

Editor:

The Legal Digest in a recent issue of *The Journal* contained an entry, titled "Ruling on Social Security Benefits,"¹ that made it seem the opinion of the treating psychiatrist carries controlling weight over that of other sources, with regard to psychiatric disability eligibility determinations. The authors indicated that there had been a psychiatric nurse in this case who had provided treatment. They were heartened that the appeals court gave weight to this source. The issue, however, is not controlling weight but whether a medical source is acceptable for a specific purpose.

For Social Security disability determination, documentation as to the existence of an impairment must come from an "acceptable medical source."² Such sources, for psychiatric purposes, include only physicians and psychologists. Nurses, however specialized their training and however free they are to practice within their particular state, are not, by definition in federal regulations, an acceptable medical source. However, once the presence of an impairment has been established, the nursing notes may then be used, as may everything else in the record, to determine the severity of the impairment.³

So, in a hypothetical case in which a claimant has been provided with a nursing opinion as to diagnosis, then treated by that nurse, with a later nursing statement provided as to impairment severity that is co-signed by a physician, we do not have documentation as to the existence of an impairment from an acceptable medical source. At no time in this hypothetical case did a physician or psychologist document formulation of a diagnosis on the basis of either a personal examination or an evaluation of available data. Medical expert testimony in the case would then focus on the failure of the medical records to establish the presence of an impairment.

In an alternative hypothetical scenario, in which the physician conducted the initial evaluation and diagnostic formulation but the nurse provided treatment thereafter, or in which the physician is con-

sulted in the midst of ongoing nursing care, the medical expert would use the physician's report to determine whether the presence of a psychiatric illness has been established and then all available information to determine whether the necessary level of severity is present.

As a medical expert for social security on psychiatric and addiction matters, I have with increasing frequency observed that claimants come in with records that show they have never seen a physician/psychologist, and indicate that the claimant was opined by a non-physician/psychologist to have a psychiatric diagnosis. In such records, clinicians often overlook medical explanations such as medication-induced anxiety symptoms, addictive diagnoses such as alcohol-induced depressive disorder, and other pharmacologically based illnesses. Nurses, physician assistants, licensed mental health counselors, certified alcoholism and substance abuse counselors, and other similar clinicians are not physicians. American Medical Association policy is that those who are not physicians cannot diagnose medical illnesses without, at the least, direct supervision by a physician.⁴ This policy is consistent with current disability determination regulations.

References

1. Yanofski J, Dike C: Legal Digest: ruling on social security benefits. *J Am Acad Psychiatry Law* 38:135-7, 2010
2. 20 CFR 404.1513(a)
3. 20 CFR 404.1513(d)
4. American Medical Association: Policy Compendium, H-35.971, Diagnosis of Disease and Diagnostic Interpretation of Tests Constitutes Practice of Medicine to be Performed by or Under the Supervision of Licensed Physicians. Resolution 904, Interim-2006

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