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trends.denise@gmail.com

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Figueredo, Roberto; Balvedi Dama, Fernando

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Psychiatric legal investigation for sickness benefits due to disability at the Brazilian Federal Social Security Special Court in Florianópolis, capital city of the State of Santa Catarina, southern Brazil

Perícias judiciais psiquiátricas em benefícios por incapacidade no Juizado Especial Federal Previdenciário de Florianópolis, capital do estado de Santa Catarina, sul do Brasil

Roberto Figueredo,¹ Fernando Balvedi Damas²

Abstract

Objective: To describe the profile of insured individuals that filed claims for sickness benefits and compare the results of the administrative and legal investigations.

Method: This case series included 114 insured persons that filed lawsuits against the Brazilian National Institute of Social Security (Instituto Nacional de Seguridade Social, INSS). They underwent psychiatric examinations required by the Brazilian Federal Social Security Special Court in Florianópolis from August to December 2010.

Results: Mean age was 47 years, and participant age ranged from 24 to 64 years. Most insured individuals were women (79%), and most were employed (67.5%) and self-employed (26.5%) workers. Mean contribution time was 99.9 months, ranging from 8 to 352 months. Mean benefit duration was 20.4 months, ranging from 2 to 97 months. The most prevalent category of workers was service workers, store and supermarket salespeople (54.4%), followed by administrative workers (19.3%).

Conclusions: Only 17 participants were found to be unable to work after benefit cessation, a 14.9% mismatch between administrative and legal investigations. The most frequent diagnoses were mood disorders (59.6%) and anxiety disorders (17.5%).

Keywords: Forensic psychiatry, work capacity evaluation, social security, judiciary.

Resumo

Objetivo: Descrever o perfil dos segurados que requerem benefícios por incapacidade e comparar os resultados das perícias administrativas e judiciais.

Método: Esta série de casos incluiu 114 segurados que buscaram a justiça contra o Instituto Nacional de Seguridade Social (INSS). Os participantes foram submetidos a perícia psiquiátrica determinada pelo Juizado Especial Federal em Florianópolis, entre agosto e dezembro de 2010.

Resultados: A idade média dos participantes foi de 47 anos, variando de 24 a 64 anos. A maioria dos segurados era do sexo feminino (79%) e era empregada (67,5%) ou autônoma (26,5%). O tempo médio de contribuição foi de 99,9 meses, variando de 8 até 352 meses. A duração média dos benefícios foi de 20,4 meses, com mínimo de 2 e máximo de 97 meses. A categoria mais prevalente foi de trabalhadores no setor de serviços e vendedores de lojas e supermercados (54,4%), seguida por trabalhadores em atividades administrativas (19,3%).

Conclusão: Apenas 17 participantes foram considerados incapazes de trabalhar após o término do benefício, uma diferença de 14,9% entre as perícias administrativa e judicial. Os diagnósticos mais frequentes foram transtornos de humor (59,6%) e transtornos de ansiedade (17,5%).

Descritores: Psiquiatria forense, avaliação da capacidade de trabalho, seguridade social, sistema judicial.

¹ Medical expert, Brazilian National Institute of Social Security, Executive Office, Florianópolis, SC, Brazil. ² Psychiatrist, Santa Catarina State Department of Health, Florianópolis, SC, Brazil. Court expert (Psychiatry), Social Security Special Court in Florianópolis, Florianópolis, SC, Brazil.

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Introduction

The number of lawsuits filed to ensure social security benefits is very high and has been growing constantly. Some characteristics of the current juridical system should be analyzed to understand this phenomenon, especially its progress toward democratic access to justice, safeguarded by the Brazilian Constitution of 1988. For that purpose countless Federal Special Courts of Law have been created.¹ In the past, all administrative channels should be exhausted before filing lawsuits to ensure Social Security rights. Currently, however, although Brazilian jurisprudence still requires that insured individuals take administrative measures, in case a prompt response is not obtained, their initiative to file legal actions is asserted as legitimate, and lawsuits are admitted.²

The mission of Social Security Services is to ensure the livelihood of workers that are unable to obtain income. Workers that see themselves as unable to perform labor activities due to health issues are entitled to sickness benefits, as long as they can prove disability and meet all the requirements under current social security law. In Brazil, insured individuals are referred to examinations by experts working with the National Institute of Social Security (Instituto Nacional do Seguro Social, INSS). After the initial administrative procedures, an expert doctor examines them and, in case the expert determines that they are able to perform labor activities, the social security benefit will not be granted and they are sent back to their work activities. However, insured individuals may appeal if they disagree with the expert diagnosis.³

The purpose of psychiatric investigations is to elucidate facts that interest legal, police and administrative authorities, as well as private individuals, and that may serve as proof. The conclusions are drawn based on psychiatric examinations, conducted according to interview techniques, knowledge of psychopathology and diagnostic skills.⁴

In routine medical exams at INSS, psychiatric disorders are some of the main conditions for which sickness benefits are claimed. These cases have peculiar characteristics, different from those found in other diseases, as they demand a deep insight from medical examiners and take longer to be analyzed. In addition, numerous individuals fake psychiatric disorders, and there are no laboratory tests to confirm the diagnosis.

Malingering is an issue of great relevance in medical exams, especially in investigations to grant sickness benefits. The relationship between the doctor and the patient should be handled differently from similar relationships in other cases. Patients here are not looking for a diagnosis or treatment; rather, they expect to obtain a sickness benefit to which they believe to

have a right. The expert doctor may be interpreted as an obstacle to be overcome, which may trigger conflicts in the relationship between them. The medical professional must be fair to avoid denying workers their right to obtain benefits or legitimating an undue benefit. Some personality and character traits, such as serenity, are important to avoid being subdued by external pressures or other factors not associated with the disease, such as social issues and unemployment.⁵

In 2008 INSS published the Guidelines to Support Medical Expert Decisions about mental disorders, a reference manual to standardize procedures, establish objective criteria to evaluate mental disability and help experts to make decisions. This manual, compiled by Institute physicians experienced in psychiatry, was submitted to internal and external consultation with representatives of society in general and was approved by the Brazilian Federal Board of Medicine and the Brazilian Society of Psychiatry. It describes technical guidelines for the examination of mental conditions, the most common mental disorders found in the INSS daily routine, and makes suggestions about how to conduct each situation.⁶

Seventeen cities are covered by the Florianópolis subsection of the Special Federal Court: Águas Mornas, Alfredo Wagner, Angelina, Anitápolis, Antônio Carlos, Biguaçu, Canelinha, Florianópolis, Governador Celso Ramos, Palhoça, Paulo Lopes, Rancho Queimado, Santo Amaro da Imperatriz, São Bonifácio, São José, São Pedro de Alcântara and Tijucas. These cities are served by agencies of the Social Security Institute located in Alfredo Wagner, Biguaçu, Florianópolis, Palhoça, São José and Tijucas.

This study described the epidemiological profile of insured individuals that file lawsuits against the Brazilian Federal Social Security Special Court (Juizado Especial Federal Previdenciário) in Florianópolis, capital city of the State of Santa Catarina, southern Brazil, claiming the right to sickness benefits due to psychiatric disorders. The result of expert evaluations performed previously in the Institute was absence of labor incapacity. This study also statistically compared the administrative decisions with the findings in the reports issued by the legal psychiatric expert.

Method

This study was approved by the Ethics Committee of INSS Expert Doctors working at the Executive Office in Florianópolis. The Committee discarded the need to obtain informed consent from participants. When developing the study protocol and preparing the presentation of results, all the necessary measures were taken to ensure participant anonymity and to prevent their identification.

This case series included lawsuits filed with the Brazilian Federal Social Security Special Court in Florianópolis. From August to December 2010, 120 claimants underwent legal psychiatric examinations to determine disability.

Some cases were excluded: 1) noncompliance with administrative criteria for benefit granting; 2) conversion to permanent disability benefit; 3) social assistance claims; 4) survivor pension claims.

The final sample comprised 114 persons that were evaluated by a psychiatrist and an INSS expert doctor.

When comparing groups of the same variable, 95% confidence intervals (95%CI) were calculated for means and proportions. In the comparison of different groups, 95%CI provided the value of p , which was significant ($p < 0.05$) when intervals did not overlap.

Statistical analyses were carried out using Microsoft Excel 2010 and Epi-Info 3.5.4.

Results

Mean age was 47 ± 10.2 years (95%CI 46.8-47.2); age ranged from 24 to 64 years. Most participants were women (89 individuals [79%]; 95%CI 69.2-85.1).

Table 1 shows the claimant categories. Mean contribution time was 99.9 months (8.3 ± 6.8 years), ranging from 8 to 352 months.

Table 2 shows the classification of the benefit periods grouped in months. Mean benefit duration was 20.4 ± 20.8 months; duration ranged from 2 to 97 months.

Table 1 - Distribution of insured individuals according to claimant categories (n = 114)

Categories	n (%)	95%CI
Employee	77 (67.5)	62.4-80.2
Self employed	30 (26.3)	19.7-37.5
Domestic employee	4 (3.5)	1.1-9.3
Special insurance workers	2 (1.8)	0.2-6.5
Voluntarily insured individuals	1 (0.9)	0.1-5.9

95%CI = 95% confidence interval.

Table 2 - Classes of benefit periods according to number of months (n = 114)

Classes	n (%)	95%CI
Up to 6	37 (32.5)	24.0-41.9
From 7 to 12	15 (13.1)	7.6-20.8
From 13 to 18	17 (14.9)	8.9-22.8
From 19 to 24	10 (8.8)	4.3-15.5
Over 24	35 (30.7)	22.4-40.0

95%CI = 95% confidence interval.

Mean number of administrative evaluations was 11.61 ± 7.3 (95%CI 11.5-11.7); minimum number was 1, and maximum, 33 evaluations. Mean number of claims denied was 4.59 ± 3.3 (95%CI 4.5-4.6), ranging from 1 to 20 claims.

Data related to professional categories, expert conclusions and diagnoses are shown in Tables 3, 4 and 5, respectively.

Table 3 - Distribution of insured individuals according to worker categories (n = 114)

Categories	n (%)	95%CI
Group 1: Public authorities; leaders and directors of public organizations or companies; managers	2 (1.7)	0.2-6.2
Group 2: Professionals in the fields of sciences and arts	6 (5.3)	2.0-11.1
Group 3: Mid-level technical worker	4 (3.5)	1.0-8.7
Group 4: Administrative workers	22 (19.3)	12.5-27.7
Group 5: Service workers, store and supermarket salespeople	62 (54.4)	44.8-63.7
Group 6: Farmers, forest workers, hunters and fishers	3 (2.6)	0.5-7.5
Group 7: Industry and service workers	15 (13.2)	7.6-20.8

95%CI = 95% confidence interval.

Source: Brazilian Classification of Occupations (CBO 2002).¹⁰

Table 4 - Results of legal psychiatric evaluations (n = 114)

Categories	n (%)	95%CI
Capable	84 (73.7)	64.6-81.5
Incapable (new grant)	13 (11.4)	6.2-18.7
Incapable	17 (14.9)	8.9-22.8

95%CI = 95% confidence interval.

Table 5 - Main diagnosis (n = 114)

Categories	n (%)	95%CI
Disorders due to use of psychoactive drugs	4 (3.5)	1.0-8.7
Psychoses	3 (2.6)	0.5-18.7
Mood disorders	68 (59.6)	50.1-68.7
Anxiety disorders	20 (17.5)	11.1-25.8
Personality disorders	5 (2.7)	1.4-9.9
Mental retardation	1 (0.9)	0.0-4.8
No psychiatric diagnostic criteria	6 (5.3)	2.0-11.1
Evidence of malingering	7 (6.1)	2.5-12.2

95%CI = 95% confidence interval.

Discussion

Age and sex distributions are in accordance with those reported by Pires and Siano: there was a clear and significant predominance of women, and their mean age was 47 years.⁷⁻⁹

Claimant categories (Table 1) and mean contribution time are in line with those found in other studies.^{9,10} However, mean benefit time was longer in the category that included only psychiatric disorders.^{7,8,11} Most benefits were granted for more than 6 months, and the rate of benefits taken for longer than 2 years was significant (Table 2). Our results suggest that benefits granted due to mental health problems last longer, which corroborates international studies.^{12,13} The number of administrative evaluations was higher than the number found in the study conducted by Marasciulo,⁸ which included all types of diagnosis. These findings suggest that people with psychiatric diseases claim benefits more often and more perseveringly than other individuals.

We have defined worker categories according to those informed in court, using the current Brazilian Classification of Occupations (CBO 2002).¹⁰ The most common occupational groups were service workers, store and supermarket salespeople, followed by administrative workers and industry and service workers (Table 3). As found in other studies, there was a predominance of low-skill jobs.^{7,8,11,13}

The comparison between administrative and legal investigations revealed a mismatch of 14.9% (Table 4). Two expert doctors acted as technical assistants for INSS in court for all types of diagnosis, most of which were clinical conditions. In Florianópolis (state of Santa Catarina), Pires⁷ found a mismatch of 16%, whereas Moraes,¹⁴ in Maceió (state of Alagoas), found a 19% rate. Results did not differ significantly.

The diagnostic hypotheses made by the legal psychiatric expert (Table 5) revealed a clear preponderance of mood and anxiety disorders, in line with national and international studies.^{8,9,13,15}

Finally, the hypothesis of malingering should be raised in any psychiatric evaluation. Malingering may be defined as the intentional production of false or exaggerated symptoms guided by outside interests. Individuals faking symptoms tend to answer the examiner's questions slowly to gain time to think about what they will say. They usually answer very simple questions with "I don't know". Coarse memory deficits, such as personal data oblivion, are also common. The inconsistency of symptoms, which do not correspond to those found in well-known syndromes, is one of the main features of malingering. Affective blunting is uncommon because it is difficult to fake. Visual hallucinations are rare

in psychotic disorders, but very common in malingering. Another particular feature is the lack of psychiatric hospitalizations despite the severity or refractoriness of the disease.^{16,17}

Seven expert reports (6.1%) included the description of clear features of symptom exacerbation and coarse malingering.

Conclusions

The analysis of the 114 examinations conducted by a legal psychiatric expert revealed that mean age and sex, as well as claimant category and mean contribution time, are in accordance with findings reported by other authors. In contrast, mean benefit duration and number of examination requests were higher.

In agreement with the trends reported in other studies, there was a clear predominance of low-skill jobs.

Only 17 individuals were found to be unable to work after benefit cessation, a 14.9% mismatch between administrative and legal investigation results, findings that do not differ significantly from similar studies.

Psychiatric diagnoses were similar to those found in other studies.

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Correspondence:

Roberto Figueredo
Av. Irineu Bornhausen, 3770/202 B
88025-201 - Florianópolis, SC - Brazil
E-mail: rob.figue@ig.com.br