Chronic fatigue syndrome gets court's nod of approval as legitimate disorder

Karen Capen

In brief

LAWYER KAREN CAPEN looks at the implications of a recent Alberta court case involving chronic fatigue syndrome. She thinks Canada's physicians should pay close attention to this precedent-setting case.

En bref

L'AVOCATE KAREN CAPEN étudie les répercussions d'une récente décision d'un tribunal albertain dans un cas de syndrome de fatigue chronique. Elle croit que les médecins du Canada feraient bien de scruter de près ce jugement qui établit un important précédent.

Few medical diagnoses are more hotly debated than chronic fatigue syndrome (CFS). Now, an Alberta court has added to the controversy. In *Baillie* v. *Crown Life*, a judge ruled that a women with CFS qualifies for long-term disability benefits.[1] Crown Life was ordered to pay benefits to plaintiff Sharon Baillie, a former senior computer systems analyst with the insurance company.

Part of the case dealt with the insurance policy and the time requirements for filing a claim. For physicians, however, the ruling's importance centres on how difficult it is to diagnose the condition.

This legal recognition of CFS, which the Alberta court handed down in March, should alert doctors of the need to understand the range of symptoms that fall within the condition's diagnostic profile. The symptoms assigned to CFS generally include at least 6 months of extreme fatigue that reduces a person's activity by 50% or more. This is accompanied by at least 4 other problems such as aching muscles and joints, headache, sleep disturbances, memory and concentration problems, and sore throat. Although the cause has yet to be determined conclusively, it is thought to involve a virus and/or a weakened immune system.

In recognizing CFS, the Alberta court recognized that a number of medical bodies have done the same thing, including the World Health Organization and the Centers for Disease Control and Prevention in Atlanta.

In 1994 the CDC concluded that CFS is "a clinically defined condition characterized by severe disabling fatigue and a combination of symptoms that prominently features self-reported impairments in concentration and short-term memory, sleep disturbances and musculoskeletal pain. Diagnosis of CFS can be made only after alternative medical and psychiatric causes of chronic fatiguing illness have been excluded. . . . Recent longitudinal studies suggest that some persons affected by CFS improve with time but that most remain functionally impaired for several years."

The Alberta case involved a Crown Life employee who resigned her position in early 1990 after a series of health problems left her unable to work. In May 1991 her physician diagnosed her condition as CFS, but her request for disability payments was rejected. The successful lawsuit could result in payments totalling more than $500 000. She was also awarded approximately $80 000 in court costs. This case may provide a precedent for the estimated 20 000 to 30 000 other Canadians who experience similar symptoms.

Baillie's position was simple: she has a condition known as CFS and has been unable to engage in neither her own occupation nor in any other type of work since 1989. Before 1989 she had a consistent work history and during her time with Crown Life her health had been good, she was physically active

Features

Chroniques

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and she worked 40 to 60 hours a week.

In September 1989 she took a Caribbean cruise and may have contracted food poisoning. The diarrhea and fever was accompanied by extreme fatigue and arm and leg aches. These symptoms, along with nausea, persisted until November, when she was finally diagnosed with giardiasis. This was treated appropriately, but Baillie continued to experience headaches, muscle weakness, night sweats and exhaustion. Her memory was also affected.

By early 1990 she was unable to perform at work and spent less and less time there. In the latter part of 1989 Baillie made 16 visits to her employer's medical staff and, up until May 1990, saw company nurses at least 25 times. She was placed on short-term disability leave to cover the absences.

Baillie's physician thought she might be experiencing work-related stress and that a change of jobs and geographic location might help. At one point he sent her to see a psychiatrist, who prescribed relaxation therapy. Baillie stopped seeing him when he declared that she was "too healthy" and that "she should get out and go back to work."

However, her family physician had concluded that Bailie had some form of physical malaise and investigated the possibility that a parasite was involved. He testified that by May 1990 he had concluded that Baillie was disabled in that she was clearly unable to perform her work duties.

Shortly after, Baillie left Crown Life and moved to Vancouver, where she brought her extreme fatigue to the attention of general practitioner Martin Gerretsen; by early 1991 he had diagnosed CFS. He testified that Baillie was not employable on any consistent basis and so he helped her apply for government disability benefits. He said her condition remained the same during the next year or so while he treated her and that he considered CFS to be a medically recognized condition.

In 1992 Baillie also saw a specialist in internal medicine, Dr. Stanley Houston, who supported her application for government benefits. He said her constellation of problems began specifically and suddenly in 1989 with the giardiasis. The last physician to see Baillie was Dr. Duncan Cameron, another internist who frequently sees CFS patients. He said her condition met CDC criteria for CFS that were established in 1994.

During the trial, Baillie said she did not claim long-term disability benefits when she left Crown Life because she did not think she had a long-term illness. When she decided to make a claim, she consulted Dr. Edward Jorundson, an expert in occupational medicine, who concluded that Baillie had CFS and the condition had been triggered by giardiasis.

The only medical evidence called by Crown Life was provided by a psychiatrist, who testified that Baillie had a conversion disorder. He examined her for 3 hours, and acknowledged that he approached the examination with the view that CFS does not exist.

The plaintiff called her own psychiatric expert, who concluded that Baillie has had CFS since 1989. He testified that the illness has been recognized by numerous medical bodies such as the CDC "and there is enormous medical literature related to it. It is a debilitating and complicated illness which involves pathological dysregulation of at least 3 fundamental physiological systems: the central nervous system, the hypothalamic-pituitary axis and the immunological system."

The judge concluded that this expert was more credible than Crown Life's and accepted his evidence that Baillie does not have a psychiatric disorder. He based this on evidence which indicated that CFS could not be "litmus tested"; this meant that the key deciding factor would be Baillie's credibility.

The judge concluded that Baillie may not have been a "model of accuracy" in terms of the information she provided. However, he was satisfied that she was credible because of her "lack of knowledge of what was really happening in terms of a diagnosis of her medical condition, particularly in the 1990–91, and the cognitive impairment she was suffering."

This case illustrates some of the not infrequent dilemmas physicians face. Since the ruling professional associations have spoken out on CFS, and the College of Physicians and Surgeons of Alberta and the Collège des médecins du Québec have either released or indicated they will release information on the condition for members and the public.

One of the dilemmas concerns the need to validate a diagnosis. The other dilemma, and one that is more relevant to professional practice standards, is how to keep current with accepted clinical knowledge, especially with controversial conditions like CFS for which none of the science is yet written in stone.

Since this case was not a negligence lawsuit involving physicians, problems within the physician–patient relationship were not at issue. However, it still contains lessons for practising physicians. The crucial one is the need to pay more careful attention to a patient's ongoing condition when controversial or difficult diagnoses are involved.

Conditions that involve ruling out a number of other medical and psychiatric conditions before a diagnosis is made can pose problems for busy doctors. It is undoubtedly difficult to follow patients who are also seeing a number of other physicians and other health care professionals, not to mention those who move frequently or who appear well when seen.

Other articles in this issue (pages 519 and 537) deal with the medical aspects of CFS.

Reference

1. A.J. No. 235; Alberta Court of Queen's Bench, Action No. 9303-22591, judgement: Mar. 2, 1998.