

**Sent:** Saturday, January 31, 2009 8:15 PM  
**To:** OS OPHS CFSAC (HHS/OPHS)  
**Subject:** CFS Advisory Committee Hearing on April 4, 2005

Located the hearing online... would like to contact someone who could use my facts to bring about changes in how SS/ERISA disability systems handle CFS cases ... am a former attorney who became disabled in 01 with CFS... while living in SF and working on famous class-action lawsuit against Ford ... Lowell Bergman (Al Pacino played him in Insider) co-wrote a series of front page articles for NY Times on the case... i co-authored an article on my research in this case with Dr. Michael Pecht. (head of Calce at University of Maryland) that appeared in Microreliability Journal after my collapse...

Have been struggling with Social Security and Cigna Insurance since disability.... Cigna forced me to use a firm to assist in my SS claim which was deliberately sabotaged. I had to hire attorney to get it reversed in Federal Court. Facts were so egregious US Attorneys stipulated to remand after attorney filed his opening brief. Hearings were held last year on Cigna and Unam forcing clients to file SS claims even though clearly not totally disabled to reduce reserves etc. In my case, they used Allsup to sabotage the claim to bolster their eventual contention able to perform occupation. Have found other cases where there are allegations of their use at another firm Advantage to sabotage claims...

As for the disability insurance have uncovered clear evidence of fraud by Cigna and Unam Insurance. have an unsigned Declaration by Linda Nee a former Unam employee who handled fibro and CFS cases. Obtained this from Suzanne Valente, a former dentist who had to sue Unam for wrongful termination of her policy... The Nee declaration lays out exactly the same strategy used by Cigna in handling my claim:

delay in granting claim forcing me to cash out on IRS and use money to live on (my firm had to threaten suing them, a document they withheld from four document productions)

lied about coverage in letter affirming acceptance (claiming an "any occupation policy");

withheld benefits forcing me to use another firm to represent me in SS without disclosing they do not use attorneys..then apparently did not provide them with 2 year medical file confirming CFS

forced me to be tested by neuropsychologist in 04 to establish depression for termination under the mental illness limitation to 24 months; instructed test-taker to hide test scores in addenda and not discuss them in report (to prevent comparison with earlier test given by CFS expert), then stamped not give to client on the file, & denied there was more to the report. The report conclusively confirms could not practice law, but does not rule out CFS as the cause of the cognitive problems. This report was fabricated to rebut a four day test by a CFS expert Dr Bastien neuropsychologist engaged by my former law firm 01 which conclusively showed could not practice law and results were uniquely consistent with my doctor's diagnosis of CFS.

forced me to go through 2 Functional Capacity exams.. in 05 and 06.

despite fact the first 2 day test showed I could not practice law or any sedentary occupation after 2 1/2 hrs testing first day and 20 minutes second day.

The second one in 06 they used a different firm, instructed them to not include test results (except for one activity they specifically requested..having me crawl across the floor), then refused to respond to repeated requests to provide test results or obvious missing pages from there ports... Clear evidence of fraud by Cigna . and/or Work well from the report... Test results show serious impairment, faitigue, balance problems; cogntive problems with residual fatigue on the second day. had to lie down twice during the test and was bed-ridden four hours the first day and 6 hours the second day. As for job match, therapist said could not find match because employer didn't provide occupation, but would be able to sit only 30 minutes at a time, with obvious concentration problems and residual fatigue on day two. Work well then fabricated a physical impairment form that conflicted with these test results

Then hired another neuropsychologist to opine that cognitive problems are caused by depression and terminated me under the Mental Illness Limitation... ,They did so despite their own psychologist opinion that they could not determine 1005 whether the cognitive problems were caused by CFS or depression.

Denied appeal which showed conclusively that Cigna's neuropsychological test results were entirely consistent with CFS and the MMPI-2 profile in his report is consistent with two published studies on the CPS MMPI-21 profile. This evidence was obtained through research online of CFS abstracts..etc. and were filed with the appeal.

Forced to file lawsuit in federal court in September..

Recent legal research has uncovered two 9th Circuit cases against Cigna which conclusively show that they cannot use the mental illness limitation for a CFS case... The leading case is a 1995 Court of Appeals decision Mongeluzo 46 F. 3d 938 which has been widely cited by attorneys specializing in disability cases on valious online web cites and was featured in article in Best's Review on Mar. 1, 2006 . Another article appearing in Mealey's Litigation Report: ERISA February 2007 discusses the Circuit Courts are divided over the policie's mental illness limitation and discusses the 9th circuit decision in 93 Patteson at 11 F 3d 948 which the Cigna case relied 011... The Cigna case also appears in various a couple secondary reporting services on disability cases, 18 Employee Benefits Cas. 2771 and Pens Plan Guide P 23910C

Cigna knows they can't use this limitation on my facts, where there is no dispute that I have CFS and never had depression before the onset of the disease... (in fact they asked my therapist and he said so in a report to them, no prior depression and prior CFS..)As the court said "if either a cause or a symptom of the disease were physical and caused disability in whole or in part, then benefits are payable.

Without any punishment or moral hazard they have nothing to lose by drawing it out and the possibility of my attorney screing up or getting a bad judge...

... whereas I almost was rendered homeless and pennyles .. All my SS back pay has been used in attorney fees and income during the last year and I am now limited to a very modest claim award under the Employees 'Energy Compensation Fund given this year for my father's death from radiation and toxic chemical exposure.. at the National Reactor Testing Station in Idaho Falls Idaho... Furthermore, Cigna has a claim on this eventual Ss award that they tried to sabotage.

In fact one my friends, Steve Cockrell who filled out a questionnaire for SS on my claim, who struggled with CFS since the 80's at only 75% capability, became homeless after I left San Francisco and killed himself and his dogs a year later...

Ken Ayers