— Social Security Matters — Major Depression and Disability

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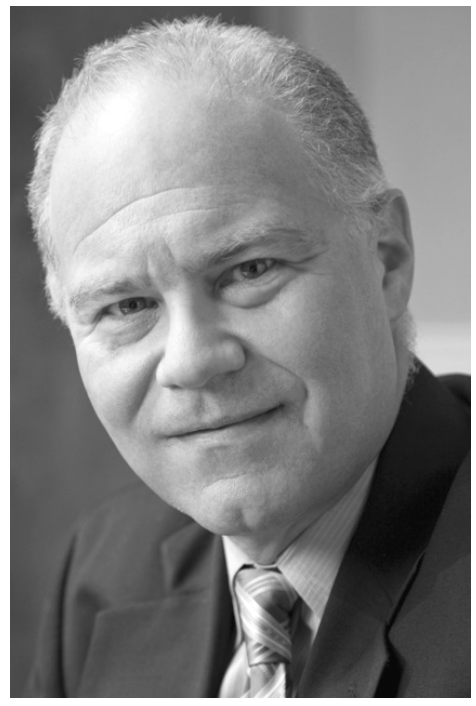

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Many of the people who come to us to obtain Social Security or Private Disability benefits are suffering from depression. In many cases this is their primary impairment; in many more, depression is present along with other disabling conditions.

Because of the typically insidious progression of the depressive symptoms, our clients are often unaware of how significantly their depression impacts on their ability to work. While the condition might start with some sadness or preoccupation with a real or perceived loss, very often, changes in performance and their behavior at work will reveal that the underlying cause of their problems is depression.

Although many lay people associate depression with pervasive sadness, from a Disability perspective, the analysis of the ability to perform work activities is paramount. Telltale signs of severe depression in the workplace might include:

- Decreased interest in work
- Slowed thoughts
- Overly sensitive or emotional reaction to supervisor's criticism or feedback
- Slowed movement or reaction
- Difficulty remembering or learning new tasks
- Increased errors and poor work product
- Decreased or inconsistent productivity
- Tardiness, procrastination, absenteeism and missed deadlines

While an enlightened supervisor might be able to address some of the behavior identified above, it is a rare employer who will tolerate an employee who exhibits these signs of major depression. More often than not, if the depressed employee does not resign or take a leave from work, he or she will suffer from poor performance reviews, which will ultimately result in termination.

From a depressed employee's perspective, there are also a number of considerations at play which might impact on his or her ability to handle severe depression. First and often paramount is a concern about the stigma of being depressed. Unlike physical conditions such as diabetes or hypertension, depression – though an even more common disease – is something that is rarely spoken about. People are embarrassed to talk about their feelings and will often not seek treatment due to concern about the ramifications of their condition and fears of "who will know."

Often, someone suffering from depression will also be concerned about whether insurance will pay for treatment. For this reason, even those who know there is something wrong are more inclined to discuss their depression only with the family doctor instead of with mental health professionals, whether psychiatrists, psychologists, social workers or other therapists. Unfortunately, more often than not, the family doctor is not qualified to treat depression and frequently tries to medicate the problem instead of referring the patient for proper treatment.

Additionally, due to the often progressive build-up of symptoms, workers often are not even aware that whatever is wrong with them is a diagnosable and frequently treatable condition. Depression crawls up on them and their work performance suffers but it is so gradual that they may be unaware of how depression has impacted their job performance until their shortcomings are laid bare for them at a performance or quality review.

By the time most people come to our offices to discuss a claim for Disability benefits, they are no longer working, whether because they simply couldn't go on and left their job, or because the employer could no longer tolerate the negative changes in performance and terminated them. Our clients typically report symptoms such as fatigue, lack of interest in activities, isolation, short temper and frustration, increased or decreased appetite, inability to maintain concentration and focus, difficulties getting things done and problems with memory. Many just say "I'm depressed," and we ask them a laundry list of common symptoms to which they respond.

Clients typically report that medication makes them numb and lethargic. Although by this time many have sought mental health treatment, some report that their treatment consists solely of medication prescribed by a primary care physician.

The Social Security Administration administers two programs for the Disabled: Social Security Disability Benefits (defined in Chapter 7, Subchapter II of Title 42 of the U.S. Code, entitled "Federal Old-Age, Survivors and Disability Insurance Benefits"); and Supplemental Security Income Benefits (defined in Chapter 7, Subchapter XVI of Title 42 of the U.S. Code, entitled "Supplemental Security Income for Aged, Blind and Disabled"). These benefits are commonly called SSD and SSI or Title II and Title XVI benefits.

Social Security Disability benefits are paid to individuals who have been found "medically disabled" who have also contributed sufficient payments as payroll taxes for enough years to be eligible for Title II benefits. By contrast, Supplemental Security Income is resource and asset based, though the standard for "disability" is the same as under Title II.

The Social Security Administration has set forth the requirements that must be met to establish Disability. The first question, which is a relatively low threshold, is a query whether a claimant suffers from a "severe impairment." The United States Code states at 42 U.S.C. § 423(d): *"In determining whether an individual's physical or mental impairment or impairments are of a sufficient medical severity that such impairment or impairments could be the basis of eligibility under this section, the Commissioner is required to consider the combined effect of all of the individual's impairments without regard to whether any such impairment, if considered separately, would be of such severity. If the Commissioner does find a medically severe combination of impairments, the combined impact of the*

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impairments shall be considered throughout the disability determination process."

A "severe Impairment" is defined in the Social Security Regulations at *20 C.F.R. §§ 404.1520, 416.920 as "*any impairment or combination of impairments that significantly limit [a claimant's] physical or mental ability to do basic work activities." In an effort to clarify the definition of "severe impairment," Social Security Ruling 96-3p states that "an impairment(s) that is 'not severe' must be a slight abnormality (or a combination of slight abnormalities) that has no more than a minimal effect on the ability to do basic work activities."

If Social Security decision makers determine that someone suffers from a "severe impairment," the next step in the query is whether that impairment is severe enough to establish Disability as defined by the Social Security rules and regulations. The Social Security Administration has set forth rules to guide the assessment of whether various conditions, including mental conditions, impact on the ability to work to the extent that a claimant should be found disabled.

The Listing of Impairments in Appendix 1 to Subpart P of Part 404 of the Social Security Regulations sets forth guidelines for decision-makers on how to assess the most severe mental disorders when considering a person's mental impairments. In an analysis of depression, Subsection 12.04, which considers Affective Disorders, describes "disabling" depression as:

Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involved depression or elation.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Depressive syndrome characterized by at least four of the following:

a. Anhedonia or pervasive loss of interest in almost all activities; or

b. Appetite disturbance with change in weight; or

c. Sleep disturbance; or

d. Psychomotor agitation or retardation; or

e. Decreased energy; or

f. Feelings of guilt or worthlessness; or

g. Difficulty concentrating or thinking; or

h. Thoughts of suicide; or

i. Hallucinations, delusions, or paranoid thinking; . . . AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or

2. Marked difficulties in maintaining social functioning; or

3. Marked difficulties in maintaining concentration, persistence, or pace; or

4. Repeated episodes of decompensation, each of extended duration; OR

C. Medically documented history of a chronic affective disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

1. Repeated episodes of decompensation, each of extended duration; or

2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or

3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

Listing 12.04 identifies a set of requirements that, in our experience, are difficult to satisfy. While many clients suffering from major depression do suffer from most of the symptoms identified in section (A)(1), except in extreme cases, where the claimant is frequently hospitalized or in intensive out-patient treatment, it is extremely difficult establish the degree of decompensation required to satisfy subsection (B) because, as we know, many people who suffer from major depression are still functional and have never decompensated to the degree required in that subsection.

If a claimant is not found disabled based on the Listings, the next step is for a decision-maker to assess whether a claimant's depression would prevent him or her from performing the duties and responsibilities of his or her job or of any other job as performed in the national economy. It is usually at this level of inquiry that a claim for disability due to major depression is established.

As I noted above, people suffering from major depression frequently have symptoms which, when translated to a work setting, make them unreliable employees. Managers and supervisors need their staff to be able to maintain their attention to tasks, devoting all of their focus to assignments and retaining the ability to learn both simple and complex tasks as needed. It is also expected that tasks assigned will be completed in a timely manner, without the risk that an employee will call in sick or leave his or her workstation more often and for longer than industry acceptable breaks.

Whether in a high stress managerial position or a repetitive factory job, someone who cannot maintain the production pace expected will not be tolerated by management, or customers and business will suffer. If a Disability claimant is legitimately suffering from major depression, mental health clinicians, whether psychologist, psychologist or therapist, will recognize the symptoms and, ideally, will make note both of the symptoms reported by the patient and also of their own observations.

Although contemporaneous medical records are frequently supplied to the Social Security decision makers, it is often the extra bit of information that can make or break a disability claim. Either a narrative statement that summarizes a claimant's symptoms and limitations, or a functional capacity assessment can be crucial to a disability claim, provided they have been properly prepared by a physician. A narrative or an assessment not only should present a patient's diagnosis and symptoms, but should also translate how those symptoms impact on all aspect of the patient's life and functional capacities as well as his or her ability to sustain competitive employment. When such a report or assessment is consistent with the contemporaneous records, more often than not, the Social Security decision-maker, usually an Administrative Law Judge, will draw the only logical conclusion: that a finding of Disability is warranted.

As a matter of practice, when someone comes to us for assistance in a claim for Disability benefits due to depression, we develop the case with the expectation that unless our client has had multiple psychiatric hospitalizations or extremely steady treatment from a knowledgeable and cooperative clinician, it will be necessary to present the claim to an Administrative Law Judge at a hearing. Having planned for that from the start, we are able to present a comprehensive case at the Hearing, laying out the treatment records, the clinician's opinions about the claimant's functioning, and our client's own testimony about his or her limitations. Using this approach, we have been very successful in representing our clients suffering from major depression, whether as a primary disability or as a secondary yet still overwhelming condition.