

Clinical Cases

## When Disability Is in Question

**A patient and physician must have a strong line of communication when dealing with pain that has no clear causes.**

Commentary by Guy Micco, MD

Dr. Lowe, a family practice physician, has been following Mrs. Darrell for many years—since her kids, now grown and married (one divorced) were in their teens. She is 56 years old, has diabetes, for which she takes glyburide, and is overweight, but active. She raised the 4 children on her own and is now serving in the role of "mother" to one of her granddaughters.

Mrs. Darrell works from 10 to 4 each day as a certified nurse's aide. She was employed by an agency that supplied home care personnel for the chronically ill, those convalescing, and, increasingly, for elderly individuals who wanted to stay in their own homes. Through the agency, Mrs. Darrell was assigned to a particular client, a woman in her 80s who wanted daily help. Mrs. Darrell cemented a relationship with the client and, after a few months, left the agency and made a private arrangement with her client.

Mrs. Darrell was involved in a traffic accident about 3 months ago. Standing at a rural railroad crossing, about third in line, Mrs. Darrell was hit from behind. The car was not traveling fast, and Mrs. Darrell did not hit the car in front of her. She came to Dr. Lowe the next day with neck pain. Her neurological exam was nonfocal and consistent with muscle strain. He prescribed some non-steroidals and told her to wear a cervical collar. He told her to come back if her neck did not feel better in 7 to 10 days. When Mrs. Darrell returned in 3 days, the pain was worse, not better. Her shoulder hurt now, also, and she said that she felt weaker in her left arm; she had trouble supporting her client, who weighed 128 lbs, when helping her in and out of her wheel chair or while bathing her.

On exam, it was difficult to assess whether there was asymmetric strength in her upper extremities, but given the trauma history, Dr. Lowe ordered an urgent cervical MRI. The results of the MRI were negative for nerve compression or bony abnormalities. In addition to the non-steroidals, Dr. Lowe prescribed a muscle relaxant and physical therapy.

A week later, Mrs. Darrell returned with complaints that the pain was not getting better. She was unable to work and asked whether Dr. Lowe could help her get disability status from the Social Security Commission. Dr. Lowe asked whether she might not get some workman's compensation for a while to see whether the neck and shoulder pain resolved. This is when Mrs. Darrell told him that she had left the agency and was working directly for 1 client. Dr. Lowe had assisted in the disability process before and knew it was important to be precise and get the facts straight. In further questioning Mrs. Darrell about her work, he discovered that Mrs. Darrell had an "off-the-books" arrangement with her client. The elderly woman was not withholding income tax from Mrs. Darrell, was not paying employer's social security benefits, and was paying Mrs. Darrell in cash each week. In other words, Dr. Lowe conjectured, Mrs. Darrell could easily continue this arrangement while receiving disability payments, and no one would be the wiser.

Dr. Lowe likes Mrs. Darrell—she's a survivor. She raised those kids on her own without complaint or bitterness and enjoys having a young one to take care of now. He imagines that she's a welcome companion and more-than-competent caregiver to her client, but he seriously doubts that she has an injury that warrants permanent disability status.

## Commentary

by Guy Micco, MD

We are presented with the story of a hard-working, middle-aged woman (Mrs. Darrell) who, now 3 months after a whiplash injury, is asking her physician (Dr. Lowe) for help in obtaining disability status from social security. The question that arises concerns the problem of how a physician might best respond to such a request when he "seriously doubts that she has an injury that warrants permanent disability status."

One problem to consider right off concerns how much Dr. Lowe knows about disability under state and federal law. It is his place to provide medical evidence regarding disability to both state and federal agencies. Mrs. Darrell need not qualify for "permanent disability status" in order to receive some benefits. Briefly, I encourage all physicians to learn about state and federal laws on this matter. There are 2 forms of federal social security benefits: Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI). SSDI is funded through social security taxes withheld under the Federal Insurance Contributions Act (FICA); and, if awarded, the benefit amount is based on prior income. If Mrs. Darrell has not had FICA taxes withheld from her paychecks (with equal contributions made by her employer) for at least 5 of the past 10 years, she will not be eligible for this benefit, regardless of her disability status. SSI is funded by "General Revenue" (general tax revenues), and it is not based on prior work. In addition to being "disabled," in order to qualify for SSI, Mrs. Darrell would have to have very limited resources.

Both SSDI and SSI are administered under the Social Security Administration. The definition of disability in the Social Security law is a strict one. The following definition is from the Social Security Administration website(1):

"To be eligible for benefits, a person must be unable to do any kind of substantial gainful work because of a physical or mental impairment (or a combination of impairments), which is expected either:  
(1) to last at least 12 months, or (2) to end in death.

If, because of a medical condition, a person cannot do the work that they performed in the past, then age, education, and past work experience must be considered in determining whether the person can do other work. If the evidence shows that the person can do other work, even if it involves different skills or pays less than their previous work, they cannot be considered disabled for Social Security purposes."

Mrs. Darrell will probably not qualify for either SSDI or SSI—but, she may. If not already started, now is the time for Dr. Lowe to begin to document the severity of his patient's disability. Though unlikely, should it become impossible for her to return to work, this information will be invaluable in helping make her case for benefits.

In California and some other states (including New York, New Jersey and Hawaii) there is a State Disability Insurance (SDI) program. Most California employees are covered by SDI, which is funded through payroll deductions and "provides affordable, short-term benefits to eligible workers who suffer a loss of wages when they are unable to work due to a *non work-related* illness or injury ..." [2]. Under SDI, "disability" is more liberally defined [2] and needn't be expected to last for any particular period of time. In addition, it has a waiting period of only 1 week and may last up to 52 weeks. Here's the good news for Mrs. Darrell (and her current employer): her earnings approximately 5 to 17 months before any disability claim were to be submitted would determine her benefits. Since she may have been working for an agency during this time, she may well qualify[3].

One last source of financial relief for Mrs. Darrell would be from the auto insurance that she and/or the person who hit her might have. There is a statutory minimum limit of liability insurance that all drivers must carry in California. For bodily injury, this (lower) limit for any 1 accident, is \$15,000 for death or injury of any 1 person. Some, perhaps most, of this insurance money would go to cover Mrs. Darrell's medical expenses (including her health insurance company's recovery of the cost of Dr. Lowe's office visits, X-rays, MRI, and any physical or other therapy), but some dollars would probably be left over to compensate her for lost wages and, perhaps, pain and suffering. If the person who hit her from behind had no such insurance, then perhaps she has "uninsured motorist" insurance that would be helpful in this regard.

Finally, regarding the problem that we are most clearly presented with in this case: Dr. Lowe's distrust (his "serious doubts") regarding Mrs. Darrell's disability claim. These 2 people have been in a doctor-patient relationship for many years, a relationship that seems to have been good. Good relationships, of course, require trust, or at the least, when trust is in doubt, a willingness to talk openly about problems. Dr. Lowe should speak honestly about his concern that his patient's injury does not warrant permanent disability status. She may well agree! Mrs. Lowe may understandably be very anxious about how long her pain and inability to work will continue. Hearing that these will likely pass in the forthcoming weeks may be good news to her. I believe physicians should take the position that, absent of clear and convincing evidence, their patients are telling the truth. Here there is no such evidence to suggest Mrs. Darrell is lying. Indeed there is no evidence possible to convince one that someone else is or is not in significant pain other than the testimony of the person in pain. Dr. Lowe should believe his patient, and begin an ongoing conversation about her ability to return to work. Together they should develop a plan for physical therapy and other modalities that will help her with pain relief and the return of her functional status—for her sake, not the sake of whatever insurance, state or private, that might afford her financial benefit. This is what is required of a good doctor-patient relationship.

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## References

1. Disability Evaluation Under Social Security (also known as The Blue Book). Available at: <http://www.ssa.gov/disability/professionals/bluebook/>.
  2. California Employment Development Department. Available at: <http://www.edd.cahwnet.gov/diindtx.htm>. "Disability is defined as any mental or physical illness or injury which prevents you from performing your regular or customary work (*California Unemployment Insurance Code, Section 2626*). This includes elective surgery, illness or injury resulting from pregnancy, childbirth, or related conditions; or inability to work due to a written order of quarantine from a state or local health officer."
  3. Her wages in question must have been subject to the SDI tax, which they most certainly were (in California and certain other states). Her wages from her current employer – though not paid – were also subject to those taxes. As well, her current employer was, contra federal law, not paying "Nanny taxes" which would fund SSDI.
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Guy Micco, MD, is a clinical professor in the UC Berkeley-UC San Francisco Joint Medical Program and director of the UC Berkeley Center for Medicine, the Humanities, and Law.

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