

She continues to ruminate and worry about family members, has difficulty sleeping without medication. She does not enjoy many of the usual activities which she had participated in with her family. This appears to be settling in some form of chronic, or subchronic form.

She is not actively seeking out psychological assistance at the present time, which could be physically advantageous for her.

As she continues to improve physically, it might be beneficial for her to improve some of the modest occupational interests which she had prior to the CVA and that might further enhance her diminished self-esteem and help distract her from the preoccupation with her anticipatory fears.

The petitioner's treating physician, in a report dated September 1, 1989, offered the following comment regarding the petitioner's mental problems:

Thanks for your request for information on [petitioner]. I have known her since 1985 and I agree that she currently has adjustment reaction with depressed mood. If she has always been a nervous woman--jittery, easily upset--I think that, for the most part, this has been manifested by her not straying far from home. Her life has been relatively constrained. It has been difficult for her to carry through long-term tasks and sometimes to follow medical directions. I believe that [petitioner] has always been an anxious woman. Her anxiety was compounded by her having the stroke, which resulted in her current long-term depression.

I have grave doubts whether [petitioner], with her limited skills, physical impairment and difficulty concentrating, would be able to hold a job for very long. I have real doubts whether she can incorporate the teaching she would need to carry on a job. I believe that, although she has made great strides in recovering from her stroke, gainful employment for her is just not in the picture.

On a separate "Mental Residual Functional Capacity Assessment" form (the same one used by DDS), the treating physician indicated that the petitioner had "markedly limited" abilities in the following areas: "the ability to

maintain attention and concentration for extended periods", "the ability to carry out detailed instructions", and "the ability to complete a normal workday and workweek without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods."

Although the petitioner's treating physician is not, himself, a psychiatrist, it is found that his assessments of the petitioner are entirely consistent with the observations of the department's consulting psychiatrist (supra) and are essentially uncontroverted by any other medical evidence. Based on this evidence, it is found that the petitioner, since her stroke, has been unable to perform any substantial gainful activity on a regular, sustained, and competitive basis.

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.

As noted above, uncontroverted medical evidence establishes that the petitioner fully meets the above definition.² The department's decision is, therefore, reversed.

FOOTNOTES

¹As defined by 20 C.F.R. § 416.967(b).

²Even if it could be found that the petitioner had some residual functional capacity for work-related activity, certainly her mental problems would preclude many "stressful" jobs--at least as many as would be precluded by 6 more months of age, at which time she would be found disabled based solely on her physical limitations. See 20 C.F.R. § 404, Subpart P, Appendix II, Rule 202.04. Thus, using the grid regulations as a "guide" in determining the existence of jobs in the national economy (see Id. § 200.00(d)), a finding of disabled would still be required.

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