



GRAY MATTER MATTERS

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A review of case law and current events for lawyers and insurers relevant to brain injury litigation.

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I. COURT FINDS DEPRESSION, NOT ORGANIC BRAIN SYNDROME, THE CAUSE OF DISABILITY.

[Deborah Laird v. MetLife and Accident Insurance Company, Slip Opinion, 2009 WL 2496491 \(E.D. Mich.\), August 17, 2009.](#)

Background:

Deborah Laird worked as a machinist. She was covered by her employer's Automotive Disability Income Insurance Long Term Benefit Plan. The plan provided long term disability benefits for disability "due to Sickness or as a direct result of accidental injury." The plan limited benefits to 24 months, for disabilities due to "Mental or Nervous Disorders or Diseases." However, the limitation did not apply to disability arising from "**organic brain syndrome.**"

For many years, Laird suffered from restless leg syndrome, headaches, fibromyalgia, and dysthymic disorder (a depressive disorder).

On February 28, 2005, Laird was rear-ended. She was transported by ambulance to ER, where she reported back pain, neck pain and a headache. She denied loss of consciousness, striking her head, and had a good recall of the accident. Her neurological examination was normal. She was diagnosed with cervical strain, given a prescription for a muscle relaxant, and advised to see her primary care doctor.

Diagnosis:

On March 7, 2005, Laird saw her primary care doctor. He diagnosed occipital sprain and spasm, fibromyalgia, and acute myositis (swelling of the muscles). He referred her to physical therapy.

On March 23, 2009, Laird saw her neurologist, Dr. Riess. Dr. Riess found that Laird's mental status was within normal limits for speech, cognition, orientation, and memory. Her neurological exam was also within normal limits. Based on Laird's complaints, he diagnosed **post-concussion syndrome**. Laird continued to treat with Dr. Riess. Each time he examined her, he found that her mental status and neurological status were within normal limits.

Laird continued to complain of worsening symptoms, including headaches, memory loss, difficulty with comprehension, depression, panic attacks, and loss of peripheral vision.



On August 2, 2005, Laird underwent a neuropsychological exam. The neuropsychologist, Dr. Kerner, diagnosed **Major Depression** and **Cognitive Disorder “not otherwise specified,” due to head trauma**. Dr. Kerner determined that Laird’s functional disabilities were primarily related to depression and a tendency to develop physical symptoms in response to stress. Dr. Riess agreed with Dr. Kerner.

Application for Disability Benefits:

Laird applied for and received disability benefits from MetLife. Benefits were commenced on August 28, 2005. In 2007, MetLife retained Dr. Becker, a psychiatrist, and Dr. Topper, a neurologist, to perform records reviews. Dr. Becker determined that Laird suffered from **Major Depressive Disorder**, and that the primary focus of Laird’s treatment was for depression, not for brain injury. Dr. Topper found that there was no evidence of **traumatic brain injury** or **organic brain syndrome**.

Laird submitted new medical records and an affidavit from Dr. Riess. In his affidavit, Dr. Riess stated: “A traumatic brain injury is an **organic brain disease** and this is the condition for which I have been treating her since March 23, 2005, and the condition for which I have disabled her from all physical and cognitive employment.” Dr. Topper and Dr. Becker reviewed the new medical records and Dr. Riess’ affidavit, but did not change their opinions.

MetLife terminated Laird’s benefits on the ground that her disability stems from a mental disorder or disease other than organic brain syndrome. Therefore, her benefits were limited to 24 months.

The Lawsuit:

Laird sued MetLife claiming that its termination of long term disability benefits was arbitrary and capricious. The Court held that MetLife’s termination of benefits was not arbitrary and capricious.

The Court found that there was sufficient evidence to establish that Laird’s symptom complaints were primarily caused by depression. Thus, even if Laird had a mild traumatic brain injury, this was not the cause of her disability. Depression was the cause of her disability.

Comment:

- The “arbitrary and capricious” standard is a highly deferential standard. In this case, the court found that the plan administrator’s decision was well-reasoned based on the medical evidence.
- The court observed that the plan did not define “organic brain syndrome.” Also, while both parties presented evidence as to whether Laird had organic brain syndrome, no expert offered a definition. MedlinePlus, the online medical encyclopedia of the National Institutes of Health, defines organic brain syndrome as a “general term that refers to diseases (usually not psychiatric disorders) that cause decreased mental function.” Organic brain syndrome is not considered a separate disease, “but is a general term used to describe physical conditions that can cause mental changes.”
- Organic brain syndrome is not identified in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (“DSM-IV”). Therefore, it has been argued that organic brain syndrome is a “medically imprecise and rather meaningless diagnoses.” (See, e.g., *In Re: Campbell*, 116 F.Supp.2d 937 (M.D. Tenn., Sep. 29, 2000.))



II. RECLASSIFYING TRAUMATIC BRAIN INJURY AS A CHRONIC DISEASE.

In March of 2009, The Brain Injury Association of America published a position paper entitled "Conceptualizing Brain Injury as a Chronic Disease." The purpose of the BIA's position paper is to "encourage the classification of TBI not as an event, not as a final outcome, but rather as the beginning of a disease process." The paper proposes reclassification of TBI because, unlike other physical injuries, "TBI impacts multiple organ systems, is disease causative and disease accelerative, and as such should be paid for and managed on par with other diseases." (p. 2.)

Comment:

- Last year, Congress approved a spending bill which provided \$300 million for TBI and psychological health research and treatment. Action items include revision of ICD-9 codes for traumatic brain injuries, and the development of universal practice guidelines for traumatic brain injury. There will be a lot of debate and discussion in the next few years about how brain injury is defined, classified, diagnosed and treated. One forum for this debate will undoubtedly be the courtroom.
- The BIA's position paper can be found at: <http://biausa.org>.



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