CONSIDERATIONS OF LEGAL MEDICINE ON THE REGULATION REAL IN FORCE IN ITALY FOR THE LAW OF ACCOMPANIMENT’S INDEMNITY WITH DETAIL RELATED AT THE LOW SIGHT PATIENTS

CONSIDERAZIONI MEDICO LEGALI SULLA NORMATIVA ATTUALMENTE VIGENTE IN ITALIA PER IL DIRITTO ALL’INDEMNITA’ DI ACCOMPAGNAMENTO CON PARTICOLARE RIFERIMENTO AGLI IPOVEDENTI

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Abstract

Objectives: The article n.18/1980 presupposes, as condition "sine qua non" to obtain the indemnity of accompanying in case of civil disability, the recognition of total disability that prevents the so-called civil blind to work. Aim of the study is to compare the distress of the condition with the benefits of the Law.

Methods: The Research is based on a critical analysis of the article n.18/1980, with particular reference to severe low vision people.

Conclusions: Some medical jurisprudence thoughts are proposed on this contradictory law which limits both the development of potential working abilities of the severe low vision people and their inclusion into the work force. They would like to improve this law so to favour a real social integration of handicapped persons.

Introduction

As part of the ophthalmology medical examiner, the rules on civil disability retirement should certainly be flexible case by case, as they relate to a complex matter that involves both physical, psychological, and social aspects of the individual (4). These should therefore be aimed at the recognition of economic assistance for which the only rigid tabular references cannot systematically, in any way, summarize all the cases considered. In other words, the forensic medicine, dealing with health issues from a juridical perspective can not only be rationally and consistently application also because of the constant reference to the examined subject, and so the evaluation of the disabling cases has to be discretionary and based on the concrete individual case referring to the plurality of situations that can be observed, then moving away from the pure tabular references that cannot handle all the cases but necessarily they have to relate to cases in the abstract (5,6,7,8). Furthermore the prevailing case law does not consider the legal counseling in civil field for the recognition of civil disability as evidence or means of proof and cannot be arranged in order to acquire at the Acts evidentiary material that the parties involved have the burden of providing (Cass.Civ. 18.12.1970 n.2713,
Considerations of legal medicine on the regulation real in force in Italy for the law of accompaniment’s indemnity with detail related at the low sight patients.

Cass.Civ. 09.06.1972 n.1811, Cass.Civ. 25.07.1972 n.2534, Cass.Civ. 15.03.1975 n .1008, Cass.Civ. 05.04.1976 n.1184, Cass.Civ. 945 of 08.03.1977, Cass.Civ. 15.09.1986 n.5607, Cass.Civ. 17.10.1988 n.5645). So each case must be judged individually, since it is not the disease that needs to be evaluated, but the patient and each patient, as is known, is a reality different from all the others (9). For this reason, this study aims to explain and refute if possible, the disabling requirements established by law for the recognition of carer’s allowance (Article 1 of Law 18/1980) with the prescribed occupational disability, which today is the "sine qua non "for the recognition. Naturally, such a strict application of the wording of the law is exercised not only by the structures of the public administration appointed to the recognition of the right itself, that is, by the competent Medical Commissions provided for disabled people of first instance or for the Blind Civilians, but also by the Office of Technical Consultants appointed by the judge in the relevant specification disputes. Therefore, as we shall see, the lack of recognitions is often an interpretation of the legal situation completely different from the one that emerges from the literature in forensic medicine and the various judgments published about it over time and that represents case-law, unfortunately are still unrecognized or not implemented by these judicial bodies.

Discussion

Examining requests for patronage, it is clear that even today despite being universally attested the need to change as soon as the legislation which recognized the carer's allowance, there is still some doubt about its recognition in cases of serious conditions that do not presuppose a state of complete mental and physical prostration with immobilization in bed and / or a serious loss of the higher mental faculties that preclude the autonomous conduct of everyday activities, or to prevent an independent ambulation. In particular, this refers not only to the large group of neuromuscular diseases that cause an impairment of the functionality of the limbs such as the spastic quadriplegia, muscular dystrophy, multiple sclerosis, etc... but relatively to our specific specialist field of interest also to those purely sensory diseases, and especially those that result in a severe condition of bilateral low vision, such as proliferative diabetic retinopathy, pigmentosa retinitis, adverse outcomes of bilateral retinal detachment, the outcomes of glaucoma and congenital cataract, the retinopathy of Stargardt, etc.. (1,2,3).

It is necessary to highlight that these latter diseases are the cause of serious reductions unfortunately not infrequent in visual acuity (even at the limits of the legal blindness), as they can determine residues of the visus for eye ranging from values bilaterally of little higher than 1 / 10 up to the mere perception of hand movement that finally is legally equivalent also to the perception of "shadow and light" (10,16,17,18).

This impressive visual reduction, which of course is associated with a predictable state of depression which can lead to a real psychotic manifestation, is hardly fully understood and addressed in its severity by family members of the patient, as is often underestimated even by doctors of other specialties, consequently leading to a state of deep frustration in the visually impaired subject.

And then just the direct observation of such patients allows us to affirm that they needed, for the performance of common activities of daily living, continuous assistance from third parties but for which, incredibly, is still often denied such recognition because "they are not yet completely blind."
Considerations of legal medicine on the regulation real in force in Italy for the law of accompaniment’s indemnity with detail related at the low sight patients.

However paradoxically they can run even the risk of losing, in the case of a fortuitous recognition of compensation itself, the ability to maintain their jobs or find one in that, necessarily, are still considered to be unfit to 100%.

In this respect it should be recalled that Article 1 of the Law 18 of 02.11.1980 establishes, without limits of age or income, and with the exclusion of subjects in institutions paid by the State that the right to the accompaniment is available to: “… civilian disabled or invalids totally disabled for physical ailments or mental ... who are in the inability to ambulate without the aid of a permanent companion or, not being able to carry out daily tasks of life, need continuous support ... “.

The peremptory nature of the wording of the Law allows us to formulate some considerations not yet fully transposed by the legislator (19,20,21,22).

Firstly, it should be remembered that the indemnity is a charitable institution that originates from specific historical and social needs, as a means of economic compensation of the so-called "loss of earnings" and "actual damages," and its recognition comes from the confluence of three factors: economic, social and biological.

More precisely, in the economic factor, as mentioned, the loss of profit alternates to the actual damage, the latter linked to the economic burden that these patients have to bear to receive the medical support that they need.

The social aspect concerns instead the obvious observation that often the person concerned, or the member of the family who looks after him lacks a capacity-profit: the genesis of the termination of profit is therefore always severe impairment charged to the vegetative life and relationship. On the other hand, just because this is a "civil" disability, also the meaning in itself makes extensible its evaluation in the light of all the socially relevant activities, without necessarily the disability is referred to the manifestation of psycho-physical energies only in the specific work activities.

The biological aspect of the legal recognition in words is finally referred to the total incapacity for work that needs to be considered as permanent.

In fact, it is recalled that the permanent condition is not related to the immutability over time to the pathological condition in question, but to a disorder that lasts indefinitely, in prognostic terms, ie without a predictable clinical improvement over time: it is for this reason that the institution of the review, was born initially for retirement benefits for disability / incapacity INPS (art.9 Law n.222/1984) and later invoked by other public authorities (INAIL and disability support) if the conditions which gave rise to the specific remuneration have not changed in time.

Now, regardless of the above observations in the regulatory, it should be noted that it is not rare observation of individuals who although suffering from serious disabilities, fortunately still retain a minimal residual work capacity that can be used in practice but at the same time, to nature and degree of disease, are not able to perform in an autonomous way the common vital functions essential to a normal life (dressing, shopping, food preparation, personal hygiene, reaching the place of work, etc...).

In other words, by making the provision of such allowance to the requirement of total disability, there is a limit to the finding of unfair demands forwarded by those invalids, who even if they requires assistance, are not entirely unable to work.

In particular, focusing the attention to the serious visually impaired, even if the tables for the calculation of the percentages disabling, published with the Ministerial Decree of 05.02.1992 by the Ministry of Health, establish the total disability of 100% for the remaining bilateral visual acuity of less than 1 / 10, without considering the possible existence of other systemic diseases and the same eye diseases that led to such a massive reduction in visual acuity, you can not disagree that these individuals, who are unfortunately only able to perceive large objects at close range (and therefore cannot be considered self-sufficient for normal life activities ), must necessarily be excluded from the world of work (11,12,13,14,15).

In conclusion, with the current strict regulations there are only two possible radically different solutions:

1) a reduced earning capacity less than 100% is evaluated, but this way is denied a priori the recognition of an attendance allowance which is completely undeniable for those serious forms of disability as it has already been said. The judgment of partial disability, which even reproduces a real psycho-physical validity of the remaining cases examined, then leaves without fair compensation for the actual damage reported;

2) the invalid totally incapacitated and in need of accompaniment is declared, but in this way any minimum residual capacity of specific work is denied and this fact constitutes a valid basis to dismiss or, in other cases, prevents a useful placement in the world of work for the disabled still unemployed.
In fact, as is well known in accordance with relevant legislation the dismissal can take place, as well as in the cases provided for good cause or for good reason, even when at the request of the taxpayer or of his employer, the medical college responsible for disabling recognition ensures the loss of all remaining work capacity, or finally, when determining a danger to human health and to the safety of fellow workers as well as the safety of installations. As above, the rigid application of this provision of the law in terms of attendance allowance not only may divert the social expectation of the same but it is also in stark contrast to the current orientation of the cure for the civilian blind, who, on the contrary, benefit both from economic assistance that from the placement of choice for their most appropriate activities (receptionists, rehabilitation therapists, etc..). There is therefore a blatantly unfair and unequal treatment currently existing between a total blind worker and, for example, a quadriplegic with a severe low vision, who, being devoid of economic assistance referred to in Law 18/1980, in order to continue to provide a sufficient work, must reach the working place or to be assisted for their daily needs at his own expense.

It thus follows clearly that often we forget that the purpose of the safeguarding of the welfare must always be the invalid and not the crippling disease, so the ministerial tables indicative of the percentage of disability, which are a mere rough guide, however, useful to avoid any discrepancies of evaluation, should not be isolated from social reality and working individual aptitude.

In other words, although the above tables take as disabling reference the body impairment of the subject, by linking the concept of working capacity to a mere anatomical aspect of the worker, it is clear now that the "physical" enhancement of the employment, compared to the more properly "intellectual" aspect, is rightly obsolete.

Scientific development has produced an inevitable downsizing of the work activities towards predominantly manifestations indicative of motor, promoting diversified activities in which prevails more and more the conceptual component. Scientific development has produced a fact inevitable downsizing of the work activities to predominantly motor manifestation, promoting diversified activities in which prevails more and more the conceptual component.

In this context, the traditional difference between "normal" person and "disabled" person, as identified by the physical diversity for the performance of manual production, tends to shrink more and more over time.

Therefore, the total disability required by the legislature in some cases can become, rather than a biological requirement, an administrative source of social inequity that distorts the charitable spirit of the law.

And maybe is for this reason that the 21.11.1988, through the Law 508-3 second paragraph of article 1 was enacted that: "... the carer's allowance is not incompatible with the performance of work activities .. . ", conforming to the circular n° 500 of the Ministry of Health of 11.02.1987 in which it was sought to rectify this obvious problem, supporting the possibility of working even for those who need constant assistance, but limited to merely residual work activities.

Of this approach there is finally also a Circular No. 14 of 09.28.1992 of the Ministry of the Treasury that, with regard to some clarifications on the system of assessment of civil invalidity, so literally reads as follows on page 10: "... the granting an attendance allowance is linked to the performance of functions that are not necessarily in connection with the performance of work, but are necessary for the autonomy of the individual in respect of a number of conditions, at least elementary , of the vegetative life and of the relationships of each day".

It follows that the benefit can be gained no matter what are the requirements needed for the performance of work and then by conditions that, while maintaining the working capacity of the person, require the permanent presence of a person in order to ensure him to perform those acts that are essential for everyday life. This regard, for example, the quadriplegic with intact mental functions, the sick progressive muscular atrophy even at the stage of state, cases of severe muscular dystrophies, etc., at least until the more advanced states of the disease is reached... ".These interventions, however, are still far from a radical and advocated legislative reform, as it continues in the same circular stating enigmatically, that the key requirement for the recognition of an attendance allowance is, and of course remains, the total disability.

Conclusions

Although the current legislation that regulates the grant of allowance in word dates back to 1980 and since then it is necessary, as already mentioned, in the subject encounter a condition of inability to get to the recognition of that right, in later years under the pressure of doctrinal reflections specialist there has been the need to criticize such a strict
Considerations of legal medicine on the regulation real in force in Italy for the law of accompaniment’s indemnity with detail related at the low sight patients.

prescription disabling with different legal interpretations, but unfortunately it is still not yet clear what the exact requirement which spells this right.

It is also common experience that even the most severe organic lesion, always leaves at least a basic working ability, as long as the disabled person performing a task that is not inconsistent with the disability itself, as well as the recovery of the disabled person with proper training can make him able to carry out an activity suited to his abilities.

Now, given that each individual socially exists as a working element with his own economic value, and that principle is protected by the following provisions of the Constitution: "... every citizen has a duty to perform, according to his ability and his own choices, an activity or a function that contributes to the material and spiritual progress of society (art. 4) ..., the disabled and handicapped persons have the right to education and vocational training (art.38) ... " it is clear that the employment of the disabled must be based not on biological impairment or on the lack thereof but with adequate rehabilitation and professional qualification, on his effective capacity and / or personal skills.

Conversely, it is inconceivable that an individual, with mental efficiency but with sensory and / or mobility impaired ability or completely abolished, is denied the attendance of allowance just because being able to work in suitable activities to his small attitudes, just because he is not considered totally invalid.

Also because his earning capacity or ability to secure, by virtue of his biological potential, an useful insertion into the world of work is the assumption of dignity as well as economic and social redemption, and therefore the operationally engaging in the world of work where possible and in especially for the younger ones, is not only a means of livelihood but also, and above all a need for realization of the human person that must be strongly protected and assisted by a State with a high level of civilization and culture like ours (23).

Table shows the percentages of disability

The criteria for assessing disability civil currently applied are contained in the Ministerial Decree of 05/02/1992 on the "Approval of the new table shows the percentage of disability for disabilities and disabling diseases." This new table refers to the complain incidence of illness in relation to the working capacity and hence for the assessment of deficits anatomofunctional ophthalmologic should be considered:

1) the decrease in visual acuity must be evaluated with the best possible correction, except that the anisometropia is such that the lens power required is too high, in which case it always add five percentage points;
2) the perimetric defects resulting from congenital or acquired glaucoma should always be assessed separately;
3) visual defects concerning both eyes are evaluated according to a specific table, in which the overall visual acuity is indicated by the horizontal column for an eye and vertical for the other eye, for which the point of intersection will read the percentage of disability.
### TABLE ORDERED IN BANDS

**BAND 91% - 100%:**
- Binocular blindness = 100%;
- Monocular blindness with visual acuity in the eye contralateral inf. 1/20 = 91% - 100%.

**BAND 81% - 90%:**
- Monocular blindness with visual acuity in the eye contralateral sup. 1/20 and inf. 3/50 = 81% - 90%.

**BAND 71% - 80%:**
- Monocular blindness with contralateral visual acuity sup. 3/50 inf and. 1/10 and reduction of the visual field of 30 ø = 71% -80%;
- Concentric narrowing of the visual field, with residue field inf. at 10 ø in both eyes = 80%.

**BAND 61% - 70%:**
- Bitemporal hemianopia = 60%;
- Monocular hemianopsia without preservation of central visual acuity = 60%.

**BAND 51% - 60%:**
- Hemianopia lower = 41%;
- Syndrome with occipital hemianopia contralateral = 41% - 50%.

**BAND 41% - 50%:**
- Apathy without possibility of applying aesthetic prosthesis = 31% - 40%;
- Homonymous hemianopia = 40%;
- Concentric narrowing of the visual field, with residue field between 10 ø and 30 ø in both eyes = 31% -40%.

**BAND 31% - 40%:**
- Anophthalmos with possibility of applying aesthetic prosthesis = 30%;
- Monocular blindness = 30%;
- Diplopia in primary position = 25%;
- Plegia of the oculomotor muscles extrinsic (3rd cranial nerve) = 21% - 30%.

**BAND 21% - 30%:**
- Diplopia in the look down = 20%;
- Monocular hemianopsia with preservation of central visual acuity = 20%;
- Concentric narrowing of the visual field, with residue field inf. at 10 ø in a single eye = 15%;
- Parietal syndrome with hemianopia Dial = 20%;
- Glaucome acquired = 11% -20%.

**BAND 11% - 20%:**
- Cataracts without visual impairment and possible surgery = 5%;
- Keratoconus with correction with glasses or contact lenses = 5%.
Diplopia in the look up = 5%;
Diplopia in lateral gaze = 10%;
Dyschromatopsia congenital or acquired = 1% - 10%;
Hemianopia nasal = 10%;
Hemianopia upper = 10%;
Diseases of the vitreous with visual acuity inf. to 5/10 = 10%;
Quadrantopsie (upper or lower) = 10%;
Concentric narrowing of the visual field with field residue between 10 ° and 30 ° in one eye = 10%;
Coloboma = 5%;
Chorioretinitis (scarring without visual impairment) = 5%;
Retinal detachment (operated with recovery of function) = 5%;
Ectropion eyelid = 8%;
Eyelid entropion = 1% - 10%;
Congenital glaucoma = 10%;
Dry eye = 1% - 10%;
Paralysis of the orbicularis muscle = 1% - 10%;
Plegia of the oculomotor muscles extrinsic (4th or 6th cranial nerve) = 1% - 10%;
Epiphora = 1% - 10%.

References

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