Medico-legal considerations on the concept of inability according to the law no 222/84 (INPS) and the law no 118/71 (Civil Invalidity): similarities, differences and operational practices in the medicolegal evaluation of oncological diseases

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Abstract

Introduction: the law 222/1984, on which the INPS (Italian National Welfare Institute) social security concept is based and which sets the unfit-to-work person as the one who “is in the total and permanent inability to perform any work activity”, is compared with the similar concept in the Civil Invalidity, which sets the unfit-to-work person as the one who has lost the “general working capacity”.

Methods: the research, based on the analysis made by the Medico-Legal Unit INPS in Siena of 10 cases of cancer patients observed and inherent cancer patients who had applied at the same time for both the Civil Invalidity and the Social Security, represents a critical analysis and comparison of the two laws.

Results: in the 10 cases, all recognized as “total and permanent inability to work 100%” in Civil Invalidity, only the 50% were evaluated as “unable to perform any work” according to the law 222/84.

Discussion: the research shows a more suppleness of the concept of “tumors for which there is the certainty or higher probability of adverse event” in Civil Invalidity than according to the law 222/84.

Conclusions: the research confirmed that the highest award of recognition of inability is according to the law 118/71 and that this variability is attributable to the uncertainty of the prognosis of oncological pathology, both in the short and medium term, which, usually, is given more weight in the Civil Invalidity than in Social Security Law.

KEY WORDS: Civil Invalidity, inability, INPS, law 222/1984, law 118/1971.

Introduction

The inability consists of the incapability of a person to perform his or her job duties as a result of physical or mental illness. The inability is implemented, in Italy, through two different laws: law no. 118/71 as part of Civil Invalidity laws and law no. 222/84 as part of the Social Security laws by INPS (Italian National Welfare Institute).

The law no. 118 of March, 30 1971, articles 2 and 12, state that the inability pension is granted to disabled persons for whom a total incapacity to work has been proved and who are classified as low income. The low income status is required to be updated and met on yearly basis in order to keep the benefit for this category.

In order to obtain and maintain the status and inability benefit, it is required that the person subject to physical and/or mental disability not related to work and military service to have an age between 18 and 65 years (increased, from January 2016, to 65 years and 7 months). Also, the subject is required to be Italian or other European Union countries citizen and to have the residency in Italy or to be non-European Union citizen having a long-term resident permit of stay. All the subjects are required to have a disability equal to 100% and have a personal yearly income not exceeding limits annually defined above. In the Civil Invalidity report issued by the Medical Committee for the person recognized as unfit-to-work, must state the following: “Completely unable to work with permanent disability of 100%”.

In addition, the article no. 2 of the law no. 222 of June 12, 1984 defines the inability as “… physical or mental defect of the subject resulting in absolute and permanent incapacity to perform any type of work” (1). This law differs from the previous one described above because adds the phrase “any activity”, to emphasize that the subject not only should not be able to carry out a “generic” or suited work, but any type of work activity (1). This is a fundamental distinction between the concept of inability in Civil Invalidity and in the Welfare
services. The first law essentially recognizes as unable to work the person having a total inability to perform an occupational activity that is not related to work or military service [i.e. the potential inability to engage in any generic work that doesn’t require a specialization, concerning manual skills(1)]. So, in Civil Invalidity, the difference between a disable person and a person unable to work is quantitative [the disable person is a person having a partial incapacity of performing manual work; the subject unable to work has a total inability (equal to 100%) to carry out generic work]. This quantitative approach makes possible the existence in the Civil Invalidity law of tables indicating, through a fixed rate value or a range of rate values, the impact of each pathology on the generic working capacity of the subject.

The Social Security law no. 222/84, however, goes much further introducing a qualitative element. The inability to work must be absolute (1), pointing out not only the loss of working capacity in general or specific skills of the subject, but any capacity to work altogether. In both laws is expressed the concept of permanence intended not so much as irremediable impairment, but as “a biological situation not transient, lasting indefinitely, without anticipation of healing or improvement in the short term” (2, 3). So, the concept of inability in Civil Invalidity is to be understood as TOTAL (i.e., not partial, equal to 100%) in reference to the general work capacities, and PERMANENT (in the sense that it is not predicted a change for the better in a short time). However, the concept of inability in Social Security Law, incorporates the adjectives of ABSOLUTE (i.e. of inability not only for a generic, manual based work, but to any work activity) and PERMANENT (still to be understood as the disability that does not involve a change for the better in a short time).

With regard to the neoplastic diseases, for decades we are witnessing, in medico-legal evaluation, to a debate, both doctrinaire and juridical, focused on the so called “etnic disability” connecting to oncological disease. That in consequence to the uncertainty prognosis of neoplasms (2), especially in the short and medium term. This has developed a conflict between different schools of thought (4); for someone, the only uncertainty prognosis of the cancer, justifies the acknowledgement of invalid/unable to work status. For others, having a more precautionary evaluation approach (5), the acknowledgement of invalidity/ inability for oncological diseases must be free from any prognostic evaluation, considering only the real reduction of the working ability caused by tumor or by the pharmacological or surgical interventions put in place to deal with the disease (6).

In Civil Invalidity, the Ministerial Decree of February 5, 1992 indicates (7) a percentage rate evaluation for tumors and distinguishes between neoplasms with a favorable prognosis (with or without severe incidence on the function of organs or apparatus) and neoplasms with a poor prognosis “quoad vitam”:

a. neoplasms with a favorable prognosis and with modest functional impairment - 11%;
b. neoplasms with a favorable prognosis and with severe functional impairment - 70%;
c. neoplasms with a poor “quoad vitam” prognosis or probably unfavorable for living despite surgical removal - 100%.

Purpose of the Lawgiver was to base the medico-legal evaluation of the oncological pathologies more on the prognosis, than on the incidence on the generic ability to work (2). Essentially, the uncertain prognosis of the neoplasms has a more important role, especially in the first 12-24 months after diagnosis, than the functional limitation produced by the pathology.

The evaluative approach in the Social Security law (222/1984) is different; in this medico-legal scope, there are no percentage rate established by law and the evaluation is left only to the judgement of the medical examiner; this suffers less for the prognosis of the oncological illness while appears to be more linked to the real functional impact produced by disease or the outcomes of pharmacological or surgical interventions put in place to deal with it.

The aim of this research is to focus on how the oncological diseases represent the situation with more discrepancy between the ratings of the recognition of the inability status in the Civil Invalidity and in the Social Security Law. The research shows, furthermore, how in some cases this discrepancy is not only due to the different type of inability examined (in Civil Invalidity an inability to perform a generic manual work - according to the law 222/84 an inability to perform any work). The research aims to show that much of the variability between two outcomes, especially in the period immediately after the diagnosis of cancer, is due to the different weight that the prognosis of the oncological disease has in the judgement expressed in Civil Invalidity than in the law 222/84.

Methods: analysis of the cases

The research was focused on the analysis of 10 cases of patients affected by different oncologic pathologies, who simultaneously applied for the law no. 222/84 and for the law 118/71. The cases examined, all concerning patients recognized unfit for generic work for the law 118/71 and whose description is shown in Table 1. The cases were extracted at random from a larger sample of 30 cases observed by the Medico-Legal Unit of INPS in Siena. Deliberately, the research not includes patients with highly aggressive tumors of the limbs (such as sarcomas) often treated with surgical amputation of the limb. In these cases, the functional impairment becomes preponderant over working capacity with respect to the prognosis of cancer. However, the research examines cases of patients affected by internal organs solid tumors or hematologic malignancies.

Results

The 10 cases observed by the Medico-Legal Unit of
Table 1 - Cases examined.

<table>
<thead>
<tr>
<th>Case</th>
<th>Macro- and Microscopic Examination</th>
<th>Surgery / Therapy</th>
<th>Physical Examination</th>
<th>Civil Invalidity</th>
<th>Invalidity by Law 222/84</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. 55-year-old woman, employee of office, level of education: high school diploma.</td>
<td>Left breast cancer, histologically mixed type, ductal and lobular (stage T1a N2a M0 / grading G2 - 100 % ER, PgR 80 %, Ki-67 75%), with no signs of vascular invasion, and with good distance from the surgical resection margins.</td>
<td>Enlarged mastectomy + axillary lymphadenectomy. Courses of chemotherapy with FEC (Fluorouracil, Epirubicin, Cyclophosphamide) protocol followed by 10 sessions of radiotherapy. Hormonal pharmacological therapy with Letrozol.</td>
<td>Mild left upper limb lymphoedema in the right-handed person with good articular function of the right arm. Side effects of chemotherapy (nausea, vomiting, hair loss).</td>
<td>Total and permanent inability to work 100%, revision at 12 months.</td>
<td>Able to work. Invalid greater than 2/3 in suitable activities.</td>
</tr>
<tr>
<td>2. 49-year-old woman, pharmaceutical representative, level of education: high school diploma.</td>
<td>Multifocal ADK of the left lung (histological stage pT4 N0 / grading G1), with signs of vascular invasion on a framework of idiopathic pulmonary fibrosis.</td>
<td>Atypical surgical resection of the LUL and LLL + CHT + experimental immunological therapy. O₂ therapy for 3 liter/ min. x 6 hours / day.</td>
<td>Evidence of mild dyspnea, good articular mobility of the upper limb.</td>
<td>Total and permanent inability to work 100%.</td>
<td>Permanent inability to work, revision at 24 months. Invalid greater than 2/3 in suitable activities.</td>
</tr>
<tr>
<td>3. 58-year-old man, merchants of vegetables, level of education: middle school diploma.</td>
<td>Lymphoma Non-Hodgkin’s B-type infiltrating the cutaneous and muscle planes of the left thigh and two lymph nodes in the ipsilateral groin chain (MiB-1 80-90 %).</td>
<td>CHT (six courses), neoadjuvant radiotherapy, surgical excision of the neoplasm.</td>
<td>Slight limitation of flexion of the left hip; not functional limitation of left knee.</td>
<td>Total and permanent inability to work 100%, revision at 24 months.</td>
<td>Able to work. Invalid greater than 2/3 in suitable activities.</td>
</tr>
<tr>
<td>4. 50-year-old man, repairs of refrigerators, level of education: middle school diploma.</td>
<td>Neuroendocrine neoplasia (NE) of the pancreas (grading G1) with 9 metastatic liver lesions.</td>
<td>CHT (six courses) + neoadjuvant radiotherapy + immunological therapy (Octreotide acetate) + morphine for abdominal pain.</td>
<td>Side effects related to chemotherapy (nausea, vomiting mild asthenia).</td>
<td>Total and permanent inability to work 100%, revision at 12 months.</td>
<td>Permanent inability to work, revision at 24 months. Invalid greater than 2/3 in suitable activities.</td>
</tr>
<tr>
<td>5. 33-year-old man, farmer, level of education: middle school diploma.</td>
<td>CNS anaplastic astrocytoma grade III (WHO 2006) in the right parietal-temporal area.</td>
<td>Neurosurgical excision of the lesion followed by 30 courses of stereotoxic RT.</td>
<td>Mild functional limitation in the left upper limb movements in right-handed patient.</td>
<td>Total and permanent inability to work 100%, revision at 24 months.</td>
<td>Able to work. Invalid greater than 2/3 in suitable activities.</td>
</tr>
<tr>
<td>6. 54-year-old man, plumber, level of education: middle school diploma.</td>
<td>Intestinal ADK of the sigma, histological stage pT3 pN1 / grading G2, not infiltrating blood vessels, good distance of the surgical margins from the lesion.</td>
<td>Hartmann’s abdominal - perineal resection, packaging of temporary stoma. Six courses of CHT based on 5-FU.</td>
<td>Side effects related to chemotherapy (nausea, vomiting asthenia); non articular functional limitation.</td>
<td>Total and permanent inability to work 100%, revision at 12 months.</td>
<td>Able to work. Invalid greater than 2/3 in suitable activities.</td>
</tr>
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*to be continued*
INPS confirm that in the Civil Invalidity as required by law 118/71, the prognosis of a tumor has a weight in the formulation of the inability rating. The functional limitation often is very small and in most cases is due to the outcomes of surgery (e.g., to mastectomy for breast cancer treatment) or to chemotherapy or radiotherapy, almost never free of side effects resulting indeed, often in a higher incidence of functional on work capacity than the underlying disease.

In the 10 cases, all recognized as “total and permanent inability to work 100%” in Civil Invalidity, only 4 (50%) were evaluated as “unable to perform any work”, despite the functional limitations caused by neoplasm have been modest in all cases and judgement was founded, almost exclusively, on the prognosis. Eight out of ten cases (80%) have been recognized as unable to work according to the law 118/71 with a short-term review (12-24 months). Only 2 cases (20%) were recognized unable for generic work without revision. From the 5 cases recognized unable to performing any activity (according to the law 222/84), 4 cases (80%) were subject to a further review; in only 1 case out of 5 (20%) the status of inability to performing any work has been recognized without a review.

Among the cases exposed inability status for the law no. 222/84 was attributed only to the tumors having, with high percentage a bad “quoad vitam” prognosis like pancreatic or lung cancers not surgically remov-able or widely metastatic.

Discussion

In particular, for Civil Invalidity the research shows a more suppleness of the concept of “tumors for which there is the certainty or higher probability of adverse event” (8). The Medical Committee for the evaluation of Civil Invalidity has considered an unfavorable prognosis tumors confined to the organ also operable, but with some pathological characters such as vascular invasion, lymphatic spread (> N2 second TNM international classification of neoplasms), poor response to hormonal treatments, i.e. to estrogen or proges-teron (the neoplasms called “double negative”), having an high grading or tumor proliferation index (like MIB-1 or Ki-67) or the presence of cancer cells in the surgical resection margins (9-11). Long-term neoadjuvant chemotherapy or radiotherapy also make the neoplasia considered as unfavorable “quoad vitam” prognosis.

According to the law 222/84, however, the evaluation of oncological diseases for the purposes of determination of the inability to work appears or closely linked to a severe functional limitation or to a “more severe” prognosis of the tumors than that considered in Civil Invalidity. Cases of neoplasia not surgically amend-able and with a prognosis “quoad vitam” of a few months (i.e. the cases of pancreatic or wide brain cancers) or widely metastatic tumors (12) seem to be the only subjects fitting the definition of inability to carry out any work. In the Social Security field only in part
this approach is more “restrictive” and the concept of inability refers to any type of work. Factors favoring the granting of the status of inability in the Civil Invalidity are identified in the use of the institute of "revision" (13). This practice allows the recognition of inability even for just 12-24 months. The use of the revision is less frequent in the welfare sector, cause to more restrictive administrative obligations (1, 12). The recognition of total inability to work required by law 118/71 is not incompatible with performing work while obtaining the benefits, although such recognition is subject to income related to pension limits (14). The granting of inability according to the law 222/84 is conditional upon termination of employment. The removal of the subject from the lists of the agricultural workers and self-employed workers and any other supplementary compensation or substitution treatment. The definition of inability expressed in Civil Invalidity is most closely connected to the concept of "ethic disability" linked to the cancer. The explanation given by the members of the Medical Committees involved in the recognition of Civil Invalidity for the attribution of the status of inability to patients affected by non-metastatic cancers and in the absence of severe functional limitations was to attempt to put patients inside a sort of “protective bubble”; this just for that period of time necessary to dissolve the prognostic uncertainty linked to the oncological pathology and dependent on many factors such as complete surgical eradication of the tumor, presence of blood or lymphatic spread, response to various immunological therapies and the need for the patients to undergo debilitating therapy such as chemo- or radiotherapy.

Conclusions

In the Civil Invalidity the evaluation of neoplastic diseases is more related to the prognosis than to the articular functional limitation produced, as established by Ministerial Decree February 5, 1992. In the Social Security, there are no law-based percentage rates to define the status of “inability to carry out any work”. This task it is left to the medical examiner who has the duty to evaluate the status of inability, also in the cases of oncological diseases which often do not have functional limitations in the subject. From our experience both in Civil Invalidity and Social Security emerges as the concept of "poor quoad vitam prognosis" is interpreted with more suppleness in Civil Invalidity and with more strictness in the Social Security law.

References