When writing the Americans with Disabilities Act (ADA), Congress borrowed the definition of “disability” from the Rehabilitation Act of 1973. (Originally noted as “handicap.”) For fifteen years, the courts had generously interpreted this definition to cover a wide range of physical and mental impairments. Below is a sampling of people that courts held were “disabled” under the Rehabilitation Act based on their impairments. The courts tended to decide questions of coverage quickly and easily, without extensive analysis.


**Diabetes** – Person with diabetes “disabled”: *Bentivegna v. U.S. Dep’t of Labor*, 9th Cir. 1982.


**Multiple Sclerosis** – Person with multiple sclerosis “disabled”: *Pushkin v. Regents of Univ. of Colorado*, 10th Cir. 1981.

**Hard of Hearing** – Person who used hearing aid “disabled”: *Strathie v. Dep’t of Transp.*, 3rd Cir. 1983.

**Vision in Only One Eye** – Person with vision in only one eye “disabled”: *Kampmeier v. Nyquist*, 2d Cir. 1977.


**Asthma** – Person with asthma “disabled”: *Carter v. Tisch*, 4th Cir. 1987.


*But now turn over the page . . . .

* What the court terms “mental retardation”
Congress expected the definition of “disability” would be interpreted the same way under the ADA as it had been interpreted under the Rehabilitation Act. But instead of following Congress’ expectations, the courts have read the definition in a strict and constrained way. Below is a sampling of people that courts have considered to be not “disabled” under the ADA. In contrast to cases decided under the Rehabilitation Act, these courts have often devoted pages of contorted analysis to arrive at their conclusions.


**Diabetes** – Person with diabetes not “disabled”: *Orr v. Wal-Mart Stores, Inc.*, 8th Cir. 2002.


**Multiple Sclerosis** – Person with multiple sclerosis not “disabled”: *Sorensen v. University of Utah Hosp.*, 10th Cir. 1999.


**Vision in Only One Eye** – Person with vision in one eye not “disabled”: *Albertson’s, Inc. v. Kirkingburg*, U.S. 1999.


**HIV Infection** – Person with HIV infection not “disabled”: *Cruz Carrillo v. AMR Eagle, Inc.*, D.P.R. 2001.


**Asbestosis** – Person with asbestosis not “disabled”: *Robinson v. Global Marine Drilling Co.*, 5th Cir. 1996.


*What the court terms “mental retardation”*
BACKGROUND INFO FOR PEOPLE COVERED UNDER REHAB ACT AND ADA

The Rehabilitation Act originally referred to people covered under the Act as “handicapped” individuals. This changed in 1992, when the Act was amended to cover individuals with “disabilities.” Pub. L. No. 102-569.

A statement of Congress’ expectations with regard to the definition of “disability” under the ADA is nicely captured in:


CITATIONS

Page 1 – “People Covered Under Section 504 of the Rehabilitation Act”

Epilepsy: Reynolds v. Brock, 815 F.2d 571, 574 (9th Cir. 1987).
Diabetes: Bentivegna v. U.S. Dep’t of Labor, 694 F.2d 619, 621 (9th Cir. 1982).
Bipolar Disorder: Gardner v. Morris, 752 F.2d 1271, 1280 (8th Cir. 1985).
Multiple Sclerosis: Pushkin v. Regents of Univ. of Colorado, 658 F.2d 1372, 1377, 1387 (10th Cir. 1981).
Vision in Only One Eye: Kampmeier v. Nyquist, 553 F.2d 296, 299 n.7 (2d Cir. 1977).


Multiple Sclerosis: *Sorensen v. University of Utah Hosp.*, 194 F.3d 1084, 1087-89 (10th Cir. 1999).


