EARNINGS CAPACITY ASSESSMENT: Methodologies and Ethical Issues

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EARNINGS CAPACITY ABOVE

WHY ATTEND AND PAY ATTENTION?

EARNINGS CAPACITY ABOVE

LISTS YOU WANT TO BE ON:

- LAWYER REFERRAL
- WORKERS COMP PROVIDER
- SS VE
- INSURANCE LTD
- SPEAKERS LIST
- GOOD PERSON LISTS
EARNINGS CAPACITY ABVE

Disciplinary Actions Taken
Against Licensees

Social Workers
Jennifer - (LSW) Non-sexual boundaries. Suspension and training
Michelle - (LSW) Sexual harassment. Suspension and training
Teona - (LSW) Improper renewal/audit. Revoked

Counselors:
Abbey - (LPC) Improper records/competency. Revoked
Nancy - (LPC) Improper records/audit. Revoked

Overview
• Methodology
• Ethical issues
• Report formatting examples
• Group participation
• Questions/summary
• Follow up

EARNINGS CAPACITY ABVE

METHODOLOGY
• RECORDS REVIEW
• INTERVIEW
• TESTING
• TSA/LMA
• REPORT PREP
Expert opinions should be based on sound methodology and empirical data. Experts do not advocate for, or attempt to preserve the interests of, the person being evaluated, an attorney or any other party in the legal matter. Experts use their unique specialized knowledge and skills to analyze the empirical data, to generate hypotheses, test their validity against the facts and to use their skilled clinical judgment to express opinions that reflect on the issues at hand. (Data source: ABVE Code of Ethics)

• METHODOLOGY
• RECORDS REVIEW
  • All records
  • Engagement letter/contract
  • Weighting of data
  • Causality
  • Case example

• METHODOLOGY
• INTERVIEW
  • PURPOSE
  • DISCUSS LIMITATIONS/BENEFITS
  • CRC PROFESSIONAL DISCLOSURE
  • REPORTED/DOCUMENTED FUNCTIONAL LIMITATIONS
  • PSY ISSUES
  • WORK HISTORY
  • EDUCATION/TRAINING
  • SOCAL/ECONOMIC
  • PRE/TRAUMA
  • VOCATIONAL GOALS
  • TESTING
EARNINGS CAPACITY ABOVE

• METHODOLOGY
  • TESTING
  • ACHIEVEMENT, APTITUDE, INTEREST, OTHER
  • ISSUES
    • PROFESSIONAL DISCLOSURE
    • OTHERS PRESENT
  • VIDEO/AUDIO RECORDING
  • VIDEO/RECORDING TEST
  • SECURITY/"COPIED"
  • COMPROMISE TEST
  • COPYRIGHT LAW
  • NORMED W/O OTHERS PRESENT
  • PAR LETTER

EARNINGS CAPACITY ABOVE

• METHODOLOGY
  • ANALYSIS
    • TSA
    • TEST RESULTS
    • JOBS
    • LMA
    • EARNINGS

EARNINGS CAPACITY ABOVE

• METHODOLOGY
  • REPORT
    • REFLECT METHODOLOGY
    • REPORT DATA
    • SHOW ANALYSIS
    • CONCLUSIONS
The vocational expert witness’ role is to provide assistance to the trier of fact in identifying the effect of injury or other event on an individual’s capacity to work, earn money and/or to maintain a quality of life. (Data source: ABVE Code of Ethics)

- ALTERNATIVE METHODOLOGIES
  - VARM; ROBINSON / POMERANZ
  - ECAF-2; SHANASARIASN
  - WORK LIFE EXPECTANCY; GAMBOA
  - OTHER
The Vocational and Rehabilitation Assessment Model (VRAM) is an empirically derived structural model of vocational and rehabilitation assessment in a legal forensic setting. The structured presentation of VRAM is useful for visualizing the relationship and interaction of construct domains.

STRENGTHS
- Covers traditional areas of assessments
- Provides metrics and specific outcomes
- Documentation & references for opinions
- Is consistent with ABVE and other ethics
- Holds up under cross examination

WEAKNESSES
- Complex
- Lengthy
- Time consuming
EARNINGS CAPACITY ABOVE

• ECAF-2; SHAHANASARIAN
  • PREMORBID AND POST INCIDENT FACTORS
  • DRIVER ITEMS & INHIBITOR ITEMS
  • ECAF-2 RATING FORM
  • ANALYSIS USING TWO GRAPHS

EARNINGS CAPACITY ABOVE

ECAF-2; SHAHANASARIAN

• 4 item rating scale
  — Inhibitor Items
    » E.g. Phase of career development, prognosis, need for retraining
  — Driver Items
    » E.g. Earnings history, career motivation, cognition.

EARNINGS CAPACITY ABOVE

• ECAF-2; SHAHANASARIAN
  • STRENGTHS
    • METRICS
      • SOME OBJECTIVE INFORMATION BASED E.G., TESTING
      • RESEARCHED AND REFERENCES
      • GREAT COUNSELING TOOL/REHABILITATION TOOL
  • WEAKNESSES
    • SUBJECTIVE METRICS
    • RATING SCORES DIVERT FROM OPINION IN TESTIMONY
    • WEIGHTING ISSUES OF CRITERIA; E.G., MOTIVATION
    • ONE FACTOR COULD ELIMINATE ALL JOBS AND EARNING CAPACITY
    • ACADEMIC
EARNINGS CAPACITY ABOVE

WORK LIFE EXPECTANCY; GAMBOA

- ACS; AMERICAN COMMUNITY SURVEY
- CPS; CURRENT POPULATION SURVEY
- CONVERSION TABLES BASED ON DEMOGRAPHICS

FACTORS INCLUDE:
- SEVERE DISABILITY, MOBILITY DISABILITY, COGNITIVE DISABILITY
- STRATIFIED BY AGE, EDUCATION
- COMPUTE WORK LIFE EXPECTANCY USING TABLES AND THE CENSUS BUREAU DEFINITION OF DISABILITY

EARNINGS CAPACITY ABOVE

WORK LIFE EXPECTANCY; GAMBOA

- STRENGTHS:
  - USES GOVERNMENT DATA
  - PROVIDES METRICS
  - NARRATIVE IS BRIEF AND TO THE POINT

- WEAKNESSES
  - NO TSA
  - NOT DISABILITY SPECIFIC
  - POST NARRATIVE IS COMPLEX AND NOT RELATED TO CASE
  - DEPERSONALIZED
  - LITTLE SEGREGATION FROM DISABILITY TO SPECIFIC FUNCTIONAL CAPACITIES
  - DATA BASE IS VERY BROAD AND NOT APPLICABLE TO A SPECIFIC CASE

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- ALTERNATIVE METHODOLOGIES
  - RAPEL
  - DEUTSCH/SAWYER MODEL
  - LABOR MARKET ACCESS
  - DILLMAN’S LOSS OF EARNING CAPACITY
  - MCCROSKEY VOCATIONAL QUOTIENT SYSTEM
  - REHABILITATION CASE ANALYSIS METHOD
  - ECONOMIC FOUNDATIONS OF EARNING CAPACITY
EARNINGS CAPACITY ABOVE

**REPORT FORMAT 1**
- PURPOSE
- METHODOLOGY
- SUMMARY OF INTERVIEW
- DOCUMENTS REVIEWED
- BACKGROUND INFO: DEMOGRAPHICS
- WORK HISTORY / EARNINGS HISTORY
- MEDICAL/PSYCHOLOGICAL
- TSA
- LMA
- OPINION

EARNINGS CAPACITY ABOVE

**REPORT FORMAT 2:**
- Introduction (clinical interview)
- ADL
- Mental Health
- Education/training
- Career development
- Testing results
- Summary & impression

EARNINGS CAPACITY ABOVE

**REPORT FORMAT 3**
- Summary of loss of earnings
- Demographics
- List of complaints
- Case comments: medical diagnosis
- Pre/post injury earnings capacity
- Disability/no disability table
- Actual earnings table
- 30-40 page rational/methodology
  - Daubert
  - Government definitions of disability/statistics
  - ACS (American Community Survey)
  - CPS (Current Population Survey)
  - Validity/reliability
  - Other
EARNINGS CAPACITY ABVE

• REPORT FORMAT 4
  • TESTS ADMINISTERED
  • DOCUMENTS REVIEWED
  • BACKGROUND AND BEHAVIORAL OBSERVATIONS
  • TEST RESULTS
  • CONCLUSIONS AND RECOMMENDATIONS

EARNINGS CAPACITY ABVE

Be sensitive to individual differences of the persons being evaluated in reference to the selection, utilization and interpretation of assessment instruments.

(Data source; ABVE Code of Ethics)

EARNINGS CAPACITY ABVE

Objectivity
• Using objective data prior to opinion.
• No inductive reasoning.
• Example-TBI opinion/diagnosis.
• Consider opposing viewpoints
### EARNINGS CAPACITY ABVE

**ABVE CODE: Competency**
- Obligated to maintain competency-education and supervised experience.
- Must be up-to-date on medical and assistive device technology as well as software.
- Cannot misrepresent areas of expertise.
- Examples: economic analysis by VE;
- Ignoring adverse medical/vocational/psychological opinions

### EARNINGS CAPACITY ABVE

**ABVE CODE: Confidentiality**
- Safeguard information.
- Recognize right to privacy.
- Release of information.
- Professional disclosure form.
- Suggestion: at least 3 protected data storage
- Suggestion: encryption, multiple & complex passwords.
- Example: theft of laptop or computer.
- Example: family law case without release.

### EARNINGS CAPACITY ABVE

Multicultural and diversity issues
- Become aware of self bias.
- No discrimination on age, race, culture, etc.
- Interpreter issues: suggested solutions.
- Duty to warn if a cultural conflict.
EARNINGS CAPACITY ABVE
Appropriate role
- Provider and coordinator of appropriate services.
- Professional disclosure form assist in defining role.
- Conflict resolution and face-to-face contacts.
- Examples: recommending and/or placement in an unsafe work environment.

COMMUNICATIONS CAPACITY ABVE
Social advocacy
- Advocacy concerning disability rights, community integration etc.
- Must remain up-to-date on litigation and legislation trends within the field.
- Example: a change in licensure law concerning documentation/record-keeping could result in suspension of licensure.
- Suggestion: attention and seminars and visit listserv and other electronic communications.

EARNINGS CAPACITY ABVE
Electronic communication
- EARNINGS apply not only to verbal interview interaction with clients but all electronic communication such as emails, messaging, Facebook etc.
- Example: plan left in door screen.
- Copyrighted documents.
- Professional disclosure and release forms.
- Unauthorized access to clients electronic communication or social media.
EARNINGS CAPACITY ABVE

Electronic communication (continued)
• Exception to review of claimants social media.
• Informed consent to access electronic communication.
• All electronic communications are considered part of the clients file.
• Suggestions: password protect, multiple backups including financial records.

EARNINGS CAPACITY ABVE

• GROUP PROJECT
• ROLES
• CASE

EARNINGS CAPACITY ABVE

GROUP EXERCISE
• 45 year old female
• HS GED + Cosmetology
• Hit by truck in MVA
• Reports this caused: ADHD, back pain, knee pain, & Fibromyalgia
• Meds cause nausea/sleep problems
• Testing
  – Aptitude: below average aptitudes; especially spatial, form.
  – Achievement: 5th grade level all areas.
• Work history: Cosmetology & packer
• Prior earnings $10,100 year average
• Stipulates to no income based on earnings capacity
• FCE: less than sedentary wk.
• Treating physician total disabled.
• Her vocational expert. Not able to work.
EARNINGS CAPACITY ABOVE

DATA ANALYSIS
BVR, VA, W/COMP, FED DIB, SSA
RTW
DISABILITY
DEMOGRAPHIC
SOURCE OF FUNDING?
GRANT
PAID STAFF
OTHER

EARNINGS CAPACITY ABOVE

APPENDIX AND REFERENCES

EARNINGS CAPACITY ABOVE

APPENDIX AND REFERENCES
EARNINGS CAPACITY ABOVE

ABVE CODE OF ETHICS

- Conflict of interest
- Exploitative or detrimental relationships.
- Lack of objectivity.
- Lack of competency.
- Confidentiality.
- Multicultural/diversity problems.
- Appropriate role for the practitioner.
- Social advocacy.
- Electronics communication

EARNINGS CAPACITY ABOVE

CDMS FORENSIC SECTION

- SECTION 3 – Provision of Services to Organizational Clients
- RPC 3.01 – Forensic Evaluation
- When providing forensic evaluations for an individual or organization, the primary obligation of certificants shall be to produce objective findings and opinions that can be substantiated based on information and techniques appropriate to the evaluation, and as required by applicable case law within the appropriate jurisdiction, which may include assessment of the individual and/or review of records. Certificants shall define the limits of their reports or testimony, especially when an assessment of the individual has not been conducted.

EARNINGS CAPACITY ABOVE

- CRC REHABILITATION COUNSELOR FORENSIC COMPETENCY AND CONDUCT:
  - Objectivity
  - Qualification
  - Avoid harmful relationships
  - Conflict of interest
  - Validity of resources
  - Foundation of knowledge
  - Duty to confirm information
## References

- ABVE Code of Professional Ethics
- CRC Desk Reference on Professional Ethics
- Gamboa, A. M. Jr., & Gibson, D. S., *Gamboa Gibson Worklife Tables*; Portland, Oregon 2010
- Brockhouse, Michael and Follmes, Grayson, L., Rejoinder: the debunking attempt is bunkum with no "De*, *The Rehabilitation Professional*, 23(3), PP 129 – 132, 2015
- *The Ticket to Work is a vocational rehabilitation program of assistance for individuals receiving Social Security disability.
METHODOLOGY

The general procedures for conducting a vocational assessment of earnings capacity consist of a review of background information, a vocational interview, testing if appropriate, an analysis of work history, an analysis of transferable skills from the work history and education and labor market information. The process begins with the collection of vocationally relevant background information. If this individual is employable, labor market data from the Department of Labor is reviewed to determine average salaries that exist in the occupations that can be performed. If this individual is able to engage in employment, the marketability of the skills and abilities are considered. Based on findings of this analysis opinions are rendered concerning earnings capacity if this individual is able to engage in employment. If there are medical or psychological issues, these are considered in forming an opinion of earnings capacity. The purpose of this procedure is to determine skills acquired from prior work that could be used or transferred to other similar jobs that could be performed using those skills. An analysis of the transferability of skills is the accepted standard procedure in the vocational assessment of individuals. It is not necessary to perform an analysis of transferable skills and examine alternate jobs.
