

community. Unfortunately, however, her psychological problems worsened during that period. In December, 1988, her treating psychologist reported that she was "significantly depressed" and that this depression was "affecting her ability to work, do school work, parent her son, interact with peers, etc." In that report, the psychologist opined: "I do not believe she is able to handle regular work demands at the present time, and would thus consider her to be disabled."

It appears that, since that time, the petitioner's condition continued to worsen. In July, 1989, her psychologist reported that the petitioner had left school and was no longer involved in her community volunteer work (rescue squad). In response to interrogatories related to the "listings" (see below) the psychologist stated that the petitioner "does not eat", that she is "unable to sleep", that she has "no energy or motivation six months does nothing"(sic), that her memory and reasoning were "impaired", and that she "actively talks of suicide". He also stated that the petitioner has become "fearful of people, going out" and that she had "extreme conflict with relatives".

In an earlier report (March, 1989) the psychologist had offered the following prognosis:

"Due to chronic depression, anxiety, and phobia around people, (petitioner) is prevented from sustained full time work or schooling for twelve months."

It appears that the petitioner had left school by this time.

In his most recent report, dated September 1, 1989, the psychologist stated:

"(Petitioner) has been disabled, due to psychotic conditions I have described to you, at least for the period of September 1988 to the present. I expect this disability to prevent her from working until September, 1990.

The above assessments are consistent with an earlier (May, 1987) consultative psychological evaluation and with statements and diagnoses from the petitioner's family physician (see report marked "received 7/15/87"). The above description by the treating psychologist of the petitioner's symptoms and his opinions and prognoses regarding her inability to work are uncontroverted by any medical evidence of record. Therefore, it is found that the petitioner since at least September, 1988, has been unable to perform any substantial gainful activity on a regular basis, and that her disability has continued for a period of twelve consecutive months.

ORDER

The Department's decision is reversed.

REASONS

Medicaid Manual Section M211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her

unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

At first blush, this seems to be another case in which DDS simply disregarded the opinion of a treating medical source. However, indications that the petitioner, at least as of December, 1988, was enrolled full-time in a bachelor degree program and was doing part-time work on campus, and volunteer work in her community, could reasonably have been viewed as evidence contradicting the opinions by the petitioner's treating psychologist that she was unable to work. Unfortunately, however, subsequent evidence has shown the accuracy of the psychologist's pessimistic assessment. The petitioner's enrollment in college and her involvement in a part-time library job and in community volunteer work proved to be short-lived. In retrospect, it cannot reasonably be viewed as evidence that the petitioner at that time was capable of performing substantial gainful activity on a regular, competitive, and sustained basis.

As all the medical evidence indicates, the petitioner's problems are chronic. It appears the petitioner will require long-term therapy if she is to become self-supporting. Fortunately, the petitioner is well-educated and she appears to be motivated to seek assistance, both medical and vocational, that will enable her to return to the work force. In the meantime, however, it must be concluded that the petitioner is disabled and that her

disability has been ongoing at least since September, 1988.

Uncontroverted medical evidence also establishes that the petitioner meets the "listings of impairments" (20 C.F.R. § 404, Subpart P. Appendix I) for both "affective disorders"¹ (§ 12.04) and "anxiety-related disorders".²

FOOTNOTES

¹Section 12.04 of the listings provides:

12.04 Affective Disorders:

Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Depressive syndrome characterized by at least four of the following:

- a. Anhedonia or pervasive loss of interest in almost all activities; or
- b. Appetite disturbance with change in weight; or
- c. Sleep disturbance; or
- d. Psychomotor agitation or retardation; or
- e. Decreased energy; or
- f. Feelings of guilt or worthlessness; or
- g. Difficulty concentrating or thinking; or
- h. Thoughts of suicide; or
- i. Hallucinations, delusions or paranoid thinking; or

2. Manic syndrome characterized by at least three of the following:

- a. Hyperactivity; or
- b. Pressure of speech; or
- c. Flight of ideas; or
- d. Inflated self-esteem; or
- e. Decreased need for sleep; or

- f. Easy distractibility; or
- g. Involvement in activities that have a high probability of painful consequences which are not recognized; or
- h. Hallucinations, delusions or paranoid thinking;

OR

3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes);

AND

B. Resulting in at least two of the following:

- 1. Marked restriction of activities of daily living; or
- 2. Marked difficulties in maintaining social functioning; or
- 3. Deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or
- 4. Repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors).

As found above, the petitioner meets ☹ (a)(b)(c)(e)(g) and (h) under part (A)(1) and ☹ (1),(2) and (4) under part (B).

²Section 12.06 of the listings provides:

12.06 Anxiety Related Disorders:

In these disorders anxiety is either the predominant disturbance or it is experienced if the individual attempts to master symptoms; for example, confronting the dreaded object or situation in a phobic disorder or resisting the obsessions or compulsions in obsessive compulsive disorders.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in both A and B are satisfied.

A. Medically documented findings of at least one of the following:

1. Generalized persistent anxiety accompanied by three or four of the following signs or symptoms:

- a. Motor tension; or
- b. Autonomic hyperactivity; or
- c. Apprehensive expectation; or
- d. Vigilance and scanning;

or

2. A persistent irrational fear of a specific object, activity, or situation which results in a compelling desire to avoid the dreaded object, activity, or situation; or

3. Recurrent severe panic attacks manifested by a sudden unpredictable onset of intense apprehension, fear, terror and sense of impending doom occurring on the average of at least once a week; or

4. Recurrent obsessions or compulsions which are a source of marked distress; or

5. Recurrent and intrusive recollections of a traumatic experience, which are a source of marked distress;

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or

2. Marked difficulties in maintaining social functioning; or

3. Deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or

4. Repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from the situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors);

OR

C. Resulting in complete inability to function independently outside the area of one's home.

As found above, the petitioner meets §§ (A)(4) and (B)(1)(2) and (4).

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