



## **THE SOCIAL WORKER AS ADVOCATE**

**Theresa I. Jiwa, RN, MSW**

*University of British Columbia MS Clinic*

*Vancouver, BC CANADA*

When the disability of Multiple Sclerosis (MS) becomes so marked that gainful employment is not possible, there are, in Canada, basically four avenues of available disability insurance: Provincial (pertaining to the province where one resides); Federal (for all, who as a condition of employment, pay into the Federal Canada Pension Plan); Group or work-related (acquired as part of a benefits package with employment) and Private (for all those who elect to purchase additional insurance).

Provincial disability insurance is basically an insurance provided to those in need who have no other source of income. It currently provides around \$800.00 per month but covers medical/dental costs as well. To qualify, applicants must have a limited amount of cash and assets and meet criteria for 'total disability' recognized by the government of the province in which they reside and by their attending physician.

The Federal Canada Pension Plan disability insurance scheme is available to all those who contribute as part of their employment and the amount available to an individual is thus a function of the amount they contributed. No other benefits are provided. Should the amount be lower than what a particular province provides, applications for 'top-ups' can be made. Completed applications must demonstrate that the individual, for reasons of disability, is unable to be gainfully employed on a 'regular' basis in any working capacity

Work-related disability insurance exists for those whose employer elected to contract with an insurance company to provide benefits for its employees. Disability insurance usually amounts to about 66% of one's employment income.

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Administrative Office

Gimbel Multiple Sclerosis Comprehensive Care Center at Holy Name Hospital  
718 Teaneck Road, Teaneck, NJ 07666 (877) 700-CMSC Fax: (201) 837-8504/9414  
Email: [info@mscare.org](mailto:info@mscare.org) Website: <http://www.mscare.org> Federal ID # 22-3216416



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Private disability insurance provides, of course, in accordance with the type of insurance one purchased, with a person usually paying higher premiums for more comprehensive insurance.

Social workers often play a major and important role in assisting people with MS around disability insurance issues. Frequently, people are either not aware of what disability insurance might be available to them, don't understand the particularities of the application process, or are too fatigued or cognitively impaired to adequately attend to the matter. As well, and also not infrequently, employers, governments and insurance companies in particular, contribute to the marked stress experienced by many people with MS who attempt to secure disability insurance. The role of the social worker is crucial in advocating on their behalf. The following is a successful case in point.

Aynsley, a 57 year old professional, came to the MS clinic in the fall of 1997, having finally received a diagnosis of MS the previous spring after some 15 years of vague, fleeting, but increasing symptoms. While relieved to put a name to her symptoms, she also became fearful for her future as she realized she couldn't keep up the struggle to work. She took a few weeks off sick leave (Spring 1997) to receive pulse steroids and was advised by her neurologist to return to work.

Upon her return, she was advised of her lay off, to be effective in 3 months time. She didn't feel able to work and with negotiation managed to secure a 'salary continuation', whereby she would not work for that 3 months but would receive her regular income. However, this was to be granted only if she signed a waiver ensuring that no action would be taken against the employer for ending her employment. She was advised to apply for long-term disability (LTD) and informed that this and all other benefits would cease after the 3 month period. Her neurologist at the time did not think she qualified for LTD and also did not sanction her request for a second opinion at the MS clinic. With no income, she had no choice but to accept a 6 month maternity leave position offered her by a former employer but she couldn't complete her contract due to MS symptomatology and resigned. Her family doctor did make a referral

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to the MS clinic and social work was requested to see her for financial and emotional reasons (November 1997)

Aynsley was anxious, depressed and distraught when assessed by social work. With no work-related LTD now available to her, no private disability insurance purchased and too much cash and investments to qualify her for provincial disability insurance, her only recourse for disability insurance was the Federal Canada Pension Plan. She was assisted with this application and was granted the disability pension a few months later (\$800.00 per month). Meanwhile, she lived off medical employment insurance for awhile and then her savings.

It was also the social work assessment, however, that Aynsley had been treated unfairly by her employer and the insurance company in sabotaging any chance she might have had to apply for LTD and a lawyer was contacted on her behalf. This went nowhere. A second lawyer was asked to intervene. Nothing happened. Meanwhile, Aynsley became more apprehensive and hopeless and social work encouraged her to keep going.

She called one day to say that a mistake had been made in information given her and that she had a year to apply for LTD. She was encouraged by social work to complete the forms and her MS clinic neurologist was consulted to provide medical information. He documented that she would not have been able to work in the spring of 1997, months later (July 1998) her application for LTD was denied, the rationale being that her consulting neurologist at the time did not consider her disabled.

Social work got a second expert neurologist from the MS clinic involved who also concurred that she qualified for disability and supporting documentation was sent to the insurance company. It is now December, 1998! Months later, we are still waiting and social work provides continuing emotional support for Aynsley and encouragement to find a good lawyer. She does so and we learn in the fall of 2002 that her case will be going to the Supreme Court of British Columbia.

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THE RESULT: (with 20 witnesses testifying, including the 2 neurologists and social worker at the MS clinic) she won on all counts.

She was deemed eligible for her claim of total disability as the defendants were found to have relied on flawed evidence and disregarded pertinent information from the MS clinic neurologists. Her income rose from \$800.00 per month to over 3 times that amount. She received retroactive monies to account for her loss of disability income, back to 1997. As well, she received aggravative damages (in this case, to compensate for breach of contract and breach of good faith causing suffering to the injured party) and punitive damages (awarded as a punishment to the wrong doer). In this case, the judge awarded punitive damages as a warning that it is not in the best interests of 'insurance companies' to engage in unfair and exploitive behavior.

This case was a victory for Aynsley, for her lawyer, for the UBC MS clinic, for all persons with MS and for justice. For social work, it was a heartening reminder that persistence pays off and that advocacy is a very, very important part of our role. Aynsley's comment to social work, when all was done, was: "What kept me going was your comment to me at the very outset - ***'We will get through this - one step at a time'***".

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