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Nature of pain doesn't diminish it as evidence

A recent ruling by the 7th U.S. Circuit Court of Appeals addressed an issue that frequently arises in disability benefit claims — may an adjudicator reject pain complaints that are deemed lacking in objective support?

In *Adaire v. Colvin*, 2015 WL 678735 (7th Cir., Feb. 18), a Social Security disability case, the court found that an administrative law judge improperly denied a claim brought by Jamie Adaire, who suffered from a variety of physical and psychiatric conditions.

Finding the ALJ's opinion "riddled with errors," the court addressed several defects in the claim analysis.

First, the court found the "principal error" in the decision was the ALJ's discounting of symptom complaints as unsupported by "objective" evidence.

The court cited three decisions that had addressed the same issue as well as an interpretive ruling, Social Security Ruling 96-7p, that advises: "[A]n individual's statements about the intensity and persistence of pain or other symptoms or about the effect the symptoms have on his or her ability to work may not be disregarded solely because they are not substantiated by objective medical evidence." (The authoritative "Guides to the Evaluation of Permanent Impairment" issued by the American Medical Association says much the same thing.)

The court was extremely critical of the ALJ's distinction between "subjective" and "objective" evidence of pain without "realizing that pain can be real and intense yet its cause not be discernible by medical tests or examinations."

But what really confounded the appeals court was that the record was replete with objective evidence consistent with Adaire's pain complaints. A surgical report found the presence of damage to Adaire's ulnar nerve, and he had lost forearm muscle. Adaire's complaints of back pain also were consistent with a history of having had Harrington rods implanted for treatment of scoliosis (curvature of the spine) when he was younger.

The court noted that such treatment is no longer recommended because it is associated with causing a painful condition known as flatback syndrome.

The court further dissected the ALJ's findings by questioning the value of the observations of the claimant by the doctors who examined him for the claim process.

The court found no basis for the ALJ's reliance on a comment in a doctor's report that the claimant appeared to leave the examination without discomfort because the doctor's examination established cervical spine stenosis, a condition consistent with Adaire's pain complaints. And another doctor's notation of a "normal gait" was dismissed because no evidence indicated that Adaire's pain complaints would have caused him to limp.

The court also rejected the ALJ's finding that a comment in a medical report about an "exaggerated pain response" was an accusation of malingering. Instead, the court recognized that the physician's comment was merely "medical jargon for a patient's experiencing more pain than his purely physical problems (spine and right arm and hand, in Adaire's case) would be expected to cause."

Further, the court ruled that

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the ALJ had no basis for disbelieving a psychologist's and therapist's testimony that Adaire suffered from panic attacks. Since both professionals believed Adaire without witnessing such an attack, the court characterized the logic of the ALJ's disbelief as meaning "that *nothing* an applicant says should be believed; disability determinations should be based entirely on the results of medical tests. Such a rule would flout the Social Security Administration's regulation." (Emphasis supplied.)

The court also rejected the ALJ's refusal to credit one of Adaire's doctors because he relied solely on the claimant's subjective complaints and was "apparently sympathetic" to the claimant. The court found no support for flatly rejecting Adaire's symptoms as "subjective" and could find no basis for a conclusion that even if the treating doctor was sympathetic, he would have furnished false evidence.

Finally, the court found Adaire was seeking extensive treatment

and his child care responsibilities were limited, thus undermining the ALJ's determination that Adaire "would be seeking treatment for his extreme symptoms" and would not have been "able to take care of his children" if his allegations were true.

The 7th Circuit has been extremely vocal in its criticism of flawed Social Security disability determinations. In a series of decisions, the court has harshly challenged illogical and poorly reasoned ALJ decisions, and this ruling is merely the most recent case examining the process of adjudicating disability cases.

To be sure, disabilities due to pain and other symptoms are difficult to assess. Despite medical advances in imaging technology, such symptoms as pain, fatigue and dizziness cannot be objectively measured.

Nonetheless, as this ruling illustrates, the lack of objective measurement does not grant disability adjudicators a license to flatly reject a claimant's allegations. All medical diagnoses begin with what a patient tells a doctor and thus cannot be disregarded as self-reported without a reasoned basis for discrediting the allegations.

The Social Security Administration, along with private disability insurers, would be well served by heeding the analysis offered by the 7th Circuit given the financial burden caused by disability and, thus, the importance of getting it right.

No one wants to see undeserving claimants receive benefits, but a meritorious case deserves a fair and accurate determination free from bias and conclusions that lack a logical basis.