Migraine and Disability Rights

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ABSTRACT

Patients with migraine often have substantial disabilities. US federal law provides protections for disabled Americans. This discussion provides information regarding the disability rights of patients with transformed migraine.

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Case

A 45-year-old woman's primary care provider referred her to the neurology outpatient clinic for evaluation and management of chronic migraine headaches without aura. The headaches first began soon after menarche at the age of 14 years and typically occurred several days each month in a perimenstrual pattern. She had been treating her headaches 2 to 3 days each month with one to two tablets containing 50-mg butalbital, 325-mg acetaminophen, and 40-mg caffeine. Her migraine attacks significantly increased in frequency following hysterectomy without oophorectomy performed at age 43. She then began taking increasing numbers of the combination tablets. Nonetheless, she had severe headaches 25 or more days per month, using two to four tablets of butalbital medication on each of these days. She had tried multiple migraine preventive medications, including topiramate, propranolol, divalproex sodium, amitriptyline, and onabotulinumtoxinA, with no change in headache frequency or severity and no ability to reduce the butalbital-containing medication. She slept fitfully at night, was sleepy during the day, and drank five cups of caffeinated coffee daily to try to stay awake. She worked as a receptionist at a large car dealership, and despite being unable to work to full capacity because of the headaches, she had to go to work anyway. She had missed up to 3 days of work per month for the past several months because of migraine symptoms and was convinced that she would be fired if her headaches did not improve. She arrived at the clinic in despair, asked about other possible treatment choices, and wished to discuss the prospects for receiving long-term disability. The patient's diagnosis was transformed migraine, a condition of worsening of the severity, frequency, and tractability of episodic migraine due to analgesic overuse, in this case the overuse of the butalbital-containing medication and caffeine.

DISCUSSION

Migraine can be a profoundly disabling condition. The Global Burden of Disease (GBD) study of the World Health Organization measures relative disease burden

based on a unified metric, the disability-adjusted life-year (DALY), which combines disease population prevalence, years of life lost due to premature death (mortality), and years of life lost due to disability (morbidity). The most recent GBD survey data indicate that migraine is responsible for more DALYs annually in the United States than multiple sclerosis, epilepsy, ovarian cancer, and tuberculosis combined.[1] Furthermore, all DALYs associated with migraine in the GBD are attributed to morbidity/disability rather than mortality.

Of the multiple forms of migraine, chronic migraine (occurring 15 or more days per month, 4 or more hours per day), either with or without analgesic overuse, is a major cause of disability both at a population level and for the individual patient.[2] Total annual economic costs for patients with transformed migraine are 4.4-fold higher than for those with episodic migraine.[3] Although only 29% of employed patients with migraine experience headache 11 or more days per month, they account for 49% of all lost productive time in employment among employed patients with migraine.[4] Only 37% of Americans with chronic migraine are employed full-time.[5]

Americans with migraine-related disability have nondiscriminatory employment rights and are entitled to disability claims under some conditions. The Americans with Disabilities Act (ADA) of 1990, as amended under the ADA Amendments Act (ADAAA) of 2008, prohibits employment discrimination based on medical conditions or impairments that ''substantially limit'' at least one ''major life activity,'' even if the medical condition is episodic or in remission at times.[6] Although disability under ADA/ADAAA is determined on a case-by-case basis, migraine typically qualifies under the revised Act because a disabling condition must be assessed in its active state. In other words, mitigating measures, such as the success of medications to reduce the frequency, duration, or severity of migraine attacks, would not limit an individual's claim of disability for migraine even though the person might be symptom free and unimpaired between attacks.

The extent to which patients with migraine may broadly rely on ADA/ADAAA protection was illuminated by a case decided before the United States Tenth Circuit Court of Appeals.[7] The court held that the plaintiff's claim of employment disability discrimination was unsupported for two reasons. First, the court found that the plaintiff's claim of disability was not a disability at all, within their interpretation of the meaning of the ADA/ADAAA, because it comprised an impairment of ''caring for oneself'' with insufficient proof of disability. This, in the court's view, was insufficient to reach the threshold of a substantial limitation of a major life activity because the plaintiff did not provide adequate evidence of the actual limitation relative to unimpaired people. The court wrote that it was the plaintiff's ''burden to make more than a conclusory showing that she was substantially limited in the major life activity of caring for herself as compared to the average person in the general population…. A mere assertion that [the plaintiff] took medication and slept after arriving at home for an unspecified period when undergoing a migraine attack rather than caring for herself was insufficient to meet this burden.''

The Tenth Circuit Court also rejected the plaintiff's argument that she was substantially limited in her ability to work because she stated that her migraine-attributed disability was specific to only one particular employer rather than to employment in general. The court stated that under ADA/ADAAA, for the

"ability to work" to be considered a major life activity that has been substantially limited, the plaintiff would have to have been prevented from performing not a single particular job but rather "a class of jobs or a broad range of jobs in various classes as compared to most people with comparable training, skills and abilities." With this judgment, the Tenth Circuit Court clarified that determination of ADA/ADAAA eligibility may be subject to a rigorous case-by-case inquiry particular to the individual patient with migraine and that plaintiffs can be expected to provide unambiguous and documented support for any claim of "substantial limitation."

Under ADA/ADAAA, employers with 15 or more employees are expected to make some reasonable accommodations as needed for patients with migraine, such as making changes in lighting, implementing a fragrance-free policy, or offering flex-time scheduling. Employers, however, are not required to provide accommodations that would impose an undue hardship, including excessive costs to their business operations. If something in the workplace is essential to a person's main job function, then it need not be accommodated away. Furthermore, such accommodations may not be enough to ensure a person's employability given the capricious nature of migraine attacks and the inescapable severe burden of disability when migraine becomes chronic. If employers are not believed to be sufficiently accommodating, complaints can be raised with the Equal Employment Opportunity Commission.

The federal Family and Medical Leave Act of 1993 (FMLA)[8] provides coverage for patients with migraine who are employed by a business with at least 50 employees. The FMLA provides up to 12 weeks of job-protected, unpaid leave during any 12-month period to eligible covered employees for the care of their own "serious health condition." As defined by the statute, migraine is included as a serious health condition. Days taken from work are not required to be consecutive to be applied under the FMLA; that is, leave may be taken on a short-term, intermittent, or reduced-schedule basis. State statutes that are variations of the FMLA also exist. Some employers with fewer than 50 employees may offer short-term or long-term disability plans.

Migraine is not yet specifically listed as a covered condition in the Social Security Blue Book, the document of record for eligibility for the federal Social Security disability benefits programs (Social Security Disability Insurance or Supplemental Security Income).[9] This is remarkable given that epilepsy is listed as a qualifying medical condition. Epilepsy is in many respects an episodic neurologic condition comparable to migraine, but it results in less than one-third as many DALYs annually in the United States.

Migraine may be judged to be a qualifying disability under Social Security in some circumstances. Social Security law "defines disability as the inability to engage in any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment(s) which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months."[10] Moreover, a medically determinable impairment "must be established by medical evidence consisting of signs, symptoms, and laboratory findings—not only by the individual's statement of symptoms."[10] Unfortunately, this latter evidentiary criterion is potentially exclusionary for many disabled individuals with migraine because the condition may involve only patient-reported symptoms and have no accompanying physical signs or

laboratory findings. Typically, however, Social Security disability judgments may be made if adequate documentation is available that migraine attacks are sufficiently severe that work cannot be performed during attacks, that attacks have been present for at least 1 year, that they have been under treatment by a suitable heath care provider, that they sufficiently limit functional capacity, and that the minimal demands of any employment cannot be met, including reliable attendance (avoiding absenteeism) and effectiveness on the job (avoiding presenteeism). In practice, obtaining Social Security disability benefits for migraine is often a time-consuming, uncertain, and arduous process involving ''sequential evaluation,''[10] that when successful may require repetitive application denial and appeal.

Is the patient with transformed migraine described in the case covered by any federal disability protection programs given that her consumption of analgesics is deemed, at least partly, a cause for her disabling medical condition? A possibly comparable circumstance might be the question of eligible coverage for disability resulting from prescription drug addiction. This circumstance is covered by the ADA/ADAAA as long as the patient has completed a qualifying rehabilitation program, but perhaps is not supported by Social Security disability benefits because the drugs are deemed material to the persistence of the disability. This is an area of unclear jurisdiction. The FMLA should apply regardless.

What management decisions should be made for this patient? It is not clear how frequent, severe, intractable, or disabling her transformed migraine problem would be if she could successfully withdraw from overuse of the butalbital-containing medication and caffeine. Although the patient's disability is, indeed, real and substantial, it is not yet clear that it would be considered a permanent disability until full withdrawal from analgesics has been aggressively attempted and achieved. The apparent failure of the multiple trials of preventive medications to bring her migraine attacks under control could be due to any of several reasons, including ongoing use of the butalbital-containing medication and caffeine, insufficient dosages of the preventive medications, and insufficient duration of the preventive medication trials. As reviewed elsewhere in this CONTINUUM issue,[11] withdrawal from overused analgesics in transformed migraine can be pursued through a number of outpatient and inpatient strategies.

Concurrent with pursuit of treatment strategies for analgesic withdrawal, the patient was strongly urged to file with her employer for FMLA coverage with intermittent unpaid medical leave; she fortunately worked for an employer with more than 50 employees. FMLA coverage afforded her legal protection from wrongful termination; if her employer were to fire her without her having proof that her employer was aware of her migraine-related disability, it would not be considered discrimination under ADA/ADAAA. Once FMLA coverage was in place, she was advised to explore whether any further workplace accommodations were available from her employer, which might permit her to take the fewest days of leave possible under FMLA.

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