formulas.[81] Nevertheless, the task force still felt the measure was worthwhile, and if it is apparent that the regulation will cause little harm, it is logical to conclude that any benefit it brings to the consumer will represent movement in the right direction.

John Newell

---

81. *See* note 46 *supra* and accompanying text.

Case Notes

DISABILITY INSURANCE—A CHRONIC ALCOHOLIC'S SOCIAL SECURITY CLAIM CANNOT BE DENIED UPON THE BASIS OF EITHER A LACK OF SIGNIFICANT ORGAN DAMAGE THAT PRECLUDES WORKING OR CLAIMANT'S ABILITY TO REMEDY HIS AFFLICTION VOLUNTARILY.—*Adams v. Weinberger* (8th Cir. 1977).

Claimant Adams filed his application to establish social security disability on October 17, 1972. The application was considered,[1] and reconsidered by the Secretary of Health, Education and Welfare (Secretary) and denied. Adams requested a hearing, which was held September 16, 1974. At the hearing, Adams testified that he commenced having blackouts in 1971, and that he was having trouble with diarrhea and involuntary nodding and sleeping. Adams further testified that he had been a heavy drinker, but since then he had only drunk beer. Adams stated to the administrative law judge that he continued to drink because "I enjoy it, and I don't think the beer hurts me, particularly."[2]

Medical evaluations, based upon examinations given by physicians between 1971 and 1974, indicated that Adams was suffering from chronic alcoholism, cirrhosis of the liver and emphysema.[3] Most of the examining physicians were of the opinion that Adams was disabled. However, one thought that he was competent to manage his own affairs, but lacked the necessary motivation.[4]

---

1. An individual who believes he is eligible for social security benefits because he is disabled initiates the procedure by filing a statement of his intention to claim benefits. The Social Security Administration or a state agency will determine the claim's validity. If an individual's claim is denied, he may request an opportunity for reconsideration. A claimant whose claim is denied upon reconsideration may request a hearing before an administrative law judge. If the administrative law judge denies the disability claim, the claimant may request a review by the Appeals Council. The decision of the Appeals Council becomes the final decision of the Secretary of HEW. Having exhausted his administrative remedies, the claimant then can file suit in the United States District Court pursuant to 42 U.S.C. § 405(g) (1970). *See* Champagne & Danube, *An Empirical Analysis of Decisions of Administrative Law Judges In The Social Security Disability Program*, 64 GEO. L.J. 43, 44 (1975).

2. Adams v. Weinberger, 548 F.2d 239, 245 (8th Cir. 1977).

3. Normally, the decision of the hearing examiner or administrative law judge will be based upon reports submitted by the examining physicians. It is not uncommon for the medical opinions of the examining physicians to differ greatly as to the extent of claimant's disability. *See* Richardson v. Perales, 402 U.S. 389 (1971).

4. Adams v. Weinberger, 548 F.2d 239, 242 (8th Cir. 1977). Perhaps the basis of this physician's opinion was Adams' vocational and educational background. Adams was born in 1924. Prior to February 1971, Adams had been employed as a schoolteacher, sales clerk, insurance salesman, area consultant for the Tuberculosis Association, welfare case worker and watchman. *Id.* at 240. With this type of background, it could be presumed

Psychological evaluations revealed that Adams had hysterical neurosis, with the possibility of successful rehabilitation well below average.[5]

The administrative law judge denied benefits holding that in the absence of significant organ damage precluding work, Adams had "the power and ability to remedy his [own] plight. . . ."[6] The Appeals Council affirmed the decision of the administrative law judge.[7] Adams sought judicial review of this final agency determination in the federal district court pursuant to 42 U.S.C. section 405(g).[8] The district court sustained the Secretary's motion for summary judgment.[9]

On appeal, Adams contended that the administrative agency had applied an incorrect legal standard in rejecting his claim.[10] Additionally, he argued that the Secretary's interpretation of the existing regulations was inconsistent with the relevant statute's provisions.[11]

The Eighth Circuit Court of Appeals reversed.[12] A chronic alcoholic's social security claim for disability insurance benefits cannot be denied upon the basis of either lack of significant organ damage which precludes work activity or upon an observation that the claimant has the ability to remedy his affliction voluntarily. *Held*, "[i]n the case of alcoholism, the emphasis should be placed on whether the claimant is addicted to alcohol and as a consequence has lost voluntary ability to control its use."[13] However, continued payment of disability benefits "may be conditioned upon [the] claimant's undertaking reasonable efforts to treat his affliction."[14] *Adams v. Weinberger*, 548 F.2d 239 (8th Cir. 1977).

---

that the claimant had both the capacity to recognize his problem and the financial ability to seek help.

5. *Id.* at 241.

6. *Id.* at 242.

7. *Id.* Since the decision of the Appeals Council is the final decision of the Secretary of HEW, references made to the Secretary in this casenote may also include the Administrative Law Judge or the Appeals Council itself.

8. 42 U.S.C. § 405(g) (1970) provides in part that "[a]ny individual, after any final decision of the Secretary . . . may obtain a review of such decision by a civil action commenced within sixty days. . . ."

9. Adams v. Matthews, 407 F. Supp. 729, 733 (E.D. Mo. 1975).

10. Normally the determination by the Secretary that the claimant is not entitled to benefits must be affirmed unless the claimant can show that the Secretary failed to satisfy one of the following requirements:

(1) Were the hearing procedures fair and lawful?
(2) Was the evidence submitted relevant to the material factual issues?
(3) Were the findings of fact supported by substantial evidence?
(4) Were the findings of fact sufficient to resolve the crucial issues?
(5) Were the correct legal standards applied in determining the ultimate issues?
(6) Was the interpretation of the regulations consistent with the relevant statute's provisions?
(7) Was the claimant required to establish his claim by a preponderance of the evidence?

See Comment, *The Social Security Appeals Process: A Critical Analysis of Administrative and Judicial Reviews*, 3 CUM. SAM. L. REV. 279, 287 (1972).

11. The Secretary reasoned that 42 U.S.C. § 423(d)(1)(A) (1970) mandated an interpretation of 20 C.F.R. § 404.1506 (1974) requiring evidence of significant organ damage.

12. Adams v. Weinberger, 548 F.2d 239, 246 (8th Cir. 1977).

13. *Id.* at 244.

14. *Id.* at 245.

The Eighth Circuit's concern was two principal issues: (1) did the Secretary apply an improper legal standard to Adams' disability insurance claim by focusing on "the absence of evidence that claimant has significant organ damage that precludes work activity"[15] and (2) did the Secretary place improper emphasis on the observation " 'that the power and ability to remedy Adams' plight rests solely with him?' "[16] In resolving these issues, the *Adams* court reviewed the statutes, regulations and judicial standards concerning a chronic alcoholic's claim for disability insurance benefits.

In holding that the chronic alcoholic claimant no longer need produce evidence of organ damage that precludes work activity, the *Adams* decision represents an effort to enunciate the proper interpretation of the relevant social security regulations. However, by holding that emphasis is to be placed upon the claimant's voluntary control of the use of alcohol, the *Adams* decision rejects the traditional approach and represents a novel change.

As the number of alcoholics in the United States continued to increase,[17] the issue of whether alcoholism alone constituted a disability under the Social Security Act had to be addressed. Early decisions[18] were based on the then-existing statutory definition of "disability." Disability was defined as an

> [i]nability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long continued and indefinite duration.[19]

Courts interpreted this statute as conditioning the finding of a disability on the satisfaction of three requirements. First, there must be a "medically determinable physical or mental impairment." Next, there must be "inability to engage in any substantial gainful activity." Finally, the inability must be "by reason of the" impairment.[20]

The approach of the court in *Mays v. Ribicoff*[21] exemplifies an application of these three requirements. In *Mays*, a chronic alcoholic based his disability claim upon shortness of breath, a heart condition, dizzy spells and nerves.

---

15. *Id.* at 242.
16. *Id.* at 243.
17. *See* Gilmer, *Alcoholism As a Disability Under The Social Security Act*, 5 CONTEMP. DRUG PROB. 149 (1976).
18. *See* Mays v. Ribicoff. 206 F. Supp. (S.D.W. Va. 1962); Thompson v. Fleming. 188 F. Supp. 123 (D. Ore. 1960). *But see* Cook v. Celebrezze, 233 F. Supp. 295 (E.D. S.C. 1964) (medical findings as a whole substantiated the finding of an impairment even though claimant was an alcoholic).
19. 42 U.S.C. § 423(c)(2)(A) (1965). This statute was amended July 30, 1965. The amendment changed the final clause directed to the duration aspect of the disability, by making it read, "which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; or . . . ."
The pertinent Social Security regulation defines "disability" the same way as does the Social Security Act. *See* 20 C.F.R. § 404.1501 (1976).
20. Pollack v. Ribicoff, 300 F.2d 674, 677 (2d Cir. 1962). *See also* Marion v. Gardner, 359 F.2d 175, 180 (8th Cir. 1966); Brasher v. Celebrezze, 340 F.2d 413, 414 (8th Cir. 1965); Celebrezze v. Sutton, 338 F.2d 417, 418 (8th Cir. 1964); Celebrezze v. Bolos, 316 F.2d 498, 500-01 (8th Cir. 1963).
21. 206 F. Supp. 170 (S.D.W. Va. 1962).

None of the examining physicians found any physical or mental impairment which would keep the claimant from working. In denying disability benefits, the court held that claimant's inability to engage in any substantial gainful activity was caused by his addiction to alcohol, rather than any underlying physical or mental impairment. This, the court concluded, was hardly sufficient to show a disability within the statute.[22]

Additional cases[23] have denied claims of chronic alcoholics relying on a later social security administrative regulation[24] which categorized alcoholism as a personality disorder.[25] Under this regulation, the finding of a disability was predicated on the existence of an associated severe psychosis or psychoneurosis. Otherwise, the claimant's lack of motivation or cooperation in seeking medical assistance to quit drinking acted as a bar to recovery.[26] Since this regulation has been repealed, however, the *Adams* court noted that these cases were of limited precedential value.[27]

In *Adams v. Weinberger*,[28] the Secretary contended that the current regulation,[29] characterizing alcoholism as a "functional nonpsychotic disorder," prevented recovery by the claimant. This regulation recognized as a disabling impairment "those functional nonpsychotic disorders (psychophysiologic, psychoneurotic, and personality disorders) which manifested themselves by a restriction of daily activities . . . and a *persistence of* . . . inappropriate patterns of behavior demonstrated by an addictive dependence on alcohol or drugs, with evidence of *irreversible organ damage*."[30] The Secretary contended that a proper interpretation required evidence of significant organ damage.[31]

Previously, the Eighth Circuit in *Brasher v. Celebrezze*[32] had held that there could be adverse findings even if the chronic alcoholic had moderate cirrhosis.[33] However, some recent decisions have used a different approach.

---

22. Mays v. Ribicoff, 206 F. Supp. 170, 171 (S.D.W. Va. 1962).
23. Osborne v. Cohen, 409 F.2d 37 (6th Cir. 1969); Brasher v. Celebrezze, 340 F.2d 413 (8th Cir. 1966).
24. 20 C.F.R. § 404.1519(c)(2)(iii) (1967).
25. *Id.* The regulation in pertinent part read: "[p]ersonality disorders are characterized by patterns of socially unacceptable behavior such as chronic alcoholism. . . . In the absence of an associated severe . . . psychosis, a personality disorder does not in itself result in inability to engage in substantial gainful activity."
26. *See* note 23 *supra.*
27. Adams v. Weinberger, 548 F.2d 239, 242 (8th Cir. 1977).
28. 548 F.2d 239 (8th Cir. 1977).
29. 20 C.F.R. § 404.1506 (1974).
30. 20 C.F.R. § 404.1506, Appendix to Subpart P, ¶ 12.04(G)(3) (1974) (emphasis added).

The Appendix to Social Security regulations, subpart P. contains a list of impairments for each of the major body systems. Under each of the body systems there appears a *Category of Impairments.* The listed impairments are of a level of severity deemed sufficient to meet the statutory definition of disability. If the applicant's impairment is manifested by one of the alternate sets of symptoms, signs or laboratory findings listed, a presumption is made that in the absence of work, the applicant meets the Social Security definition of disability.

31. Adams v. Weinberger, 548 F.2d 239, 242 (8th Cir. 1977).
32. 340 F.2d 413 (8th Cir. 1965).
33. Brasher v. Celebrezze, 340 F.2d 413, 417 (8th Cir. 1965).

In *Badichek v. Secretary of Health, Education and Welfare*,[34] it was held that a regulation[35] requiring a claimant to undergo prescribed therapy if his impairment was amenable to treatment, no longer required a claimant to have irreversible organ damage.[36] A similar type of result was reached in *Griffis v. Weinberger*[37] where chronic alcoholism itself was held to be a disability. The *Griffis* court held that a disability existed even in the absence of an accompanying physical or mental impairment.[38]

On August 30, 1974, several changes were proposed[39] to the regulations which the Secretary had relied upon in the *Adams* decision. These proposed amendments, which were to be applied on an interim basis until final regulations were adopted,[40] became effective July 18, 1975.[41] The amended section 404.1506 now reads:

> (d) The presence of a condition diagnosed or defined as addiction to alcohol or drugs will not, by itself, be the basis for a finding that an individual is or is not under a disability. As with any other condition, the determination as to disability in such instances shall be based on *symptoms, signs,* and *laboratory findings*.[42]

The Appendix to the social security regulations, subpart P now reads:

> 12.04—Functional nonpsychotic disorders (psychophysiologic, psychoneurotic and personality disorders, drug addiction and *alcoholism*).[43]

---

34. 374 F. Supp. 940 (E.D.N.Y. 1974).
35. 20 C.F.R. § 404.1507 (1976).
36. Badichek v. Secretary of HEW, 374 F. Supp. 940, 943 (E.D.N.Y. 1974).
37. 509 F.2d 837 (9th Cir. 1975).
38. Griffis v. Weinberger, 509 F.2d 837, 838 (9th Cir. 1975).
39. *See* 39 Fed. Reg. 31648 (1974).
40. *Id.* At this point, a reiteration of the procedural history of Adams' claim is important to clarify why the proposed amendments to the regulations could be applied in the instant case.

Pursuant to the Administrative Procedure Act, 5 U.S.C. § 553 (1970), the Secretary is required to give notice of the proposed rule change in the Federal Register. After notice, the Secretary shall give interested parties an opportunity to participate in the rule making.

In the instant case, the claimant applied for disability insurance benefits on October 17, 1972. Notification of the proposed amendments appeared in the Federal Register on August 30, 1974. 39 Fed. Reg. 31648 (1974). The proposed amendments were to be applied on an interim basis in administering the Disability Insurance program until final regulations were adopted. Since Adams requested a hearing on September 16, 1974, his denial of benefits by the Administrative Law Judge, on December 10, 1974, should have been based upon the proposed amended regulations.

41. *See* 40 Fed. Reg. 30262 (1975).
42. 20 C.F.R. § 404.1506 (1976) (emphasis added).

Symptoms are "the claimant's own description of his physical or mental impairment." 20 C.F.R. § 404.1506(b)(1) (1976).

Signs are "anatomical, physiological or psychological abnormalities which are demonstrable, apart from the claimant's symptoms, by medically acceptable diagnostic techniques. Psychiatric signs are medically demonstrable phenomena, apart from the claimant's symptoms, indicating specific abnormalities of behavior, affect, thought, memory, orientation and contact with reality." 20 C.F.R. § 404.1506(b)(2) (1976).

Laboratory findings are "manifestations of anatomical, physiological, or psychological phenomena which are demonstrable by the use of medically acceptable laboratory diagnostic techniques which extend or replace the perceptiveness of senses, including chemical tests, electrophysiologic or roentgenologic studies and psychological tests." 20 C.F.R. § 404.1656 (b)(3) (1976).

43. 20 C.F.R. § 404.1506, Appendix to Subpart P, ¶ 12.04 (1976) (emphasis added).

There was no longer any reference to the presence of irreversible organ damage.

The Social Security Commissioner interpreted the amendments to mean: (1) The regulation was amended in order to clarify what was a disability and to insure equitable treatment of all claimants;[44] (2) to determine if a disability existed, the Secretary must consider the sum total of impairments;[45] (3) finally, a certification of alcoholism alone was not a disability.[46] However, the Secretary must still consider all the recognized impairments[47] and determine whether individually or in combination the impairments establish a disability.[48] Denial of benefits could not be predicated on failure to show a particular impairment.

Thus, since the proposed amendments were to be applied on an interim basis, the *Adams* court based its decision on the amended regulation,[49] and neither *Badichek* nor *Griffis* were dispositive.[50] The *Adams* court held that organ damage was not required in order for a chronic alcoholic to become eligible for disability insurance benefits. By basing denial of benefits on an absence of such damage, the Secretary had applied an improper legal standard.[51]

The *Adams* holding can be viewed as a reestablishment of the principle set forth in *Martin v. Secretary of Department of Health, Education and Wel-*

---

44. Adams v. Weinberger, 548 F.2d 239, 242-43 (8th Cir. 1977), *citing* 40 Fed. Reg. 30262-63 (1975).

45. *Id.* The sum total of a claimant's impairments may be ascertained from 20 C.F.R. § 404.1506, Appendix to Subpart P, ¶ 12.04 (1976):

> § 12.04 *Functional nonpsychotic disorders (psychophysiologic, psychoneurotic and personality disorders, drug addiction and alcoholism*). Manifested by marked restriction of daily activities and constriction of interests and deterioration in personal habits and seriously impaired ability to relate to other people and persistence of one of the following:
>
> A. Demonstrable structural changes mediated through psychophysiological channels (e.g., duodenal ulcer); or
>
> B. Recurrent and persistent periods of anxiety, with tension, apprehension, and interference with concentration and memory; or
>
> C. Persistent depressive affect with insomnia, loss of weight, and suicidal ideation; or
>
> D. Phobic or obsessive ruminations with inappropriate, bizarre, or disruptive behavior; or
>
> E. Compulsive, ritualistic behavior; or
>
> F. Persistent functional disturbance of vision, speech, hearing, or use of a limb with demonstrable structural or trophic changes; or
>
> G. Long-lasting, habitual, and inappropriate patterns of behavior manifested by one of the following:
>
> 1. Seclusiveness and autistic thinking; or
>
> 2. Antisocial or amoral behavior (including pathologic sexuality) manifested by: (a) inability to learn from experience and inability to conform with accepted social standards leading to repeated conflicts with society or authority and (b) by psychopathology documented by mental status examinations and the results of appropriate, standardized psychological tests; or
>
> 3. Pathologically inappropriate suspiciousness or hostility manifested by psychopathology documented by mental status examination and the results of appropriate standardized psychological tests.

46. *Id.*
47. *See* note 45 *supra.*
48. *See* 40 Fed. Reg. 30263 (1975).
49. Adams v. Weinberger, 548 F.2d 239, 242-43 (8th Cir. 1977).
50. *See* text accompanying notes 34-38 *infra.*
51. Adams v. Weinberger, 548 F.2d 239, 243 (8th Cir. 1977).

fare.[52] In *Martin*, the Fourth Circuit held that the Secretary could not establish exclusive preconditions in finding that a disability existed. In *Adams*, the Secretary arguably expressly preconditioned a finding of disability on the existence of organ damage precluding work activity. Additionally, this aspect of the decision represents the Eighth Circuit's concern for uniform application of the social security regulations.[53]

The second issue confronting the *Adams* court was whether a chronic alcoholic has the power and ability to remedy his own plight. Although few cases have dealt with the obligation of the claimant to seek a remedy for his alcoholism,[54] two different approaches have developed.

The traditional approach is based in part upon section 216(i) of the Social Security Act which defines "disability" as an "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment. . . ."[55] The claimant has the burden of establishing the existence of a disability within the meaning of the statute.[56] Under this approach, a claimant must be unable to engage in any substantial activity by reason of the impairment.[57] Additionally, a disability does not exist if the claimant would be able to work if he stopped drinking.[58] The court in *Osborne v. Cohen*,[59] commenting on remediable alcoholism, stated that the claimant's lack of motivation and cooperation prevented a determination that he was disabled. Under this approach, alcoholism without some basic organic change in the body does not qualify as a physical or mental impairment.

The dissent in *Osborne* typifies the modern approach. Circuit Judge Combs in his dissent stated that

> [f]rom a medical standpoint, chronic alcoholism in many cases is a physical or mental impairment sufficient to prevent the alcoholic from pursuing a gainful occupation. That claimant's addiction may

---

52. 492 F.2d 905, 910 (4th Cir. 1974).

53. Lack of uniformity in applying the regulations is a problem that has continually plagued the Secretary. *See* Dixon, *The Welfare State and Mass Justice: A Warning From the Social Security Disability Program*, 4 DUKE L.J. 681, 727 (1972).

54. Ordinarily, the determination of remediability does not cause the courts undue problems. Most cases involve the claimant's refusal to undergo treatment by a physician. *See* Whaley v. Gardner, 255 F. Supp. 862 (E.D. Mo. 1966) (refused treatment to alleviate pain).

However, the cases requiring the claimant to attempt to alleviate his problem without the help of a physician present more difficulty. *See* Smith v. Gardner, 253 F. Supp. 991 (D.S.C. 1966) (recommended therapy was change in job).

55. 42 U.S.C. § 423(d)(1)(A) (1970).

56. Nelson v. Gardner, 386 F.2d 92 (6th Cir. 1967).

57. Mays v. Ribicoff, 206 F. Supp. 170 (S.D.W. Va. 1962).

58. Havens v. Weinberger, 477 F.2d 138 (5th Cir. 1973) (epileptic seizures could be controlled by medication and abstention from drinking alcohol); Osborne v. Cohen, 409 F.2d 37, 39 (6th Cir. 1969) (only bar to recovery was claimant's lack of motivation and cooperation); Mays v. Ribicoff, 206 F. Supp. 170, 171 (S.D.W. Va. 1962) (has the capacity to work if only he would follow the advice of physicians to "stop alcohol"); Thompson v. Flemming, 188 F. Supp. 123, 125 (D. Ore. 1960) (difficulties arise because claimant continues to drink excessive quantities of alcohol despite repeated prohibitions by attending physicians).

59. 409 F.2d 37, 39 (6th Cir. 1969).

> be remedial eventually is not decisive. For the purpose of determining disability, we must take a man as we find him.[60]

Badichek v. Secretary of Health, Education and Welfare[61] gave additional substance to this modern approach. There, claimant lost his job due to chronic alcoholism, and did not seek medical or psychiatric treatment. The Secretary denied his claim stating that chronic alcoholism alone did not constitute a disability.[62] The *Badichek* court held that chronic alcoholism would be considered a compensable disability where the claimant was "impotent to seek and use means of rehabilitation. . . ."[63]

In *Griffis v. Weinberger*,[64] the court rejected the traditional view of alcoholism as typified by *Mays v. Ribicoff*.[65] In *Griffis*, the court stated that "[i]n so far as *Mays* can be read as holding that an alocholic can never be disabled because all that he need do is 'stop alcohol,' we think it wrong."[66]

The modern approach represents a dramatic change from the traditional approach. Under the modern approach, chronic alcoholism may be a medically determinable disability if the claimant can show that his use of alcohol has so affected his mental capacity that he no longer can decide whether or not to seek rehabilitation.[67]

In *Adams*, the Secretary contended that the relevant social security regulation required application of the traditional approach. This regulation in pertinent part states

> [a]n individual with a disabling impairment which is amenable to treatment that could be expected to restore his ability to work shall be deemed to be under a disability if he is undergoing therapy prescribed by his treatment sources but his impairment has nevertheless continued to be disabling or can be expected to be disabling for at least 12 months. However, an individual who willfully fails to follow such *prescribed treatment* cannot by virtue of such failure be found to be under a disability.[68]

The Secretary stated that a claimant must attempt to quit drinking before any disability could be found. Finding neither significant organ damage precluding work activity or an attempt to quit drinking, the Secretary concluded that Adams had willfully failed to follow the prescribed treatment.

The *Adams* court rejected this contention and adopted the modern approach. The court held that "[i]n the case of alcoholism, the emphasis should be placed on whether the claimant is addicted to alcohol and as a consequence has lost voluntary ability to control its use."[69] The court held that

60. Osborne v. Cohen, 409 F.2d 37, 40 (6th Cir. 1969).
61. 374 F. Supp. 940 (E.D.N.Y. 1974).
62. Badichek v. Secretary of HEW, 374 F. Supp. 940, 941 (E.D.N.Y. 1974).
63. *Id.* at 943.
64. 509 F.2d 837 (9th Cir. 1975).
65. Mays v. Ribicoff, 206 F. Supp. 170 (S.D.W. Va. 1962).
66. Griffis v. Weinberger, 509 F.2d 837, 838 n.1 (9th Cir. 1975) (emphasis added).
67. Adams v. Weinberger, 548 F.2d 239, 245 (8th Cir. 1977).
68. 20 C.F.R. § 404.1507 (1976).
69. Adams v. Weinberger, 548 F.2d 239, 244 (8th Cir. 1977).

Adams' statement that drinking beer was not causing him harm represented "the rationalizations of a sick individual who does not realize the extent of his illness."[70]

In adopting this modern approach, the *Adams* court held that a chronic alcoholic who refuses to stop drinking so as to diminish his alleged impairment to a point below that of disabling seriousness can still be declared disabled where his mental capacity or motivation is such that he cannot be held responsible for his refusal to accept the physician's order to stop drinking. Under this rationale, the Secretary must determine from the medical reports[71] whether the claimant has adequate motivation and mental capacity to seek rehabilitation. Additionally, an admission by the claimant that he could quit drinking is relevant only where the claimant has control over the use of alcohol.[72]

The *Adams* decision did not totally abrogate the responsibility of the alcoholic claimant to quit drinking. The court specifically stated that continued payments, after the initial finding of a disability, could be conditioned upon the claimant "undertaking reasonable efforts to treat his affliction."[73]

Since drug addiction, like alcoholism, is a functional nonpsychotic disorder,[74] the rationale used by the court in *Adams* should be applied. Emphasis should be placed upon whether the addict has the capacity or motivation to resist the compulsion to take the drug. Additionally, it is suggested that there be no distinction between claims based upon addiction to legal drugs and claims based upon addiction to illegal drugs.

The *Adams* decision could have additional impact in the area of private pension plans. In *Wyper v. Providence Washington Insurance Co.*,[75] the Second Circuit held that social security regulations concerning alcoholism can be used to decide if a chronic alcoholic is "incapacitated" under a private pension plan.[76] "Incapacity," as used in private pension plans, is an inability to fill one's position of employment.[77] Since private pension plans are set up to meet the needs of each individual employer, however,[78] it would be possible for an employer to remove alcoholism from any category of incapacity.

The *Adams* holding is a reasonable extension of earlier decisions[79] in finding that chronic alcoholism is a compensable disability. In light of the changing

---

70. *Id.* at 245.
71. *See* note 3 *supra.*
72. Adams v. Weinberger, 548 F.2d 239, 245 (8th Cir. 1977).
73. *Id.*
74. 20 C.F.R. § 404.1506, Appendix to Subpart P, § 12.04 (1976).
75. Wyper v. Providence Washington Ins. Co., 533 F.2d 57 (2d Cir. 1976).
76. *Id.* at 61.
77. *Id.* at 58.
78. *See* Seidman, *Future Structure of Social Security System and Interrelation With Private Pension Plans*, 27 NAT'L TAX J. 473 (1974).
79. *See* Griffis v. Weinberger, 509 F.2d 837 (9th Cir. 1975); Osborne v. Cohen, 409 F.2d 37 (6th Cir. 1969) (Combs, C.J., dissenting); Cornett v. Weinberger, CCH *Unemployment Insurance Reports, New Matters Transfer Binder* ¶ 14,191 (S.D. Ohio 1975); Badichek v. Secretary of HEW, 374 F. Supp. 940 (E.D.N.Y. 1974).

attitude of our society to alcoholism, it is not surprising that the court felt obligated to decide this issue. By emphasizing the claimant's "voluntary control of the use of alcohol," the court has successfully adopted contemporary theories on alcoholism.[80] The *Adams* holding illustrates that the concept of a compensable disability can change to meet the evolving needs of society.

Fredd Joseph Haas

INSURANCE—THE DOCTRINE OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING APPLIES TO CANCELLATION CLAUSE OF MEDICAL MALPRACTICE INSURANCE POLICY.—*Spindle v. Travelers Insurance Cos.* (Cal. Ct. App. 1977).

Plaintiff Spindle, a physician, was issued a malpractice insurance policy from defendant Phoenix Insurance Co., a subsidiary corporation of codefendant Travelers Insurance Co., pursuant to a master insurance contract with the Southern California Physicians Council of which plaintiff was a member. The policy contained a standard cancellation clause which gave the insured and the insurer an absolute right to cancel.[1] Defendant Phoenix Insurance Co. exercised this right of cancellation and Spindle brought suit against both insurers to recover compensatory, punitive and special damages for the alleged bad faith cancellation of his malpractice insurance policy. Spindle based his cause of action on the ground that Phoenix's purpose in cancelling the policy was to coerce the Southern California Physicians Council into accepting higher insurance premiums.[2] The trial court sustained defendant's demurrer to plaintiff's amended complaint and dismissed, ruling that plaintiff had failed to state a

80. *See* Driver v. Hinnant, 356 F.2d 761 (4th Cir. 1966) (chronic alcoholism cannot be the basis for judgment of criminal conviction).

1. The cancellation clause, which is standard in all malpractice insurance policies, read:

> This policy may be cancelled by the named insured, by surrender thereof to the company, or any of its authorized agents, or by mailing to the company written notice stating when thereafter the cancellation shall be effective. This policy may be cancelled by the company by mailing to the named insured, at the address shown on this policy, written notice stating when, not less than thirty days thereafter, such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of surrender of the effective date and hour of cancellation stated in the notice shall become the end of the policy. Delivery of such written notice, either by the named insured, or by the company, shall be equivalent to mailing.

Brief for Appellant at 6, Spindle v. Travelers Ins. Cos., 66 Cal. App. 3d 951, 956, 136 Cal. Rptr. 404, 406-07 (1977).

2. More specifically, plaintiff alleged defendant Phoenix "breached 'its implied obligation to plaintiff [to act in good faith] . . . did not act in good faith and did not deal fairly with plaintiff,' but cancelled his policy 'willfully, with malice, and with the intent and purpose to hurt, harm and injure the plaintiff in the practice of his profession.'" Spindle v. Travelers Ins. Cos., 66 Cal. App. 3d 951, 954-55, 136 Cal. Rptr. 404, 406 (1977).

cause of action. The plaintiff appealed from the judgment dismissing his complaint contending that the defendant did not have an absolute right to cancel the policy. *Held*, reversed. The doctrine of implied covenant of good faith and fair dealing is applicable to the cancellation provisions of a malpractice policy. *Spindle v. Travelers Insurance Cos.*, 66 Cal. App. 3d 951, 136 Cal. Rptr. 404 (1977).

The *Spindle* court was presented with the question of whether an insurer's absolute right of cancellation contained in a malpractice insurance policy is limited to good faith cancellations. Prior to the *Spindle* decision, the California courts had not had occasion to consider limitations on an insurer's motives in cancelling malpractice insurance policies. However, Justice Jefferson, for a unanimous court in *Spindle*, found that the doctrine of implied covenant of good faith and fair dealing which had in the past been held applicable to an insurance company's failure to settle[3] and failure to pay claims to the insured,[4] also extended to the cancellation provisions of a malpractice insurance policy.[5]

Cancellation provisions in insurance agreements are either reserved in the policy itself, provided for by statute or effectuated by concurrent agreement of the parties.[6] The insurance policy will normally contain a provision which gives both parties an absolute right to cancel, a right more often exercised by the insurer than the insured.[7] The clauses usually provide for the giving of proper notice[8] and the return of the unearned premium.[9] The cancellation clause benefits both parties to the insurance policy. The insured is able to obtain insurance without delay;[10] and an agent may deliver the policy before investigation of the insured is completed, subject to the insurer's reserved right to cancel the policy.[11] The insurer profits by the inclusion of the cancellation clause because if the insured becomes a greater risk than initially anticipated, the policy may be cancelled.[12]

The standard cancellation clause in most insurance policies gives both par-

---

3. Comunale v. Traders & Gen. Ins. Co., 50 Cal. 2d 654, 328 P.2d 198 (1958) (insurer failed to agree to a settlement proposed by a plaintiff suing its insured when there was a good probability of a judgment in excess of the policy's liability limits).

4. Silberg v. California Life Ins. Co., 11 Cal. 3d 452, 113 Cal. Rptr. 711, 521 P.2d 1103 (1974).

5. Spindle v. Travelers Ins. Cos., 66 Cal. App. 3d 951, 958-59, 136 Cal. Rptr. 404, 408 (1977).

6. Prudential Ins. Co. of Am. v. Ferguson, 51 Ga. App. 341, 346, 180 S.E. 503, 506 (1935).

7. Smoot, *The Cancellation Clause*, 295 INS. L. J. 675, 676 (1947) [hereinafter cited as Smoot].

8. *See generally* Davidson v. German Ins. Co., 74 N.J.L. 487, 65 A. 996 (1907). *See* IOWA CODE § 514A.3(2)h (1977).

9. *See generally* German Union Fire Ins. Co. v. Fred G. Clarke Co., 116 Md. 622, —, 82 A. 974, 975-76 (1911).

10. *See* Smoot, *supra* note 7, at 675.

11. *Id.*

12. *Id.* Comment, *Insurance—Cancellation Clause—Improper Motive Invalidates Insurer's Cancellation*, 54 IOWA L. REV. 649, 650 (1969) [hereinafter cited as IOWA Comment].