



Rhode Island Executive Office of Health and Human Services  
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Docket # 15-86  
Hearing Date: March 26, 2015

Date: April 29, 2015



### **ADMINISTRATIVE HEARING DECISION**

The Administrative Hearing that you requested has been decided against you upon a de novo (new and independent) review of the full record of hearing. During the course of the proceeding, the following issue(s) and Agency regulation(s) were the matters before the hearing:

**EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES (EOHHS)  
MEDICAID CODE OF ADMINISTRATIVE RULES (MCAR)  
SECTION: 0352.15 ELIGIBILITY BASED ON DISABILITY**

The facts of your case, the Agency rules and regulations, and the complete administrative decision made in this matter follow. Your rights to judicial review of this decision are found on the last page.

Copies of this decision have been sent to the following: You (the appellant), and Agency representatives: Julie Hopkins RN, Lori Gardiner, and Neil Weintraub.

Present at the hearing were: You (the appellant), and Julie Hopkins, RN (Agency representative).

**EOHHS RULES AND REGULATIONS:**

Please see the attached APPENDIX for pertinent excerpts from the Rhode Island Department of Human Services Policy Manual.

**APPEAL RIGHTS:**

Please see attached NOTICE OF APPELLATE RIGHTS at the end of this decision.

**ISSUE:** Is the appellant disabled for the purposes of the Medical Assistance Program (MA)?

**TESTIMONY AT HEARING:**

**The Agency representative testified:**

- In order to be eligible for Medical Assistance (MA) an applicant must be either aged (age 65 years or older), blind, or disabled.
- The Medical Assistance Review Team (MART) determines disability for the MA Program.
- The MART is comprised of public health nurses, a social worker and doctors specializing in internal medicine, surgery, psychology and vocational rehabilitation.
- To be considered disabled for the purposes of the Medical Assistance Program, the appellant must have a medically determinable impairment that is severe enough to render her incapable of any type of work, not necessarily her past work. In addition, the impairment must last, or be expected to last for a continuous period of not less than twelve (12) months.
- The MART follows the same five-step evaluation as SSI for determining whether someone is disabled.
- The MART reviewed an Agency MA-63 form (Physician's Examination Report), an Agency AP-70 form (Information for the Determination of Disability), and records of Angell Street Psychiatry, and Kent Hospital.
- Consultative examination reports were requested from DDS (Disability Determination Services), but none were received.
- Records were also requested from Rhode Island Hospital, but none were found for the timeframe requested.
- She had completed an application for MAGI (Modified Adjusted Gross Income) health insurance, and did not claim to be disabled when asked about disability on that application.
- A review of the available records included information relative to post-traumatic stress disorder (PTSD), dissociative disorder, recurrent major depressive disorder (MDD), anxiety disorder, and alcohol abuse.

- Kent Hospital records documented admission after she had presented to the emergency room (ER) with suicidal ideation while intoxicated.
- She was started on a mood stabilizers and a sleep medication.
- Records showed that she most likely had a personality disorder and PTSD, although the primary diagnosis listed was adjustment disorder with depressed mood
- There were no documents supporting dissociative disorder.
- She was stable at discharge from the hospital and had plans to follow up with Angell Street Psychiatry.
- Her initial appointment at Angell Street was on June 9, 2014.
- She reported childhood issues including poor behavior and ADHD, but had not sought any treatment as an adult.
- She was not on any medication.
- On June 16, 2014 at a follow up appointment she reported increased anxiety, and a clinician added anti-anxiety medication to her treatment.
- One week later, that medication was stopped due to side effects, and new meds were prescribed.
- Angell Street progress notes were redundant, and without a current detailed assessment of her condition.
- Reasons for some medication changes were not clearly explained.
- An August 6, 2014 treatment note discussed a recent legal charge of simple assault and disorderly conduct, which occurred while she was intoxicated.
- The event had occurred one day prior to the Kent Hospital admission.
- She reported being motivated to abstain from substance abuse, and was considering job opportunities
- The records reviewed included multiple and brief medication trials, none of which were sufficient in length to determine the impact on symptoms.

- The attempt to abstain from alcohol was very recent, and could be expected to alter her symptoms and the effectiveness of medication.
- Evidence did not support the existence of a medically determinable impairment that would limit functioning, meet the durational requirements, or have residual deficits when following prescribed treatment.
- She was not disabled for the purpose of the Medical Assistance program.

**The appellant testified:**

- She is presently unemployed.
- She is currently 21 years old, has a GED education and no relevant work history.
- She has been treated at Angell Street for about 1 ½ years.
- When she first started that treatment relationship she saw a psychiatrist who performed a complete psychiatric evaluation.
- She has appointments with a psychiatric clinical nurse specialist (PCNS) about every two weeks.
- She has applied for SSI, and is pending a consultative examination scheduled by DDS.
- Within the last year, she has also been treated at Rhode Island Hospital, and at Kent Hospital.
- She was treated at both hospital ERs, and was not admitted at Rhode Island Hospital, although she was admitted to Kent Hospital.
- She asked her PCNS for a written statement about her conditions, and was given a note listing PTSD since childhood, social avoidance, unable to go out in public, nightmares, dissociative disorder since childhood, different personalities with different names, lack of awareness of surroundings, and opining that all conditions are severe, and significantly affect functioning.
- The PCNS had elaborated more on her earlier statements, as she had gotten to know her better.
- She cannot go to public places by herself.

- If she is left alone she tends to cry or run away.
- She had been scheduled for a mental evaluation for her SSI case, but had to reschedule, and does not know how long the wait will be.
- She does not have a work history due to the limitations of her conditions.
- She feels that dissociative disorder is the primary barrier to her ability to find and sustain employment.
- She doesn't usually know where she is.
- She talks to people who are not there.
- She makes things up in her mind which was an escape mechanism she learned while growing up.
- She doesn't think as most people do.
- Her current PCNS diagnosed the dissociative condition.
- She has difficulty completing personal care, because she thinks that when she dresses or showers someone is watching her.
- She can manage errands if someone is with her.
- She prefers to sleep in the woods and stay away from people.
- She uses a relative's address as her mailing address.
- She had tried going to a shelter, but had her backpack stolen there.
- She was told that she needed to look for work so that she could pay fines.
- She did not recall being advised to attend job counselling services as documented by her therapist.
- She is not attending AA, but states she has not had a drink in three months.
- She has stayed on anxiety medications for a maximum of two months.
- She is not currently following a prescribed treatment regimen.
- She does have health insurance.

- When she applied for health insurance, she completed the information over the phone.
- She has difficulty remembering instructions.
- She does not concentrate well on anything, and is often distracted.
- She does not have any hobbies or recreational activities she enjoys.
- She did try to go to a couple of job interviews, but found herself sweating and nervous, and could not complete the interviews.
- She does not drive, and does not know if she could navigate public transportation.
- She requested to hold the record of hearing open for the submission of additional evidence.

**FINDINGS OF FACT:**

- The appellant filed an application for Medical Assistance (MA) on September 8, 2014.
- The Agency issued a written notice of denial of MA dated November 24, 2014.
- The appellant filed a timely request for hearing received by the Agency on December 24, 2014.
- Per the appellant's request, the hearing scheduled for February 19, 2015 was rescheduled to March 26, 2015.
- Per the appellant's request, the record of hearing was held open through the close of business on April 23, 2015 for the submission of additional evidence.
- No additional evidence was received during the held open period.
- As of the date of this decision, the MART had not withdrawn the notice under appeal.
- The appellant is not engaging in substantial gainful activity.
- The appellant has not met her burden of proof to establish the existence of a severe, medically determinable impairment which meets the durational requirements, and that results in a measurable impact on functioning.
- The appellant is not disabled as defined in the Social Security Act.
- The appellant is not disabled for the purposes of the Medical Assistance Program.

## DISCUSSION OF THE MEDICAL EVIDENCE RECORD:

The record of hearing consists of:

- ✓ An Agency MA-63 dated October 6, 2014 and signed by Michelle Crandall, PCNS (psychiatric clinical nurse specialist).
- ✓ An updated diagnosis page from an Agency MA-63, undated and signed by Michelle Crandall PCNS. (exhibit #1)
- ✓ An Agency AP-70 dated September 29, 2014 and signed by the appellant.
- ✓ Records of Angell Street Psychiatry for June 9, 2014 to October 4, 2014.
- ✓ Records of Kent Hospital for August 7, 2014 to August 12, 2014
- ✓ Hearing testimony.

Medical and other evidence of an individual's impairment is treated consistent with (20 CFR 416.913). The medical evidence record was held open through the close of business on April 23, 2015 for the submission of additional evidence. Release forms were prepared for the appellant to update Angell Street psychiatry records, and instructions were given for obtaining the consultative examination report of the psychiatric evaluation ordered by DDS (Disability Determination Services). The agreement was summarized in writing and provided to both parties. As of the close of business on April 23, 2015, no new information had been received. Additionally, the appellant did not request extension of the deadline to submit new evidence, and she allowed the record to close without the evidence identified as essential during the hearing.

According to 20 CFR 416.916 (If you fail to submit medical and other evidence): You must co-operate in furnishing us with, or in helping us to obtain or identify, available medical or other evidence about your impairment(s). When you fail to cooperate with us in obtaining evidence, we will have to make a decision based on the information available in your case. We will not excuse you from giving us evidence because you have religious or personal reasons against medical examinations, tests, or treatment.

All medical opinion evidence is evaluated in accordance with the factors set forth at (20 CFR 416.927). In this matter, the evidence record consists of one hospital admission, and four months of office notes from a psychiatric clinical nurse specialist (PCNS) and a licensed clinical social worker (LICSW). None of those sources have provided a longitudinal record documenting the nature and extent of care that would justify controlling weight of opinion. Opinions of the PCNS noted on two Agency MA-63 forms were not well detailed, and not supported by the existing evidence record. Outside of the brief hospital stay, there were no evaluations completed by a psychiatrist or psychologist.

The MART is considered a non-examining source when expressing opinions regarding an individual's condition. At the time of application, the MART had received limited progress notes which failed to support some diagnoses, or to explain details of treatment. Lack of specific information led them to a conclusion that she had not established the existence of severe impairment with reliable

clinical and diagnostic evidence. No new evidence has been received, and the MART decision remains unchanged as of the date of this decision.

At the time of application, the appellant alleged that symptoms of obsessive compulsive disorder (OCD), post traumatic stress disorder (PTSD), anxiety, depression, and bipolar disorder impaired her. Records received for agency review also introduced dissociative disorder, adjustment disorder, and substance abuse.

Both the hospital psychiatrist and her PCNS believe that there had been a history of early trauma. The appellant appeared at Kent Hospital in August of last year quite intoxicated with increased irritability, and depressed mood. It is not possible from this one occurrence to determine what symptoms were associated with the alcohol abuse as opposed to actual psychiatric symptoms. During her hospital admission she was monitored for safety and stabilized with medication and counseling. Once stabilized, she was able to speak coherently. Laboratory screenings were unremarkable, except for the elevated alcohol level. She was agreeable and motivated for ongoing counseling. She was expected to continue with her regular counseling sessions as a follow up.

When alcohol abuse is established to be a medically determinable impairment for consideration within the sequential evaluation process, the material nature of the addiction toward the overall impairment is addressed at any step that is the last step in a particular case only if there is first a finding of disability. (20 CFR 416.935).

The records do not document diagnoses of OCD or bipolar disorder. References are made to PTSD and dissociative disorder, but there is no information about who diagnosed the conditions originally, when, or why. Records contained one anecdotal example of the appellant choosing to use a different name for three days as summarized by a social worker. That incident alone does not sufficiently support the existence of dissociative disorder. There are no evaluations or diagnostic tests included. Medication management and psychotherapy treatment were indicated, although there is no evidence relative to treatment compliance or effectiveness. As a result it is not possible to establish whether treatment can be expected to reduce or eliminate symptoms necessary to restore ability to function within a work environment.

At the time of application, the appellant's mental health treating source completed an MA-63 form opining that she had slight to moderate limitations to carrying out most mental activities, although social interaction was more markedly impaired. Patterns of social isolation including avoidance of public places were noted. On the date of hearing, however, the appellant arranged transportation to the hearing, she appeared unaccompanied, and appropriately interacted with this Appeals Officer and a registered nurse representing the agency. She made an informed decision to testify without assistance of legal

counsel and to assume responsibility for developing the evidence record. Although she may prefer to avoid socialization, her behavior did not demonstrate an inability to interact with others.

She was able to complete high school equivalency requirements to obtain a GED, and indicated on her AP-70 form that she was capable of independently completely all of her activities of daily living (ADLs). Starting in June 2014 and continuing throughout the available records, her mental status evaluations revealed that she was oriented in all spheres, cooperative, displayed normal speech, showed full range of affect, and no harmful ideations or delusions. Sleep was good, appetite and weight were both normal, concentration was good and memory was intact. She did experience worry, depressed mood and some obsessive thoughts. A plan was made to treat the adverse conditions with medication management and counseling. Over time, several adjustments were made to her medications, and in July cognitive behavioral therapies were utilized to alleviate anxiety and depression as well as to help her in developing coping skills.

Worries increased by her first August visit due to legal charges of simple assault and disorderly conduct which she did not recall due to the level of her intoxication at the time. She had required a five-day admission to Kent Hospital. She responded well to treatment, was stabilized, and discharged with follow up plans to return to her therapists at Angell Street Psychiatry. She felt the incident would motivate her to abstain from substance use, and was referred to a vocational program to explore job opportunities. Many of the mental health office notes are repetitive, and although they describe certain complaints, they do not offer much detail regarding medication compliance or treatment effectiveness. Documentation of office visits ended on October 8, 2014 with little information relative to her progress, limited support for the diagnoses listed, and vague discussion of the functional impact of her conditions.

**CONCLUSION:**

In order to be eligible for Medical Assistance (MA) benefits, an individual must be either aged (65 years or older), blind, or disabled. When the individual is clearly not aged or blind and the claim of disability has been made, the Agency reviews the evidence in order to determine the presence of a characteristic of eligibility for the Medical Assistance Program based upon disability. Disability is defined as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment or combination of impairments that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve (12) months.

Under the authority of the Social Security Act, the Social Security Administration has established a **five-step** sequential evaluation process for determining whether or not an individual is disabled (20 CFR 416.920). DHS policy directs that disability determination for the purposes of the MA program shall be determined according to the Social Security sequential evaluation process. The individual claimant bears the burden of meeting steps one through four, while the burden shifts to DHS to meet step five. The steps must be followed in sequence. If it is determined that the individual is disabled or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step. If it cannot be determined that the individual is disabled or not disabled at a step, the evaluation continues to the next step.

**Step one:** A determination is made if the individual is engaging in substantial gainful activity (20 CFR 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. Substantial work activity is work that involves doing significant physical or mental activities (20 CFR 416.972(a)). Gainful work activity is work that is usually done for pay or profit, whether or not a profit is realized (20 CFR 416.972(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that he/she has demonstrated the ability to engage in SGA (20 CFR 416.974 and 416.975). If an individual is actually engaging in SGA, he/she will not be found disabled, regardless of how severe his/her physical or mental impairments are, and regardless of his/her age, education and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

The appellant has testified that she is not currently working. As there is no evidence that the appellant is engaging in SGA, the evaluation continues to step two.

**Step two:** A determination is made whether the individual has a medically determinable impairment that is severe, or a combination of impairments that is severe (20 CFR 416.920(c)) and whether the impairment has lasted or is expected to last for a continuous period of at least twelve months (20 CFR 416.909). If the durational standard is not met, he/she is not disabled. An impairment or combination of impairments is not severe within the meaning of the regulations if it does not significantly limit an individual's physical or mental ability to perform basic work activities. Examples of basic work activities are listed at (20 CFR 416.921(b)). A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only by the individual's statement of symptoms. Symptoms, signs and laboratory findings are defined as set forth in (20 CFR 416.928). In determining severity, consideration is given to the combined effect of all of the individual's impairments without regard to whether any single impairment, if considered separately, would be of sufficient severity (20 CFR 416.923). If a medically severe combination of impairments is found, the combined impact of the impairments will be considered throughout the disability determination process. If the individual does not have a severe medically determinable impairment or combination of impairments, he/she will not be found disabled. Factors including age, education and work experience are not considered at step two. Step two is a *de minimis* standard. Thus, in any case where an impairment (or multiple impairments considered in combination) has more than a minimal effect on an individual's ability to perform one or more basic work activities, adjudication must continue beyond step two in the sequential evaluation process.

In summary, the appellant has alleged that mental disorders including OCD, PTSD, anxiety, depression, and bipolar disorder impair her. Medical records do report some episodes of depressive symptoms and anxiety which appear to stabilize when targeted treatment is given. Unexplained changes of medication regimen and lack of information regarding treatment compliance and effectiveness fall short of establishing an expectation that once treated, her conditions would rule out ability to perform basic work activities. Treating source diagnoses of dissociative disorder and adjustment disorder appear to be more theoretical than backed by medical facts.

Evidence includes just one emergency visit within the past year, which was primarily triggered by substance abuse. Hospital treatment as documented was highly successful, and follow up was arranged. Testimony includes the appellant's report of a three-month abstinence from substance abuse. The evidence records of hearing do not, however, contain any 2014-2015 clinical or diagnostic mental health assessments with explanation of prescribed treatment methods, proof of compliance and effectiveness of treatment, or documentation supporting sobriety.

At step two of the sequential evaluation, the appellant bears the burden of proof. The record, as it exists, reveals that the appellant has not met her burden of proof relative to the requirement to support allegations of disability with acceptable clinical and diagnostic medical evidence. Although the evidence documented some history of conditions requiring medical attention, the records do not establish that a medically determinable impairment with a measurable impact on functional ability has persisted for a continuous period of twelve months, or could be expected to do so. Therefore, the sequential evaluation of disability ends at Step two.

After careful and considerate review of the Agency's policies as well as the evidence and testimony submitted, this Appeals Officer concludes that the appellant is not disabled as defined in the Social Security Act, and for the purpose of the Medical Assistance Program.

**Pursuant to DHS Policy General Provisions section 0110.60.05, action required by this decision, if any, completed by the Agency representative must be confirmed in writing to this Hearing Officer.**



Carol J. Ouellette  
Appeals Officer

## APPENDIX

### 0352.15 ELIGIBILITY BASED ON DISABILITY

REV:07/2010

- A. To qualify for Medical Assistance, an individual or member of a couple must be age 65 years or older, blind or disabled.
- B. The Department evaluates disability for Medical Assistance in accordance with applicable law including the Social Security Act and regulations (20 C.F.R. sec. 416.901-416.998).
  - 1. For any adult to be eligible for Medical Assistance because of a disability, he/she must be unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death, or which has lasted, or can be expected to last for a continuous period of not less than twelve (12) months (20 C.F.R. sec. 416.905).
  - 2. The medical impairment must make the individual unable to do his/her past relevant work (which is defined as "work that you have done within the past 15 years, that was substantial gainful activity, and that lasted long enough for you to learn to do it" (20 C.F.R. sec. 416.960(b)) or any other substantial gainful employment that exists in the national economy (20 C.F.R. sec. 416.905).
  - 3. The physical or mental impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. The individual's statements alone are not enough to show the existence of impairments (20 C.F.R. sec. 416.908).

### 0352.15.05 Determination of Disability

REV:07/2010

- A. Individuals who receive RSDI or SSI based on disability meet the criteria for disability.
  - 1. A copy of the award letter or similar documentation from the Social Security Administration is acceptable verification of the disability characteristic.
  - 2. For individuals who were receiving SSI based on disability and were closed upon entrance into a group care facility because their income exceeds the SSI standard for individuals in group care, a copy of the SSI award letter serves as verification of the disability characteristic.

- B. For all others, a disability review must be completed and a positive finding of disability must be made before eligibility for MA based on disability can be established.
1. In such cases, it is the responsibility of the agency representative to provide the applicant with the following:
    - a. Form letter AP-125, explaining the disability review process
    - b. Form MA-63, the Physician Examination Report with instructions
    - c. Form AP-70, the applicant's report of Information for Determination of Disability
    - d. Three copies of form DHS-25M, Release of Medical Information
    - e. A pre-addressed return envelope
  2. When returned to DHS, the completed forms and/or other medical or social data are date stamped and promptly transmitted under cover of form AP-65 to the MA Review Team (MART).
    - a. If the completed forms are not received within thirty (30) days of application, a reminder notice is sent to the applicant stating medical evidence of their disability has not been provided and needs to be submitted as soon as possible.
    - b. If all completed forms are not received within forty-five (45) days from the date of application, the referral to MART is made with the documentation received as of that date.
  3. It is the responsibility of the applicant to provide medical and other information and evidence required for a determination of disability.
    - a. The applicant's physician may submit copies of diagnostic tests which support the finding of disability.
    - b. The physician may also choose to submit a copy of the applicant's medical records or a letter which includes all relevant information (in lieu of or in addition to the MA-63).

### **0352.15.10      Responsibility of the MART**

REV:07/2010

- A. The Medical Assistance Review Team (MART) is responsible to:
1. Make every reasonable effort to assist the applicant in obtaining any additional medical reports needed to make a disability decision.
    - a. Every reasonable effort is defined as one initial and, if necessary, one follow-up request for information.
    - b. The applicant must sign a release of information giving the MART permission to request the information from each potential source in order to receive this assistance.
  2. Analyze the complete medical data, social findings, and other evidence of disability submitted by or on behalf of the applicant.

3. Provide written notification to the applicant when a decision on MA eligibility cannot be issued within the ninety (90) day time frame because a medical provider delays or fails to provide information needed to determine disability.
  4. Issue a decision on whether the applicant meets the criteria for disability based on the evidence submitted following the five-step evaluation process detailed below.
    - a. The decision regarding disability is recorded on the AP-65 and transmitted along with the MART case log to the appropriate DHS field office where the agency representative issues a decision on MA eligibility.
    - b. All medical and social data is retained by the MART.
- B. To assure that disability reviews are conducted with uniformity, objectivity, and expeditiously, a five-step evaluation process is followed when determining whether or not an adult individual is disabled.
1. The individual claimant bears the burden of meeting Steps 1 through 4, but the burden shifts to DHS at Step 5.
    - a. The steps must be followed in sequence.
    - b. If the Department can find that the individual is disabled or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step.
    - c. If the Department cannot determine that the individual is disabled or not disabled at a step, the evaluation will go on to the next step (20 C.F.R. sec. 416.920).
  2. Step 1  
A determination is made if the individual is engaging in substantial gainful activity (20 C.F.R. sec. 416.920(b)). If an individual is actually engaging in substantial gainful activity, the Department will find that he/she is not disabled. "Substantial gainful activity" is defined at 20 C.F.R. sec. 416.972.
  3. Step 2  
A determination is made whether the individual has a medically determinable impairment that is severe, or a combination of impairments that is severe (20 C.F.R. sec. 416.920(c)) and whether the impairment has lasted or is expected to last for a continuous period of at least 12 months (20 C.F.R. sec. 416.909). If the durational standard is not met, the Department will find that he/she is not disabled.
    - a. An impairment or combination of impairments is not severe within the meaning of the regulations if it does not significantly limit an individual's physical or mental ability to perform basic work activities (20 C.F.R. sec. 416.921). Examples of basic work activities are listed at 20 CFR sec. 416.921(b)).
    - b. In determining severity, the Department considers the combined effect of all of an individual's impairments without regard to whether any such impairment, if considered separately, would be sufficient severity (20 C.F.R. sec. 416.923).

- i. If the Department finds a medically severe combination of impairments, then the combined impact of the impairments will be considered throughout the disability determination process.
    - ii. If the individual does not have a severe medically determinable impairment or combination of impairments, the Department will find that he/she is not disabled.
  - c. The Department will not consider the individual's age, education, or work experience at Step 2.
  - d. Step 2 is a de minimis standard. In any case where an impairment (or multiple impairments considered in combination) has more than a minimal effect on the individual's ability to perform one or more basic work activities, adjudication must continue beyond Step 2 in the sequential evaluation process.
4. Step 3  
A determination is made whether the individual's impairment or combination of impairments meet or medically equal the criteria of an impairment listed in the Social Security Administration's Listings of Impairments (20 C.F.R. Pt 404, Appendix 1 to Subpart P).
  - a. If the individual's impairment or combination of impairments meets or medically equals the criteria of a listing and meets the duration requirement, the individual is disabled.
  - b. If it does not, the analysis proceeds to the next step.
5. Step 4  
A determination is made as to the individual's residual functional capacity (RFC) and whether, given the RFC, he/she can perform his/her past relevant work (20 C.F.R. sec. 416.920(e)).
  - a. An individual's RFC is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments.
    - i. In making this finding, all of the individual's impairments, including impairments that are not severe will be considered (20 C.F.R. sec. 416.920(e), 416.945, and Social Security Ruling ("S.S.R.") 96-8p as applicable and effective).
    - ii. The Department will assess the individual's RFC in accordance with 20 C.F.R. sec. 416.945 based on all of the relevant medical and other evidence, including evidence regarding his/her symptoms (such as pain) as outlined in 20 C.F.R. sec. 416.929(c).
  - b. It must be established whether the individual has the RFC to perform the requirements of his/her past relevant work either as he/she has actually performed it or as it is generally performed in the national economy.

- c. The Department will use the guidelines in 20 C.F.R. sec. 416.960 through 416.969, and consider the RFC assessment together with the information about the individual's vocational background to make a disability decision. Further, in assessing the individual's RFC, the Department will determine his/her physical work capacity using the classifications sedentary, light, medium, heavy and very heavy as those terms are defined in 20 C.F.R. sec. 416.967 and elaborated on in S.S.R. 83-10, as applicable and effective.
  - d. If the individual has the RFC to do his/her past relevant work, the individual is not disabled. If the individual is unable to do any past relevant work, the analysis proceeds to the fifth and final step in the process.
6. Step 5
- The Department considers the individual's RFC, together with his/her age, education and work experience, to determine if he/she can make an adjustment to other work in the national economy (20 C.F.R. sec. 416.920(g)).
- a. At Step 5, the Department may determine if the individual is disabled by applying certain medical-vocational guidelines (also referred to as the "Grids", 20 C.F.R. Pt. 404, Appendix 2 to Subpart P).
    - i. The medical-vocational tables determine disability based on the individual's maximum level of exertion, age, education and prior work experience.
    - ii. There are times when the Department cannot use the medical-vocational tables because the individual's situation does not fit squarely into the particular categories or his/her RFC includes significant non-exertional limitations on his/her work capacity. Non-exertional limitations include mental, postural, manipulative, visual, communicative or environmental restrictions.
  - b. If the individual is able to make an adjustment to other work, he/she is not disabled.
  - c. If the individual is not able to do other work, he/she is determined disabled.

### 0352.15.15 Evidence

REV:07/2010

- A. Medical and other evidence of an individual's impairment is treated consistent with 20 C.F.R. sec. 416.913.
- B. The Department evaluates all medical opinion evidence in accordance with the factors set forth at 20 C.F.R. sec. 416.927.

- C. Evidence that is submitted or obtained by the Department may contain medical opinions.
1. "Medical opinions" are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of an individual's impairments, including:
    - a. Symptoms
    - b. Diagnosis and prognosis
    - c. What the individual can do despite impairments
    - d. Physical or mental restrictions
  2. Medical opinions include those from the following:
    - a. Treating sources - such as the individual's own physician, psychiatrist or psychologist
    - b. Non-treating sources - such as a physician, psychiatrist or psychologist who examines the individual to provide an opinion but does not have an ongoing treatment relationship with him/her
    - c. Non-examining sources -such as a physician, psychiatrist or psychologist who has not examined the individual but provides a medical opinion in the case
  3. A treating source's opinion on the nature and severity of an individual's impairment will be given controlling weight if the Department finds it is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in the case record.
    - a. If a treating source's opinion is not given controlling weight, it will still be considered and evaluated using the same factors applied to examining and non-examining source opinions.
    - b. The appeals officer will give good reasons in the administrative hearing decision for the weight given to a treating source's opinion.
  4. The Department evaluates examining and non-examining medical source opinions by considering all of the following factors:
    - a. Examining relationship
    - b. Nature, extent, and length of treatment relationship
    - c. Supportability of opinion and its consistency with record as a whole
    - d. Specialization of medical source
    - e. Other factors which tend to support or contradict the opinion.
    - f. If a hearing officer has found that a treating source's opinion is not due controlling weight under the rule set out in the foregoing paragraph, he/she will apply these factors in determining the weight of such opinion.
    - g. Consistent with the obligation to conduct a de novo (or new and independent) review of an application at the administrative hearing, the appeals officer will consider any statements or opinions of the Medical Assistance Review Team (MART) to be a non-examining source opinion and evaluate such statements or opinions applying the factors set forth at 20 C.F.R. sec. 416.927(f).

- D. Symptoms, signs and laboratory findings are defined as set forth in 20 C.F.R. sec. 416.928.
- E. The Department evaluates symptoms, including pain, in accordance with the standards set forth at 20 C.F.R. sec. 416.929 and elaborated on in S.S.R. 96-7p, as applicable and effective.

### **0352.15.20      Drug Addiction and Alcohol**

REV:07/2010

- A. If the Department finds that the individual is disabled and has medical evidence of his/her drug addiction or alcoholism, the Department must determine whether the individual's drug addiction or alcoholism is a contributing factor material to the determination of disability; unless eligibility for benefits is found because of age or blindness.
1. The key factor the Department will examine in determining whether drug addiction or alcoholism is a contributing factor material to the determination of disability is whether the Department would still find the individual disabled if he/she stopped using drugs or alcohol.
  2. The Department applies the standards set forth in 20 C.F.R. sec. 416.935 when making this determination.

### **0352.15.25      Need to Follow Prescribed Treatment**

REV:07/2010

- A. In order to get MA benefits, the individual must follow treatment prescribed by his/her physician if this treatment can restore his/her ability to work.
1. If the individual does not follow the prescribed treatment without a good reason, the Department will not find him/her disabled.
  2. The Department will consider the individual's physical, mental, educational, and linguistic limitations (including any lack of facility with the English language) and determine if he/she has an acceptable reason for failure to follow prescribed treatment in accordance with 20 C.F.R. sec.416.930.
  3. Although the question must be evaluated based on the specific facts developed in each case, examples of acceptable reasons for failing to follow prescribed treatment can be found in 20 C.F.R. sec. 416.930(c) and S.S.R. 82-59, as applicable and effective.

**352.15.30      Conduct of the Hearing**

REV:07/2010

- A. Any individual denied Medical Assistance based on the MA Review Team's decision that the disability criteria has not been met, retains the right to appeal the decision in accordance with Section 0110; COMPLAINTS AND HEARINGS in the DHS General Provisions.
1. A hearing will be convened in accordance with Department policy and a written decision will be rendered by the Appeals officer upon a de novo review of the full record of hearing.
  2. The hearing must be attended by a representative of the MART and by the individual and/or his/her representative.

## NOTICE OF APPELLATE RIGHTS

This Final Order constitutes a final order of the Department of Human Services pursuant to RI General Laws §42-35-12. Pursuant to RI General Laws §42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms: