

## **Alberta court rules that chronic fatigue syndrome is a physical illness**

Chronic fatigue syndrome (CFS), the name given to the illness characterized by symptoms that include overwhelming fatigue, muscle pain, memory loss, poor concentration and depression, has been a matter of controversy for some time. While it has been accepted as an organic illness by the World Health Organization and the U.S. Center for Disease Control, others consider it to be psychological disorder. Now, an Alberta court has weighed in on the side of those claiming that CFS is a physical, not a psychological, ailment. *Baillie v. Crown Life Insurance Co.* (March 2, 1998) is believed to be the first Canadian court ruling to this effect.

Sharon Baillie had worked her way up in Crown Life to a position where she was manager of computer operations, supervising some 35 people. Considered a hard-working employee and a valuable asset to the firm, she also led an active life in her spare time, enjoying a variety of sports and maintaining an exercise program. Then, in September 1989, she went on Caribbean cruise.

While on vacation, Baillie contracted what she believed to be seafood poisoning. She fell ill, and was later diagnosed with giardiasis. She experienced headaches, exhaustion and memory problems. Her attendance at work began to suffer, and her doctor struggled to control her downward slide. By May 1990, the physician concluded that Baillie could no longer perform the duties of her job, a fact he attributed to stress.

### **CFS DIAGNOSED, DISABILITY CLAIM RESISTED**

Baillie then moved to Vancouver where she sought further medical help. In the spring of 1991, her new physician diagnosed her as having prolonged and severe CFS. In the fall of that year, she began the process of applying for benefits under Crown Life's long term disability plan. The company refused the claim.

In court, Crown Life raised as one of its grounds for not paying benefits the fact that its policy excluded coverage for "psychoneurotic or behavioural disorders", which were distinguished from "organic diseases" for which benefits would be paid. The issue therefore was whether CFS was a physical or psychological ailment.

### **EXPERT WITNESSES**

Given the nature of the dispute, expert medical evidence played an important role. Crown Life introduced only one expert, a psychiatrist who had examined Baillie for three hours. His view, which he acknowledged he brought with him into his encounter with Baillie, was that CFS did not exist, but was rather a "convenient label" applied to certain psychosomatic symptoms developed by persons under stress. After seeing Baillie, he concluded that she suffered from "conversion disorder", a psychiatric disorder in which the problems of dealing with stress are converted into a physical form.

Among Baillie's experts was a psychiatrist who made use of EEG brain-mapping techniques which reveal abnormalities in the frontal portion of the left hemisphere of the brain in persons diagnosed with CFS. In the neurology literature, this is where the probable origin of the disorder is said to be located. He testified that the results of his test of Baillie placed her within the group of CFS sufferers.

The court accepted the evidence of Baillie's experts. It noted that Crown Life's witness had performed his diagnosis of Baillie on the basis of a pre-conceived notion of what that diagnosis would be. The court criticized the quality of his testimony and expressed the view that the expert was "in the process of building a career based on the idea that there is no such thing as CFS and that people who claim to have that condition really have psychiatric problems."

### A CREDIBLE PLAINTIFF, A PHYSICAL DISEASE

Before concluding that Baillie did indeed suffer from an organic disease and was thus eligible for benefits under the policy, the court also rejected attacks on her credibility by Crown Life. The company had pointed to the fact that from September 1990 to May 1991, Baillie was in receipt of unemployment insurance benefits, and was regularly informing the UI Commission that she was ready, willing and able to work. The fact that she was deceiving the UI Commission meant that she could not be trusted by the court, it claimed. The court disagreed, noting that, at the time, Baillie had not yet accepted that she was physically disabled:

"At the time [Baillie] was getting UIC she was unaware of her diagnosis of CFS, she thought she was going to get better and ... she was not ready to accept that she could not hold down a normal full-time job. ... She fully expected that she was going to recover from the problems that she was having and it was only in May 1991 that her world 'crashed' in that regard."

### In Our View

This issue will probably continue to give rise to considerable uncertainty, as even insurers who provide benefits to some CFS sufferers tend to maintain close scrutiny of those claiming the condition. This will presumably remain the case until more progress is made at identifying the virus, if any, that causes this disorder.

Crown Life filed notice to appeal the decision on May 25. We will keep readers informed of any developments.

For further information, please contact [J.D. Sharp](#) at (613) 563-7660, Extension 274.

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