Court rules employee too disabled to work, entitled to benefits

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Disability insurance lawyers should note a recently decided case from the 7th U.S. Circuit Court of Appeals, *Garcia v. Colvin*, 2013 U.S.App.LEXIS 25452 (7th Cir. Dec. 20, 2013).

The case involved Michael Garcia, who was 40 years old when he applied for Social Security disability benefits. Garcia said he had abdominal pain due to cirrhosis of the liver, Hepatitis C and other related conditions.

Although his impairments were caused by or exacerbated by alcoholism, which would ordinarily bar him from receiving Social Security disability benefits, the court determined that Garcia had ceased drinking and that his alcoholism ceased to be a "contributing factor" to his disability. See, 42 U.S.C. Section 423(d)(2)(C).

The court, which characterized Garcia as being "in awful shape," described the severity of his condition and noted that even a doctor appointed by the Indiana disability determination service found him incapable of working due to his diminished liver function and a platelet count that was so low that he could not safely undergo a transplant.

Given the severity of Garcia's multiple impairments, the court was astonished that the administrative law judge and district court found Garcia capable of full-time employment. The court also questioned the law judge's finding that Garcia's employment up to the claimed date of disability disqualified him from receiving benefits.

The court explained:

"One can be employed full time without being capable of substantial gainful activity, paradox though that may seem. (citations omitted)"

The reasons given in the cases we've just cited are a desperate employee or a lenient or altruistic employer. But another reason why a disabled employee might be treated by his employer as a

full-time employee, as by being paid a full-time employee's wages for what was actually part-time work, might be that he possessed skills of such value to his employer that the employer was willing to overlook his inability to work full time — which appears to have been Garcia's situation.

The court also expressed puzzlement at why the administrative law judge gave no weight to the opinion of the treating doctor that Garcia was "disabled and unable to perform any functions." The court agreed with the government that "whether the applicant is sufficiently disabled to qualify for Social Security disability benefits is a question of law that can't be answered by a physician."

Nonetheless, the court pointed out that "the answer to the question depends on the applicant's physical and mental ability to work full time and that is something to which medical testimony is relevant and if presented can't be ignored."

The court also criticized the administrative law judge for disregarding testimony from Garcia's fiancee, suggesting that while her potential bias would be a factor affecting her credibility, the judge said nothing about what parts of the testimony he believed or disbelieved.

The court questioned the law judge's reliance on an agency doctor's finding that Garcia can walk, stand, stoop and squat since none of the plaintiff's impairments were related to his musculoskeletal system and sense of balance.

In addition, the court challenged the law judge's rationale that Garcia's medical treatment was insubstantial as of his date of impairment because the judge failed to ask whether he had insurance or the funds to pay for treatment.

The court concluded by questioning why the law judge would have ruled against the claimant since no physician testified and no medical records supported a conclusion that Garcia could work and deemed him "one of the most seriously disabled applicants for Social Security disability benefits whom we've encountered in many years of adjudicating appeals from benefits denials."

There is much to take away from this decision that is applicable not only to Social Security disability, but to any matter that involves disputed medical or vocational opinions.

First, the court's finding that the adjudicator cannot disregard the opinions of its own evaluators is a critical observation. The whole point of an independent examination is to elicit an opinion that would be free from the bias inherent in a treating doctor's opinion, since that doctor might want to do a favor for a longtime patient.

And the independent doctor would also be free from the bias of a doctor in the employ of the benefits administrator who may be swayed by the notion expressed by Upton Sinclair that, "It is difficult to get a man to understand something, when his salary depends upon his not understanding it!" "I, Candidate for Governor: And How I Got Licked" (1935).

The discussion of this issue in the *Hawkins v. First Union Corp. Long-Term Disability Plan*,

326 F.3d 914 (7th Cir. 2003), ruling cited in this opinion is invaluable for its conclusion that the treating doctor possessed superior knowledge over the consultant, who had never examined the claimant.

Next, in addition to the citations for the proposition that one can be disabled and still work, *Mabry v. Travelers Ins. Co.*, 193 F.2d 497, 498 (5th Cir. 1952), should be added, which colorfully noted, "Pinched by poverty, beset by adversity, driven by necessity, one may work to keep the wolf away from the door though not physically able to work … "

Yet another key criticism from the court relates to what Aristotle would have described as the "fallacy of accident" in the law judge's reasoning. Merriam-Webster defines that term as "the fallacy that consists in arguing from some accidental character as if it were essential or necessary." See, merriam-webster.com/dictionary/fallacy%20of%20accident.

Here, the law judge relied on the absence of any musculoskeletal impairment to support a conclusion that Garcia was not disabled; however, as the court pointed out, there is no logical requirement of musculoskeletal impairments as a precondition to a finding of disability. The court gave several examples, including Alzheimer's disease.

This opinion is a veritable gold mine of critical issues in disability adjudication and it will no doubt be frequently cited both in Social Security and in other disability cases.