819.112(8))—impairments include:
 1. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or
 2. Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
 3. Such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction.
- B. For FHA claims, the regulations also specifically include alcoholism and HIV infection. 24 C.F.R. § 100.201.
- C. For ADA Title II claims, the regulations also expressly include “HIV disease (whether symptomatic or asymptomatic), tuberculosis . . . and alcoholism.” 28 C.F.R. § 35.104.
- D. For state FHA claims, the regulations also specifically include HIV infection. 40 T.A.C. § 819.112(8)(B).
- E. Impairment is clearly a broad term. Even correctable nearsightedness is an impairment. *Sutton v. United Air Lines, Inc.*, 527 U.S. 471, 490 (1999).

- F. On the other hand, one of the most common errors in attempting prove a disability is to mistake diagnosis for disability.
1. At most, a diagnosis merely shows an impairment; it does not reflect whether that impairment substantially limits a major life activity.
 2. The existence of a disability is to be determined in a case-by-case manner, and such an individualized assessment of the effect of an impairment is particularly necessary when the impairment is one with symptoms that vary widely from person to person; a carpal tunnel syndrome diagnosis, on its own, does not indicate whether the individual has a disability within the meaning of the ADA. *Toyota Motor, supra*, 534 U.S. 184, 198–199 (2002).
 3. Recent shocking example: *Littleton v. Wal-Mart Stores, Inc.*, 2007 WL 1379986 (11th Cir. May 11, 2007) (unpublished) (“mental retardation” does not necessarily substantially limit a major life activity).

V. Major Life Activities

- A. The term is defined in the regulations as including “functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.” 24 C.F.R. § 100.201 (FHA); 24 C.F.R. § 8.3 (HUD’s § 504 regulations); 28 C.F.R. § 35.104 (ADA Title II); 40 Tex. Admin. Code § 819.112(8)(C) (state law).
- B. This is also the same definition appearing in the EEOC’s ADA Title I regulations, 29 C.F.R. § 1630.2(i), and the EEOC explains major life activities as “those basic activities that the average person in the general population can perform with little or no difficulty.” 29 C.F.R. pt. 1630 App. § 1630.2(i).
- C. The activities listed in the regulation are meant to be illustrative, not exhaustive. *Bragdon v. Abbott*, 524 U.S. 624, 639 (1998) (ADA Title III); *Dupre v. Charter Behavioral Health Systems of Lafayette, Inc.*, 242 F.3d 610, 613 n.3 (5th Cir. 2001) (ADA Title I); 29 C.F.R. pt. 1630 App. § 1630.2(i) (ADA Title I).
- D. The word “major” means comparative importance, and suggests that the touchstone for determining whether something is a major life activity is its significance. *Toyota Motor, supra*, 534 U.S. at 197; *EEOC v. R.J. Gallagher Co.*, 181 F.3d 645, 654 (5th Cir. 1999), quoting *Bragdon v. Abbott*, 524 U.S. 624, 638 (1998).
- E. The Fifth Circuit also suggests looking at whether the activity is necessary for self-sustenance or to support a family; provides the opportunity for self-expression and for contribution to productive society; involves some degree of social interaction; is

an important element in how individuals define themselves and are perceived by others; or provides an opportunity for many of the significant experiences of life. *EEOC v. R.J. Gallagher Co.*, *supra*, 181 F.3d at 654–655.

- F. The Supreme Court has stated that major life activities are not limited to those aspects of a person’s life that have a public, economic, or daily character. *Bragdon v. Abbott*, 524 U.S. 624, 638–639 (1998).
- G. Nor are major life activities limited to those activities that everyone experiences (in *Bragdon*, the Court held that reproduction is a major life activity, even though many people do not experience it), and they do not “turn on personal choice.” *Bragdon*, *supra*, 524 U.S. at 641.
- H. In *Toyota Motor*, on the other hand, the Court held that major life activities “need to be interpreted strictly to create a demanding standard for qualifying” in order to coincide with the Congressional finding of 43 million Americans with disabilities. *Toyota Motor*, *supra*, 534 U.S. at 197 (holding major life activities include performing manual tasks, but only if those manual tasks are “central to daily life”).
- I. Reproduction is a major life activity. *Bragdon v. Abbott*, 524 U.S. 624, 638–639 (1998).
- J. The Fifth Circuit has also recognized eating, lifting, reaching, sitting, and standing as major life activities. *Waldrip v. Gen’l Elec. Co.*, 325 F.3d 652, 655 (5th Cir. 2003) (eating); *Pryor v. Trane Co.*, 138 F.3d 1024, 1026 (5th Cir. 1998) (lifting, reaching, sitting, and standing).
- K. The ability to obtain an apartment may also be a major life activity. *U.S. v. Southern Mgmt. Corp.*, 955 F.2d 914, 919 (4th Cir.1992).
- L. Case law around the country has variously included the following in the list of major life activities: caring for oneself, bathing, dressing, toileting, controlling bowels, waste elimination, sleeping, getting into or out of bed, getting around outside, getting around inside, keeping house, living independently, drinking, cooking, using stairs, throwing, squatting, bending, carrying, performing manual tasks, walking, running, seeing, hearing, speaking, breathing, reading, writing, thinking, learning, concentrating, reproducing or bearing children, sexual activities, working, attending school, traveling, and interacting with others.
- M. In this Circuit working is also a major life activity, *EEOC v. R.J. Gallagher Co.*, *supra*, 181 F.3d at 654–655, but is generally seen as the activity “of last resort” because it requires a showing that the person is “significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills and abilities.”

Aldrup v. Caldera, 274 F.3d 282, 286–287 (5th Cir. 2001). “The inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working.” 29 C.F.R. § 1630.2(j)(3)(i), *cited in Sutton v. United Air Lines, Inc.*, 527 U.S. 471, 491 (1999); *Dupre, supra*, 242 F.3d at 614; *Aldrup, supra*, 274 F.3d at 287 (depression caused by “the stress and anxiety of having to work with certain employees” merely shows an inability to work at one specific location, and is not evidence of a general inability to perform a class of jobs).

VI. Substantial Limitations

- A. The term “substantially limits” is not defined by statute or applicable regulations. The Supreme Court states that it means considerable or to a large degree. *Toyota Motor, supra*, 534 U.S. at 196.
- B. The Supreme Court has also said that substantial limitations must be “interpreted strictly to create a demanding standard for qualifying” in order to coincide with the Congressional finding of 43 million Americans with disabilities. *Toyota Motor, supra*, 534 U.S. at 197
- C. The EEOC’s ADA Title I regulations, which have been followed by the Fifth Circuit in employment cases, *e.g.*, *Dupre, supra*, 242 F.3d at 614, define a substantial limitation at 29 C.F.R. § 1630.2(j)(1) as:
 - 1. the inability to perform a major life activity that the average person in the general population can perform; or
 - 2. being significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.
- D. According to the regulations at 29 C.F.R. § 1630.2(j)(2), the following factors should be considered in determining whether an individual is substantially limited in a major life activity:
 - 1. the nature and severity of the impairment;
 - 2. the duration or expected duration of the impairment; and
 - 3. the permanent or long term impact, or the expected permanent or long term impact of or resulting from the impairment.
- E. Mitigating Measures

1. The Supreme Court has held that corrective or “mitigating” measures must be considered in determining whether a person has a disability under the ADA. *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999).
2. Such mitigating measures may include devices (such as eyeglasses), *Sutton*, medications, *Murphy v. United Parcel Service, Inc.*, 527 U.S. 516, 521 (1999), or even the body's own internal compensations, *Albertson's, Inc. v. Kirkingburg*, 527 U.S. 555, 565–566 (1999).
3. *Sutton* commands that the focus be on what IS (“the present indicative tense”), not on what might, could, or should be. *Sutton, supra*, 527 U.S. at 482; *Finical v. Collections Unlimited, Inc.*, 65 F. Supp. 2d 1032, 1037 (D. Ariz. 1999); *Nawrot v. CPC Int’l*, 277 F.3d 896, 904 (7th Cir. 2002) (*Sutton* is not “license for courts to meander in ‘would, could, or should-have’ land.”). This means:
 - a. Disability is gauged at the time of the discriminatory action or request for accommodation. *Cash v. Smith*, 231 F.3d 1301, 1306 n.5 (11th Cir. 2000); *Kocsis v. Multi-Care Management, Inc.*, 97 F.3d 876, 884 (6th Cir. 1996); *Leicht v. Hawaiian Airlines, Inc.*, 77 F. Supp. 2d 1134, 1147 (D. Hawaii 1999). Note, however, that evidence of abilities at a later date may still be relevant to the issue of the plaintiff's abilities at the time of the discriminatory action. *Swanson v. University of Cincinnati*, 268 F.3d 307, 316 (6th Cir. 2001).
 - b. Past mitigation does not matter, if the plaintiff is not currently using mitigating measures and has a substantial limitation of a major life activity. *Compare Finical, supra*, 65 F. Supp. 2d at 1037–1038 (employer cited the testimony of Plaintiff's expert, who said he thought the plaintiff "would benefit from hearing aids;" the argument was rejected because, regardless of the doctor's opinion, the plaintiff did not use them; she had tried them in the past, but they picked up background noise).
 - c. Speculating about “possible” mitigating measures in the future is precluded by *Sutton*, and employers should not be able to claim that a person does not have a disability because they choose not to use mitigating measures. *Finical, supra*, 65 F. Supp. 2d at 1037–1038; *Capizzi v. County of Placer*, 135 F. Supp. 2d 1105, 1113 (E.D. Cal. 2001) (“the question of disability addresses plaintiff's current condition . . . the fact that a particular procedure would mitigate the condition cannot prevent a finding that the plaintiff is presently disabled”); *Nawrot v. CPC Int’l*, 277 F.3d 896, 904 (7th Cir. 2002) (courts should consider only those mitigating measures actually

taken; those who discriminate take their victims as they find them). *See also Rodriguez v. ConAgra Grocery Products Co.*, 436 F.3d 468, 477–479 (5th Cir. 2006) (if there is such a defense as “failing to control a controllable impairment,” it does not apply in “regarded as” cases). *Contra: Tangires v. Johns Hopkins Hospital*, 79 F. Supp. 2d 587 (D. Md.) (asthma did not substantially limit any major life activity since it was correctable by steroidal medication, even though plaintiff refused to take the medication due to her subjective and unsubstantiated belief about adverse effects), *aff’d*, 230 F.3d 1354 (4th Cir. 2000) (unpublished).

- d. Not everything used to compensate for an impairment is a mitigating measure.
 - (1) Reasonable accommodations are not mitigating measures. *Finical, supra*, 65 F. Supp. 2d at 1037–1038 and n.4.
 - (2) Some assistive measures do not improve the ability to engage in major life activities. For example, lip-reading and telephone lights do not mitigate a person's deafness, because although they improve that person's ability to communicate, they do not improve the ability to hear. *Id.* at 1041–1042. In another example, the court noted that it would not take into account those measures that did not affect an applicant's ability to perform the major life activity of reading, such as having other people read to her, or participating in study groups. *Bartlett v. New York State Bd. of Law Examiners*, 2001 WL 930792, at *31–35 (S.D.N.Y. Aug. 15, 2001). Likewise, the use of a wheelchair may improve a person's mobility without improving a person's ability to walk. *Sutton v. United Air Lines, Inc.*, 527 U.S. 471, 488 (1999).
- e. *Sutton* requires that the negative effects of mitigating measures must also be considered, such as the side effects of medications. *Sutton, supra*, 527 U.S. at 482. *See also Belk v. Southwestern Bell*, 194 F.3d 946 (8th Cir. 1999) (although person with residual effects of polio could walk using a leg brace, he was substantially limited in walking because his brace limited his range of motion and his gait was hampered by a pronounced limp); *Taylor v. Phoenixville School District*, 184 F.3d 296, 308–309 (3d Cir. 1999) (noting therapeutic levels of lithium can cause a number of side effects, some of which, like the nausea the plaintiff complained of, indirectly affect the ability to think, while others, such as impaired concentration and memory problems, bear directly on thinking); *Dees v. Austin-Travis*

County Dept. of Mental Health & Mental Retardation, 860 F. Supp. 1186, 1189 (W.D. Tex 1994) (ability of person with mental illness to work was limited by medication's side effects).

- f. Of course, many people have disabilities despite the use of mitigating measures. *See, e.g., Sutton v. United Air Lines, Inc.*, 527 U.S. 471, 487–488 (1999); *Battle v. United Parcel Service, Inc.*, 438 F.3d 856, 862 (8th Cir. 2006) (doctor testified that although plaintiff was aided by psychiatric counseling and medication, he would continue to suffer substantial limitations in his ability to think and concentrate); *Taylor v. Phoenixville School Dist.*, 184 F.3d 296, 308–309 (3d Cir. 1999) (secretary who took lithium for her bipolar disorder raised fact issue regarding whether she had disability even after taking medication); *Otting v. J.C. Penney Co.*, 223 F.3d 704 (8th Cir. 2000) (person with epilepsy continued to have seizures despite surgery and medication); *White v. Orange Auto Center*, 101 F. Supp. 2d 485, 494–495 (E.D. Tex. 2000). *See also Little v. Texas Dept. of Criminal Justice*, 148 S.W.3d 374 (Tex. 2004) (state law employment case involving plaintiff with prosthetic leg).

VII. “Record of” Disability

- A. A person has “record of” disability if he or she “has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.” 28 C.F.R. § 35.104 (ADA Title II); 24 C.F.R. § 8.3 (§ 504); 24 C.F.R. § 100.201 (FHA); 40 Tex. Admin. Code § 819.112(8)(D) (state FHA).
- B. To prove a record of a disability, the plaintiff must show not only that he or she has a record of an injury or impairment, but the evidence must also show that the impairment substantially limited a major life activity. *Dupre v. Charter Behavioral Health Systems of Lafayette, Inc.*, 242 F.3d 610, 615 (5th Cir. 2001) (ADA employment case). A record with only a “vague mention of the existence and treatment” of a back problem, and that did not indicate whether or how this problem substantially limited any major life activity, was insufficient. *Id.*
- C. Case examples: *Davidson v. Midelfort Clinic, Ltd.*, 133 F.3d 499, 510 (7th Cir. 1998) (record of employer’s awareness of plaintiff’s attention deficit disorder produced sufficient to defeat summary judgment); *Pritchard v. Southern Co. Services*, 92 F.3d 1130, 1134 (11th Cir. 1996), *modified on other grounds*, 102 F.3d 1118 (11th Cir. 1996) (use of paid disability leave may be record of impairment); *Wheaton v. Ogden Newspapers, Inc.*, 66 F. Supp. 2d 1053, 1064–1065 (N.D. Iowa 1999) (multiple hospitalizations and ongoing treatments for severe and permanent back condition could constitute a “record of” disability); *Murray v. Surgical Specialties Corp.*, 1999

WL 46583, at *5 (E.D. Pa. Jan. 14, 1999) (plaintiff presented employer with a variety of documents evidencing various restrictions, creating a fact issue); *Mark v. Burke Rehabilitation Hospital*, 1997 WL 189124, at *3–4 (S.D.N.Y. Apr. 17, 1997) (plaintiff had a record of impairment based on employer’s awareness that plaintiff had been hospitalized for cancer surgery).

- D. It is not clear whether an employee with only a record of a disability is entitled to a reasonable accommodation. See *Davidson v. Midelfort Clinic, Ltd.*, 133 F.3d 499, 509–510 (7th Cir. 1998) (citing authorities).

VIII. “Regarded As” Disability

- A. A person has a “regarded as” disability if he or she has:
1. A physical or mental impairment that does not substantially limit one or more major life activities but that is treated by another person as constituting such a limitation;
 2. Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of other toward such impairment; or
 3. Has none of the impairments defined in paragraph (a) of this definition but is treated by another person as having such an impairment.
 4. Citations: 28 C.F.R. § 35.104 (ADA Title II); 24 C.F.R. § 8.3 (§ 504); 24 C.F.R. § 100.201 (FHA); 24 C.F.R. § 8.3; 40 Tex. Admin. Code § 819.112(8)(E) (state FHA); *Gowesky v. Singing River Hosp. Systems*, 321 F.3d 503, 508 (5th Cir. 2003) (ADA employment case).
- B. Case examples: *McGinnis v. Alamo Community College Dist.*, 207 F.3d 276 (5th Cir. 2000) (perceived disability shown by statements of employer’s ADA coordinator, and by past transfer admittedly given as an “accommodation”); *EEOC v. R.J. Gallagher Co.*, 181 F.3d 645 (5th Cir. 1999).
- C. Obligation to accommodate a person with a perceived disability
1. Some case law supports the obligation to provide a reasonable accommodation to one who is not actually disabled but is regarded as such. See *D’Angelo v. ConAgra Foods, Inc.*, 422 F.3d 1220, 1235–1239 (11th Cir. 2005); *Kelly v. Metallics West, Inc.*, 410 F.3d 670, 674–676 (10th Cir. 2005); *Williams v. Philadelphia Housing Authority Police Dept.*, 380 F.3d 751, 773–776 (3d Cir. 2004); *Katz v. City Metal Co., Inc.*, 87 F.3d 26, 33 (1st Cir. 1996); *Jacques v. DiMarzio, Inc.*, 200 F. Supp. 2d 151, 163–171 (E.D.N.Y.

2002).

2. But there is also substantial contrary precedent. *See Kaplan v. City of North Las Vegas*, 323 F.3d 1226, 1231-1233 (9th Cir. 2003), *cert. denied*, 540 U.S. 1049 (2003); *Weber v. Strippit, Inc.*, 186 F.3d 907, 915-917 (8th Cir. 1999); *Workman v. Frito-Lay, Inc.*, 165 F.3d 460, 467 (6th Cir. 1999); *Cebertowicz v. Motorola, Inc.*, 178 F. Supp. 2d 949, 953-954 (N.D. Ill. 2001).
3. In dicta, the Fifth Circuit seems to agree with these latter cases. *Newberry v. East Texas State University*, 161 F.3d 276, 280 (5th Cir. 1998).

IX. Exceptions to Coverage

A. Drugs

1. The relevant statutes generally exclude from protection persons who are currently using or currently addicted to illegal drugs. 42 U.S.C. § 12210(a) (ADA); 42 U.S.C. § 3602(h) and 24 C.F.R. § 100.201(FHA); 29 U.S.C. § 705(20)(C)(i) (§ 504); Tex. Prop. Code § 301.003(6) and 40 T.A.C. § 819.112(8) (state FHA).
2. Note, however, that § 504 does not exclude persons from programs and activities providing health and vocational services an individual because of current illegal drug use if they are otherwise entitled to such services. 29 U.S.C. § 705(20)(C)(iii).
3. Also, HUD's § 504 regulations appear to only exclude an "individual who is an alcoholic or drug abuser [*and*] whose current use of alcohol or drugs prevents the individual from participating in the program or activity in question, or whose participation, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others." 24 C.F.R. § 8.3.
4. Note, too, that the Fair Housing Act allows adverse action against a person because of his or her conviction for manufacturing or distributing a controlled substance 24 C.F.R. § 100.10(a)(4).
5. Safe harbor. 42 U.S.C. § 12210(b) (ADA); 29 U.S.C. § 705(20)(C)(ii) (§ 504); *U.S. v. Southern Management Corp.*, 955 F.2d 914, 919-923 (4th Cir. 1992) (interpreting FHA consistently).
 - a. The statutes generally protect persons who:
 - (1) have successfully completed a supervised drug rehabilitation

program, or have otherwise been rehabilitated successfully, and are no longer engaging in such use;

- (2) are participating in a supervised rehabilitation program and are no longer engaging in such use; or
- (3) are erroneously regarded as engaging in such use, but are not engaging in such use.

b. Although the Texas FHA does not specifically include such a provision, it is intended to “provide rights and remedies substantially equivalent to those granted under federal law,” Tex. Prop. Code § 301.002(3), and it seems likely that state law will be interpreted consistently. *Compare U.S. v. Southern Management Corp.*, 955 F.2d 914, 919–923 (4th Cir. 1992) (interpreting FHA consistently).

c. Note that the ADA does not prohibit a covered entity from adopting or administering reasonable policies or procedures, including drug testing, designed to ensure that an individual in rehab, or who has completed rehab, is no longer engaging in the illegal use of drugs. 42 U.S.C. § 12210(b).

B. Sexual orientation is not a disability. 42 U.S.C. § 12211(a) (ADA); 29 U.S.C. § 705(20)(E) (§ 504) 40 T.A.C. § 819.112(8) (state law).

C. Certain other conditions may also be excluded, including:

1. transvestitism. 42 U.S.C. § 12211(b)(1) (ADA); 29 U.S.C. § 705(20)(F)(i) (§ 504); 24 C.F.R. § 100.201 (FHA); 40 T.A.C. § 819.112(8) (state law).
2. transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders. 42 U.S.C. § 12211(b)(1) (ADA); 29 U.S.C. § 705(20)(F) (§ 504).
3. compulsive gambling, kleptomania, or pyromania. 42 U.S.C. § 12211(b)(2) (ADA); 29 U.S.C. § 705(20)(F) (§ 504).
4. psychoactive substance use disorders resulting from current illegal use of drugs. 42 U.S.C. § 12211(b)(3) (ADA); 29 U.S.C. § 705(20)(F) (§ 504).