

Column: Walkup Talks Disability

Social Security Disability A Chink in the Armor

- Michael Walkup, Attorney at Law



Michael Walkup is an experienced disability practitioner with over 25 years of experience in the disability law field. In 2001 he became disabled due to MCS, CFS, and FM. He is now providing a service to advise clients with potential disability claims who have MCS, CFS, and/or FM. As these programs and law are usually Federal, he is able to practice in all 50 states, so your location does not matter.

Michael is a long time Sustaining Member of the National Organization for Social Security Claimants' Representatives (NOSSCR), the only national body for disability representatives. He is also certified as a Federal Trial Lawyer and is admitted to the U.S. Court of Appeals for Veteran's Claims.

Michael would welcome the opportunity to try to help you with your legal claims. His web site may be found at www.MCSLegalHelp.com, or he may be contacted at MJWalkup@Amertech.net, or at 866-880-HURT (4878).

You might want to think about the legal system and society in general as wearing a suit of armor, like the Knights of Olde, when it comes to MCS/EI claims. If the MCS people are right, much of Western Civilization as we know it is called into question, as it has been based to a large extent on the use of ever increasing amounts of chemicals. They can't allow that to happen. There's too much money involved.

The medical profession, unfortunately, has played a large role in this due to their reliance on pharmaceuticals. The legal system long ago embraced the MD's as the only valid source of information on health issues, to the extent that the word "medicine", which simply means the use of drugs in the treatment of health conditions, has become synonymous with "health care" and with science itself.

Up until very recently, the Social Security Administration rules did not even allow any evidence to be considered as coming from an 'expert' unless it came from an MD, DO, or PhD in psychology. If your chiropractor submitted a report, it was treated as a 'lay observation' and was accorded the same weight as a letter from you next door neighbor (Joe the Plumber).

In the previous articles I have talked about how difficult it is to obtain any benefits or compensation from: (1)

disability insurance plans; (2) workers compensation claims; (3) litigation; and (4) the ADA. I should point out as well that I have not been talking about greedy people wanting to get money out of somebody or greedy lawyers looking for fees. What is usually involved in these cases is simply keeping a roof over someone's head who has lost their job and can't work anywhere else, and perhaps enabling them to pay for some health care treatment. No one is getting rich here. We just want to live.

So, what else is there? Is there a 'chink in the armor' someplace?

Maybe.

Sometimes.

I handled my first Social Security Disability case in the late 1970's. At that time no one had really heard of it, and you could count the lawyers representing people in that field even in a major metropolitan area on the fingers of one hand.

Over the ensuing years I took in more and more such cases until, by the late 1980's, it was the bulk of my practice. After developing fibromyalgia myself in the mid 80's, I started handling a disproportionate amount of those cases compared to my expanding field of colleagues. Even so, I had never encountered a client with chemical sensitivities and had never heard of it until I met 'Doris' (not her real name).

'Doris' worked with my wife and lived a block away from us in our city neighborhood so I got to know her and her husband quite well. Both were journalists like my wife and we had a lot in common. We went to each other's houses for dinners and went out to eat at local restaurants. She and my wife carpooled to work.

I happened to also be the precinct captain for our local reform oriented city councilman and in that capacity had been to every home in the precinct. Shortly before 'Doris' and her husband had moved in, I had stopped by a two flat building where I was greeted by the young owner who was in the middle of renovating it before he rented it out. This seemed like a positive development. What I did not know was that he was using Urea Formaldehyde foam insulation in all of the exterior walls.

Everything was normal after 'Doris' and her husband moved in and remained that way for the two years that we knew them. Then 'Doris' got another journalism job working in a building that was undergoing renovation. She also became pregnant around that time. Suddenly, we were no longer in their social loop. Even after the baby was born, we weren't invited over to see her. It was a mystery. Had we said something?

Then I got a call from 'Doris'. It seems that she hadn't been working for some time and had applied for disability benefits. She hadn't wanted to hire me because she was embarrassed about it, but now she had gone to a hearing using another lawyer and had lost and wanted me to do the appeal. We were invited over to see the baby.

When we got to their apartment it had been stripped bare. Her husband had been an art critic and his entire art collection had been removed from the walls which were now covered in tin foil. 'Doris' confided in us both that she had developed a strange health problem which she eventually learned was an "environmental illness" after seeing a

Dr. Theron Randolph (who I had not heard of prior to that).

To make a long story short, I won the appeal only by having her go to see a psychologist and we were granted a new hearing. In the meantime, 'Doris' and her family had moved into her parent's home in a nearby city. When I went to meet her before the hearing I had to stand outside on a stepladder and talk to her through a plate glass window. Her house had been completely stripped down and she and her husband slept on bedsprings. She could not read or watch TV or listen to the radio.

Her husband had to shower in the basement when he came home from work and put on fresh clothes before coming upstairs. One day when he had stopped in a bookstore on the way home, she noticed it even though he had taken a shower and changed clothes. I began to think from that there might be something going on here.

We did the hearing with her husband being the only witness and won based on the psychological evidence. This, however, caused her to lose the disability insurance benefits due to their exclusion for mental impairments. I tried to explain to her that this would have happened anyway but she wouldn't listen, and I didn't hear from her again for 20 years. By the time she called, I was able to tell her that I had MCS myself and had closed my office and gone on disability.

Over the intervening years I had a few more such cases. They were all pretty much approved based on mental impairment issues, even though the clients seemed more or less normal. I ran into one of them again years later after we had moved out to the far suburbs and I had developed the MCS problem myself. She was at our 200 member church, and neither of us had recognized each other until I got up one Sunday and told the congregation about my problem, and she introduced herself afterward.

Next article: Light at the end of the tunnel?