

*by Scott E. Davis*

*Scott E. Davis is a Social Security and Long-Term Disability Insurance attorney in Scottsdale, Arizona. The majority of his disability practice is devoted to representing individuals with FM and/or CFIDS/ME. Scott has extensive experience in handling FM/CFIDS cases and does represent individuals throughout the United States. In most cases he charges a fee only if his client obtains benefits.*

In the article on obtaining disability with the Chronic Fatigue Syndrome/Chronic Fatigue and Immune Dysfunction Syndrome/Myalgic Encephalopathy (CFS/CFIDS/ME), I analogized obtaining Social Security Disability benefits based on any disease or ailment to the epic battle between David and Goliath. Unfortunately, obtaining disability benefits based on fibromyalgia (FM) and/or CFIDS/ME sometimes can be similar to David versus Godzilla. Why? . . . in part due to a lack of education at the Social Security Administration (SSA) and human bias against claimants who appear to be "healthy" compared to those afflicted with a more understood and obviously disabling diagnosis. Indeed, I must confess that three years ago I had never heard of fibromyalgia.

However, the good news is FM and CFIDS/ME claimants can and do obtain benefits with proper preparation of their case coupled with an understanding of how the system may view them.

**Take a deep breath and relax!!!** Before you call SSA to give up, please read on, as this article will give you important (maybe critical) information to use in your pursuit of disability benefits.

As a disability attorney who concentrates on representing those with FM and/or CFIDS/ME, I find two things interesting about my clients. Most are very educated about their disease(s) while others have never heard of a tender point. Second, almost all have great difficulty explaining to family, friends and other people (that they could care less about!) that even though they appear "healthy," in fact, the diseases have left them debilitated. Many feel as if their disease and the resulting limitations are often not taken seriously. Undoubtedly, every client has experienced the look of disbelief and a raised eyebrow from another person when trying to tell him or her the diseases have literally ruined his/her life.

Thus, similar to the real world, it is not surprising that at the SSA the problems of education and bias can be alive and well. This reality is of paramount importance. Why? . . . Because it should dictate how one proves he/she is disabled. Please understand I am not saying SSA discriminates, intentional or otherwise against FM and/or CFIDS/ME claimants; but rather that your claim (especially if you are under 50 years old) may be viewed by SSA or an administrative law judge (ALJ) with a raised eyebrow.

FM and/or CFIDS/ME are no strangers to SSA and ALJs who decide whether you are disabled; however, that doesn't mean they understand or appreciate the diseases. In what may be considered the landmark FM disability case, *Preston v. Secretary of Health and Human Services*, 854 F.2d 815 (6th Cir. 1988), a Federal Court of Appeal unknowingly provided a framework within which SSA and ALJs should evaluate FM (and logically CFIDS/ME) disability claims.

In May 1997, 9 years after working at bureaucratic breakneck speed, a Regional Chief Judge issued a memorandum to other ALJs which provided a *framework to follow at a disability hearing before a diagnosis of FM is accepted*. Although the following will focus on FM I believe it can also apply to CFIDS/ME. Ignoring these factors could be fatal to your claim. They are as follows:

1. *Was the diagnosis made by a rheumatologist or other specialist familiar with FM?*

I am always surprised (and skeptical) when a person calls or comes to meet with me and says s/he has FM and/or CFIDS/ME but it was not a rheumatologist or other specialist who made the diagnosis. Other medical doctors can and do make the diagnosis of FM, but many use the terms FM/CFIDS generically and more as a description of a patients' symptoms rather than making the diagnosis following the American College of Rheumatology's (ACR) 1990 Criteria for Fibromyalgia or using the CFIDS Centers for Disease Control criteria.

If you learn one piece of information from this article, let it be this: *It is critical your diagnosis is either made or confirmed by a rheumatologist or specialist*

. If not, you risk having SSA and/or an ALJ rejecting the diagnosis altogether, which could be fatal to your claim. Whether or not you (or your diagnosing doctor) agree with SSA's position, it is senseless to try to fight the system. Addressing this issue is always my first priority in

representing a FM/CFIDS client.

Second, if a rheumatologist has not made the diagnosis, find one (a.s.a.p.!) who is board certified and sympathetic to your diagnosis and disability claim. Eventually, you or your attorney will need to obtain opinions from him/her regarding how the diagnosis was made along with your inability to work. An unsupportive and/or uncooperative rheumatologist (or any treating physician for that matter!) can create real and sometimes insurmountable obstacles to winning your case. Why? . . . because you can bet SSA will have its own doctor who will tell the ALJ you are able to work. How do you find a supportive doctor? FM/CFIDS support groups are a good place to find a referral.

*2. Whether the claimant's physician(s) systematically attempted to eliminate other diseases before making the diagnosis of FMS?*

A frequently heard comment made by non-FM specialists, SSA case workers and even federal courts is that "FM is a diagnosis made by exclusion of other diseases." Of course, the implication is that doctors really don't know how to diagnose FM and that somehow invalidates the fact the disease exists. Such a belief shows unfamiliarity with the ACR 1990 criteria for diagnosis. However, it reinforces why a specialist should make the diagnosis after a physical exam (finding and documenting tender points) and blood work excludes other rheumatic diseases which may share symptoms with or mimic FM/CFIDS. That process provides validity to the diagnosis.

*3. Whether the patient's complaints are typical for the disease?*

This question is usually answered by reviewing the patient's medical records and comparing them to the ACR criteria. Hopefully, the medical records provide detail regarding the patient's symptoms or complaints. FM/CFIDS specialists almost always document the defining symptoms. For FM patients it is also critical that a physical examination was performed confirming the existence and location of the classic tender points. Without documentation, the diagnosis may be subject to attack.

*4. Whether the claimant was referred to physical therapy or a pain clinic for treatment, whether pain medication was prescribed for mild or severe pain and whether the claimant received pain*

*relief through injections into focal tender points?*

The "exhaustion of remedies requirement." I always counsel clients to undergo and at least try any treatment the specialist prescribes, including non-traditional treatment. Why? Because you do not want to be at a hearing before an ALJ who is wondering whether your condition would be as severe if you had followed your own doctors' instructions. Moreover, the SSA's doctor will usually tell the ALJ that your symptoms would improve (of course, allowing you to work) if you would undergo some type of treatment. Don't give the ALJ an open door to deny your claim.

Exhausting each type of prescribed treatment is good for your health and your disability case. After doing so, your testimony will be more credible because nothing exists (including an injection!) to alleviate the severity of your symptoms. Moreover, the severity of your condition will be supported by the fact that you have tried everything to find relief.

Trying to stay within the framework provided by the Preston case should increase your odds of winning and avoid any unfortunate surprises.

**Additional Tips To Keep In Mind:**

Involve your treating physician! Tell your doctor as soon as possible you have filed a disability claim. If s/he is lukewarm to the idea, try to find another doctor. Unfortunately, there are many doctors who could care less about a patient's legal issues. Do not get stuck with one! As an attorney, nothing is more frustrating than a doctor with no backbone or worse, s/he refuses to be involved at all.

Medical records can be your best or worst friend! It is your job to be a very detailed historian with your doctor regarding the severity, frequency and nature of your pain, fatigue and other symptoms. I tell clients to convey information regarding pain, fatigue, sleeplessness, flare ups, days spent in bed, inability to do simple daily activities and brain fog problems. Tell the doctor you want the information in your records.

Hire an attorney who has experience handling FM/CFIDS cases! During initial meetings with FM/CFIDS clients I sometimes say to myself "If I didn't know better, I'd say this 40 year old woman looks perfectly capable of working!" It is only through an understanding of the diseases and talking to clients that I realize they will pay for the trip to my office for the next couple of

days! Through understanding comes compassion and the ability to convey the effect the diseases have on a client's life to SSA or a judge. Your attorney should at least be familiar with the 1990 ACR and/or CDC criteria and be able to talk intelligently with your doctor.

Remember: people obtain disability benefits every day based on FM/CFIDS. Do not quit! Keep fighting! Use this article as the cornerstone to preparing and hopefully winning your case.

See the article [Obtaining Disability with CFS](#)