

CASE REPORT IN LEGAL MEDICINE

An explanatory case report about critical differences of ‘inability to work’ in Italian welfare and social security systems

Michele Sammiceli¹, Marcella Scaglione¹

Affiliations:

¹ Medical Doctor, Medical Legal Department, Italian Institute of Social Security (INPS), Siena, Italy.

Corresponding Author:

Dr. Michele Sammiceli, INPS - Medical Legal Dept., Lippo Memmi street nr. 2, 53100, Siena, Italy.

E-mail: michele.sammicheli01@inps.it

Abstract

In Italy, there is a different status of ‘inability to work’ in civil invalidity and INPS social security insurance systems. These differences and overlaps cause some concerns. We show a case report of a 55-year-old woman with a recent left radical mastectomy and ipsilateral lymphadenectomy, for infiltrating ductal and lobular carcinoma. The woman, showing no radiological evidence of metastases, was undergoing chemotherapy with taxanes and cisplatin. The patient reported no significant osteo-articular functional limitations, with the exception of a reduction in left shoulder movements at extreme degrees in a right-handed person, due to the recent mastectomy and complained nausea and vomiting due to chemotherapy. The civil invalidity committee assessed her as being disabled, with a total and permanent incapacity for work as 100%, whereas the INPS Medical Legal Department (C.M.L.) recognised her as disabled in employments suitable for her capabilities (article 1 of Law no 222/1984), but not

incapable of carrying out any works (article 2 of Law no 222/1984). Progress in medicine and workplace adjustments may enable employees with disabilities to come back work. Therefore, knowledge of these differences and overlaps and the role of legal practitioners and policymakers could be decisive resulting in a source of savings for the Italian welfare system.

KEY WORDS: Inability; civil invalidity; law; medicine, legal; social security.

Riassunto

In Italia, il concetto di inabilità lavorativa assume una diversa valenza in ambito assistenziale di invalidità civile ed in quello previdenziale INPS. Queste differenze e sovrapposizioni causano alcune incertezze. Gli Autori presentano il caso di una donna di 55 anni con una recente mastectomia radicale sinistra ed una linfadenectomia omolaterale per carcinoma duttale e lobulare infiltrante. La donna, senza evidenza radiologica di metastasi, veniva sottoposta a chemioterapia con taxani e cisplatino. La paziente non presentava limitazioni funzionali osteo-articolari significative, ad eccezione di una riduzione dei movimenti della spalla sinistra a gradi estremi in persona destrimane, a causa della recente mastectomia, nonché nausea e vomito, effetti collaterali della chemioterapia. La commissione per invalidità civile giudicava la donna invalida con totale e permanente inabilità lavorativa al 100%, mentre il Centro Medico Legale INPS competente per il territorio la riconosceva come invalida superiore ai 2/3 in attività confacenti (articolo 1 della legge n. 222/1984), ma non inabile all'espletamento di qualsiasi attività lavorativa (articolo 2 della legge n. 222/1984). Il progresso della medicina e gli adattamenti sul posto di lavoro possono consentire ai dipendenti disabili il reinserimento lavorativo. Pertanto, la conoscenza di queste differenze e sovrapposizioni nonché il ruolo svolto

dagli operatori del diritto e responsabili politici potrebbe essere decisivo al riguardo, rappresentando una fonte di risparmio per il welfare italiano.

TAKE-HOME MESSAGE: In Italy, there is a different status of ‘inability to work’ in civil invalidity and INPS social security insurance systems. These differences and overlaps cause some concerns and must be recognized by legal practitioners and policymakers.

Competing interests: none declared

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INTRODUCTION

In Italy, the welfare of all citizens is ensured by a dual welfare- and social security system; the term social security refers to a complex of initiatives, economic and otherwise, designed to keep every citizen, even if they are not gainfully employed, free of being in situations of need [1]. The legal basis for the Italian non-work related invalidity system, the so-called Civil Incapacity Benefit, is the recognition that a disabled person has the status provided for by Law no. 118 of 1971 [2], namely a disabled person of working age (between 18 and retirement age) with general

capacity for work reduced by more than 1/3 (34%), or over the retirement age with a persistent difficulty in carrying out the functions and tasks appropriate for their age [3]. On the contrary, the social security system is based on the stipulations in a public social insurance policy, by which the contributions paid by workers allow social and health protection. The main Italian social insurance institution, named Italian Institute of Social Security (INPS), bases its protection against common disease, that is, those not due to war or employment. Upon the Law no. 222 of 1984, the INPS social security system recognizes, as a disabled person, an insured person who has his/her working capacity reduced to less than one third in employments suitable for capabilities. The social security system, unlike the civil incapacity benefit system, is also reliant on an administrative requirement being met, i.e. the payment of at least 260 weekly contributions, equal to five years of contributions and insurance, of which 156, equal to three years of contributions and insurance, have been made in the five years preceding the date of submitting an application. In both the Italian civil invalidity and security disability systems, there is the medical concept of inability; despite the common definition of ‘an inability to carry out a work activity’, this concept however, in operation, relies on different aspects that are not only attributable to the different types of work that can be carried out. On one side, the inability to work a non-specific, manual job, according to Law no 118 of 1971, on the other side the inability to carry out any works, according to Law no 222 of 1984.

We report a brief medical-legal case showing differences and overlaps between these two systems. This case examination involving a person with a locally advanced neoplastic disease who has applied for both civil invalidity and social security inability/disability benefits, may help clarify the current issues of the Italian civil invalidity and security disability systems.

CASE REPORT

A 55-year-old woman with a recent left radical mastectomy and ipsilateral lymphadenectomy, for infiltrating ductal and lobular carcinoma; the histological examination showed a TNM staging of T2 N2 G3, an ER (Estrogen Response positive) of 80%, a PgR (Progesteron Response positive) of 100% and a Ki-67, a neoplastic proliferation marker, of 40% [4]. The woman, without radiological evidence of metastases, on the advice of her oncologist, was undergoing chemotherapy with taxanes (Paclitaxel[©]) and cisplatin (Cisplatin DBL[©]). The civil invalidity committee members who visited the woman after she had submitted the administrative request, assessed her as being ‘disabled, with a total and permanent incapacity for work as 100%, in agreement with articles 2 and 12 of the Law 118/71’ and made provision for a health audit 12 months after the medical legal examination. The woman was examined at the INPS Medical Legal Department (C.M.L.) in charge of the region a few days after the visit for civil invalidity, for the purposes of Law 222/1984. The woman, who had always worked as mechanical operator and was on sick leave at the time of the visit, complained that she was being undergone a chemotherapy treatment based on cisplatin and taxanes once every 21 days, which was confirmed by the presence of a port-a-cath in left subclavular site and the iatrogenic hair loss. However, the patient did not have significant osteo-articular functional limitations, with the exception of a reduction in left shoulder movements at extreme degrees in a right-handed person, due to the recent mastectomy. The woman complained nausea and vomiting due to chemotherapy. Her mood was slightly depressed, with ideation polarised on her recent health problems, yet she was not diagnosed with any psychiatric disorders. At the end of the visit, the INPS committee recognised her as disabled in employments suitable for her capabilities (article

1 of Law no 222/1984), but not incapable of carrying out any works (article 2 of Law no 222/1984).

DISCUSSION

Under civil invalidity, the inability to work status corresponds to a 100% disability, that is, to the total loss of the general ability to work; general work ability can be considered as the ability to perform a non-specific job, meaning an unskilled job, of a purely manual nature, for which no specific training, either intellectual or manual, is required [5, 6]. In civil invalidity, the morbid conditions that can frame such a picture are all of the impairments to which the tables of laws attached to the Italian Ministerial Decree of February 1992 [7] attributes a value of 100%: The myocardopathies and the severe coronary arteries attributable to class IV NYHA (New York Heart Association); pulmonary tuberculosis or pneumectomy with dyspnea even at rest; severe hypothyroidism with mental retardation; diabetes complicated by severe retinopathies and/or nephropathies; and anatomical or functional loss of both hands. Added to which are severe dementia, generalised epilepsy with a weekly or daily crisis, severe hemiparesis or hemiplegia associated with sphincter disorders, paraparesis with severe force deficiency and tetraparesis, parkinsonism with severe functional repercussions, chronic delusional syndrome with profound autism and severe cyclothymic disorders requiring continuous therapy, binocular blindness, trisomy 21 (Down syndrome) with severe mental retardation and trisomy 18 (Edwards syndrome), AIDS with opportunistic infections (ARC complex or AIDS-related complex) and, finally, neoplasms with poor or possibly unfavorable prognosis despite surgical excision. With regard to social security concept of inability, Law 222 of 1984 [8] establishes, in article 2, that

someone is unfit-to-work if: ‘... the insured or the holder of disability allowance, with effect after the date of entry into force of the present law who, because of infirmity or physical or mental defect, has an absolute and permanent incapacity to carry out any work activity’. The concept of INPS social security inability is different from that of social security disability (established by Article 1 of the same law) because the condition of disability is related to ‘employments suitable for capabilities of the insured person’, that is, those occupations that the insured has exercised, in a non-occasional but continuous way, during his or her working life, and occupations similar to these in terms of physical and intellectual engagement [9]. Thus, in the social security field, an insured person who cannot carry out any type of work, not just general, purely manual jobs, is considered totally unable to work. Differently from civil invalidity, the social security inability does not provide any tables for legal practitioners.

In our case report, we found some of the most significant discrepancies between civil invalidity and social security assessments, in a woman affected by mammary neoplasia. This case report showed that in social security disability field, the concept of inability assumes a character that has greater selectivity and evaluative rigour than in civil invalidity field. However, this greater rigidity is not only attributable to the different range of incapacity for work examined, which is related to only generic employment in civil invalidity and to performance in any type of work in the social security one. The different evaluation carried out by the two committees on woman affected by breast cancer, as showed in this case of oncological disease, was due to the fact that her impairment was not produced by functional limitations of the upper limbs, but it was associated with both the prognostic relevance of the disease and the heavy psychophysical burden induced by chemotherapy [10]. In other words, in this case, the disabled state was mainly

due to the locally advanced stage of the breast neoplasm rather than the functional breakdown produced by disease, which was represented by only a mild functional limitation of the ipsilateral limb at the site where mastectomy was performed.

This condition should not have resulted in significant disparities of the medico-legal evaluation, because the psychological repercussions and the debilitating effects of the chemotherapy, like vomiting and diarrhea, in fact make working physically impossible, for a manual worker or farm labourer as well as for a teacher or lecturer.

However, in the Italian system the variable element between the notion of inability to work status under civil invalidity and social security systems is the permanence over time of an impairment that makes the subject physically and/or psychologically incapable of work [11]. More specifically, the assessment of inability under civil invalidity may be revised after a short period of time (about 6-12 months); it has been called the 'maximum invalidity', which is the highest degree of physical and psychological disability, that does not correspond, anyhow, to the absolute inability of the individual to work [12]. Indeed, in Italy a 100% of civil invalidity is compatible with fitness for work released by an occupational health physician, who, in a different context, must evaluate whether an individual is fit to perform his or her tasks without risk to self or others [13, 14]. Conversely, being totally incapable in any works according to INPS inability (article 2 of Law no 222/1984), implies a certificate of unfitness for work released by the occupational health physician.

Conversely, in medical law field, the term 'unfit-to-work' indicates a person who has lost his or her general capability for working [15], which is the psychophysical capacity as described by

Gerin ('the psychosomatic efficiency of the individual to carry out any work and extra-work activities') [16]. The loss of the ability to work may be temporary if the person may recover his/her own state of health following a variable rest period for care and treatment, whereas we refer to a permanent incapacity when the inability to undertake work continues for an indefinite period due to huge impairments, such as quadriplegia, severe dementia, poly-amputations, and others that make it impossible to carry out any work activity [17]. Therefore, inability in the INPS social security arena is a very different and more selective concept than in the area of civil invalidity and it may be described as a condition of prolonged inability to work of one sick-insured individual. As such it requires permanence, that is, an improvement of the clinical-functional picture over the short-medium term being unforeseeable. Which is why, returning to examine assessments in the field of oncological diseases, obtaining the status of incapable according to the Law 222/1984 is reserved, almost exclusively, for diffuse metastatic diseases or tumours that are not amenable to surgery [18], for which a favorable prognosis is highly unlikely (e.g., tumours of the brain, lung or pancreas that are entirely unresectable by surgery).

In conclusion, this case shows that in Italy forensic consultants and lawyers must know very well the highlighted differences concerning inability to work status in civil invalidity and social security field assessments to avoid useless and expensive medical-legal disputes. Nevertheless, thanks to progress in medicine and workplace adjustments nowadays many life-threatening chronic diseases as cancer allow to work normally again. For this reason, it would be desirable to allow the employee affected by non-terminal cancer, after a period of treatment and rest, to choose between having a civil inability with a feasible back to work that has a crucial therapeutic value, and social security disability to work. Although in some cases it is very difficult to carry

out this different prognostic evaluation, the residual capability of workers able to fit job tasks and conditions might be utilized, through ergonomic principles in workplace design, for employee's return to work. Ergonomics is the science of designing the job to fit the worker, rather than physically forcing the worker's body to fit the job. Rehabilitation ergonomics may be an important strategy to support return to work for (breast) cancer survivors [18, 19]. Probably, the role of government and business-related policy is decisive and could be result in a source of savings for the Italian welfare system.

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