



Rhode Island Executive Office of Health and Human Services
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Docket #15-726
Hearing Date: May 12, 2015

Date: July 13, 2015



ADMINISTRATIVE HEARING DECISION

The Administrative Hearing that you requested has been decided in your favor 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, Joseph Perry, and Rita Graterol.

Present at the hearing were: You (the appellant), your witness, 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 him incapable of any type of work, not necessarily his 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 Dr Sammon.
- Consultative examination reports from DDS (Disability Determination Services) were not received prior to the date of the original decision.
- Since that review, he has been denied eligibility by Social Security, but was made eligible for MAGI Medicaid.
- A review of the available information revealed diagnoses of major depressive disorder (MDD), post-traumatic stress disorder (PTSD), and polysubstance abuse disorder.
- Although he self-reported a diagnosis of arthritis, there was no objective medical evidence supporting that diagnosis.

- Records show that he started medication management with Dr Sammon in November 2014, but there was not a complete psychiatric examination submitted.
- Records of Larry Simon (therapist) were also requested, but not included in the evidence submitted.
- He reported some improvement with medication, was alert, oriented, and showed good judgment.
- On October 8, 2014 he reported limiting alcohol consumption, and that he had not recently used any street drugs.
- He was caring for his mother-in-law and not working.
- Adjustments were made to his sleep medication.
- In December 2014 he reported further improvement of his mood, but complained of tiredness.
- He was alert, oriented and focused on dealing with current financial stressors.
- His mood was brighter and less depressed.
- The MA-63 was completed after the December appointment, but the opinions were not supported by the evidence that existed at that time.
- The last available record was from February 2015, and noted continued alcohol use.
- It was unclear how often he saw Larry Simon for counseling, or if he was participating in any substance abuse programs.
- Depressive symptoms were related to situational stressor and did improve with medication.
- The medical evidence reviewed 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.
- He was not disabled for the purpose of the Medical Assistance program.

The appellant, assisted by a witness testified:

- He is currently unemployed.
- He attended a consultative physical examination arranged by DDS completed by Jay Burstein, MD, which included two x-rays of his hand, and requested to submit the reports as evidence.
- Arthritis affects the use of both hands.
- He had sustained serious injury to his hands.
- He worked for 33 years as an injection molder, using various machinery to perform his job.
- He injured four fingers (two on each hand) while operating the machinery at work.
- One finger had to be replaced and sewed on.
- The accident occurred about 6-7 years ago.
- He did return to work after that incident, but because he could not use his hands well, his boss gave him more manageable assignments, such as training.
- When his wounds healed he returned to his regular job.
- He eventually began to slow down, and drop objects frequently.
- Those changes resulted in loss of his job.
- He cannot grip and hold large objects.
- He is right-hand dominant.
- He requires help with grocery shopping, some chores, and other tasks that require gripping.
- He tries to manage personal care independently.
- Some days are better than others.
- He experiences swelling at times which worsens use of hands.

- Dr Opalenski is his current primary care physician (PCP).
- He does not have any other physical impairments.
- He experiences numbness of the hands in the areas that are scarred.
- He cannot perform fine manipulative movements with either hand.
- He sees psychiatrist, Dr Sammon monthly, and sees the therapist, Larry Simon on a weekly basis.
- He has been treated by both mental health professionals for about two years.
- Dr Sammon expressed a good prognosis with which he agrees.
- His witness did not agree that reducing or eliminating his adverse symptoms seemed likely.
- He still has difficulty sleeping.
- His mood has not changed with the latest medication adjustments.
- He feels that his memory is declining, and he has difficulty completing tasks.
- He is socially isolative.
- He is not certain that he could get along with others in a workplace.
- He knows how to drive, but avoids driving due to side effects of the medications he is taking.
- He was denied by Social Security in January, and was sent for consultative examination after he filed for reconsideration.
- He has sustained sobriety since last June.
- Dr Sammon is monitoring his progress.
- He achieved sobriety on his own, and tested clean at his last examination.
- He still does drink, but limits the amount and frequency to about one shot once per week.

- He was not given any physician warnings about combining alcohol with his anti-depressant medication.
- He 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 December 22, 2014.
- The Agency issued a written notice of denial of MA dated February 24, 2015.
- The appellant filed a timely request for hearing received by the Agency on March 18, 2015.
- Per the appellant's request, the record of hearing was held open through the close of business on June 9, 2015 for the submission of additional evidence.
- Additional evidence from Dr Opalenski, Dr Sammon, Larry Simon, and a consultative examination report of Dr Burstein that was received by the MART during the held open period was forwarded to the Appeals Office on June 10, 2015 and was added to the record of hearing.
- 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 had severe, medically determinable impairments including major depressive disorder, post-traumatic stress disorder, substance abuse disorder, and chronic bilateral hand pain, and loss of sensation in all digits.
- The appellant did not have an impairment or combination of impairments that met or medically equaled any of the listed impairments in the Social Security listings.
- Based on the appellant's residual functioning, he is limited to physical ability to perform simple, routine tasks with some postural, manipulative and environmental restrictions, and mental capacity reduced to a level of simple, routine tasks that are not highly time pressured, and do not require working closely with others.

- The appellant is 56 years old, which is defined as advanced age.
- The appellant has an 11th-grade education and communicates in English.
- Transferability of job skills is not an issue in this case.
- The appellant is disabled as defined in the Social Security Act.
- The appellant is 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 December 18, 2014 and signed by psychiatrist, Carolyn Sammon, MD.
- ✓ An Agency AP-70 dated December 20, 2014 and signed by the appellant.
- ✓ Records of Carolyn Sammon, MD for June 25, 2014 to March 26, 2015.
- ✓ Consultative physical examination results dated April 13, 2015 and signed by Jay Burstein, MD, including two x-ray reports.
- ✓ An operative report dated April 17, 2015 and signed by primary care physician (PCP), Philip Opalenski, MD.
- ✓ Records of Larry Simon, MHC dated May 27, 2014 to May 20, 2015.
- ✓ Hearing testimony.

Medical and other evidence of an individual's impairment is treated consistent with (20 CFR 416.913).

All medical opinion evidence is evaluated in accordance with the factors set forth at (20 CFR 416.927). The appellant has been treated by a psychiatrist, Carolyn Sammon, MD since June 2014. He has medication reviews monthly with the doctor, and also works with a behavioral therapist, Larry Simon, MHC on a weekly basis. Based on the frequency, length, nature and extent of treatment; opinions noted by the psychiatry practice are given great weight. Witness testimony affirming the symptoms reported by the appellant as documented by the psychiatrist and therapist are deemed as credible and significant factors. Although the records of the PCP contain only one report of an unremarkable colonoscopy procedure, DDS has obtained x-rays and a consultative examination of injuries affecting the use of his hands. Consideration is given to his reduced manipulative capabilities, as they affect the occupational base at all levels of exertional functioning.

The MART is considered a non-examining source when expressing opinions regarding an individual's condition. At the time of their review, limited mental health notes were available, and physical records had not been received. As a

result, the decision that the appellant was not disabled was based on the appearance that he was making progress with mental health treatment, that he had not met the durational requirements subsequent to his diagnosis, he was given a good prognosis, and because they had no evidence to prove existence of any physical impairments. Additional evidence was submitted during the hearing, as well as during the held open period. As of the date of this decision, the MART has not reversed their original determination. The final rationale for that decision has not been communicated to this Appeals Officer.

The appellant has alleged that symptoms of MDD, PTSD, and chronic pain of the neck and hands impairs him. Symptoms, including pain, are evaluated in accordance with the standards set forth at (20 CFR 416.929). He sustained injuries to four fingers (right hand index and middle fingers, and left hand middle and small fingers) while using machinery that was required of his past relevant work as an injection molder for a plastics company. He is right hand dominant. Recent x-rays of the hands were negative for fracture, focal erosive or lytic changes. There was some ossification of tissue, and possible tendinous deposits. No images were taken of the neck. Using the radiographic information and physical examination, Dr Burstein evaluated functional capabilities.

A previous orthopedic evaluation had been performed, and treatment involving prescribed Ibuprofen and physical therapy was tried without improvement. He evidently declined surgical treatment as a next option. The appellant reported a pain range of 3-8/10, although the physician observed no obvious pain on the date of the examination. Range of motion of the cervical spine was moderately limited. However, range of motion in both shoulders, elbows, wrists and hands was full. He also had no limit to motion of the thumbs and digits. There was no atrophy, or deformity of the upper extremities. Grip strength was 4/5 bilaterally, capillary refill was normal, and both Tinel's and Phalen's testing was completed with negative results. The sensory examination was notable for diminished sensation in the distal aspect of all 10 digits. He testified that he often drops things because he cannot feel them accurately, and that his difficulty contributed to reduced performance which led to the loss of his job.

In terms of manipulative abilities, he would require use of both hands if expected to perform any repetitive or forceful gripping and grasping. He was, however capable of occasional gripping, grasping, and performing motions requiring fine motor-coordination. Exertional capability was expected to accommodate lifting and carrying up to 15-20 lbs regularly.

The appellant was diagnosed with MDD and PTSD in June 2014. Since that diagnosis was made, he has been compliant with treatment recommendations including medication management and behavioral counseling. Mental status exams reported at different intervals throughout the past year have typically revealed that he has been alert and oriented in all spheres, had a good attitude, and appropriate appearance. His motor activity, speech, thought process and

content have been normal. Reduced concentration and memory have been reported by both physician and patient, but there is no evidence of cognitive testing or other instrument to identify and quantify the extent of that claim. Poor sleep quality, and reduced appetite have been indicated to reduce functioning. His primary challenge appears to be changes in mood. At the time of the most recent visit with the psychiatrist, his affect was brighter, and his mood was less depressed. He reported that his sleep was improving. He also indicated that he had abstained from any drug use, and consumed a limited amount of alcohol occasionally. There was no evidence of any harmful ideations, no psychotic features, and his insight and judgment were good. He was receptive to smoking cessation, sobriety support, and continued psychotherapy.

Although the appellant's witness was concerned about his symptoms, particularly isolating himself and crying, physician reports show some improvement of adverse symptoms since they had reached moderate levels in December of last year. She was also concerned about his lack of interest in performing his daily activities.

Drug Addiction & Alcoholism (DA&A) is a medically determinable impairment in this case. Current medical evidence records report a period of several months' remission from street drugs, and a limited use of alcohol. The material nature of the addiction is addressed at any step of the sequential evaluation that is the last step, only if there is a finding of disability.) (20 CFR 416.935).

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

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 he 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.

The appellant has been diagnosed with MDD and PTSD, and has followed treatment recommendations of a psychiatrist and a behavioral therapist. Although adverse symptoms remain, they have been documented to reflect some improvement. The psychiatrist has expressed a "good" prognosis. At this time, however, his conditions continue to result in some restrictions to functioning and are severe for the purpose of the sequential evaluation.

Substance abuse has been in sustained remission for drugs and has been reduced for alcohol use. The condition is regarded as severe due to the nature of addiction, and a need to focus on relapse prevention.

In addition, he has demonstrated that his manipulative abilities are limited by loss of sensation in all of his fingers. His chronic bilateral hand pain, and impact on functioning had contributed to the loss of his past relevant work of 33 years, and affects his activities of daily living. The loss of function is also considered to be a severe impairment affecting this determination. Neck pain, however, has not been established to be severe based on available records.

Step three: 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 CFR Part 404, Subpart P, Appendix 1). If the individual's impairment or combination of impairments meets or medically equals the criteria of a listing and also meets the duration requirement (20 CFR 416.909), the individual is disabled. If it does not, the analysis proceeds to the next step.

In this matter, listings 1.02 (Major dysfunction of a joint), 12.04 (Affective disorders), 12.06 (Anxiety related disorders), and 12.09 (Substance addiction disorders) have been considered. Evidence has established that his injuries do not involve *extreme* loss of function of major peripheral joints in both upper extremities according to diagnostic imaging and physical examination. Psychiatric assessment and treatment have revealed some moderate changes, but have not demonstrated the existence of marked level restrictions to activities of daily living, ability to maintain social functioning, concentration, persistence or pace, and have not been documented to have resulted in repeated episodes of decompensation, each of extended duration. The medical evidence record does not support the existence of an impairment that rises to the level of the listings.

Step four: 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 CFR 416.920(e)). An individual's functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, all of the individual's impairments, including impairments that are not severe must be considered. The individual's RFC will be assessed in accordance with (20 CFR 416.945) and based on all relevant medical and other evidence including evidence regarding his/her symptoms (such as pain) as outlined in (20 CFR 416.929). Next, it must be established whether the individual has the RFC to perform the requirements of his/her past relevant work either as he/she had actually performed it or as it is generally performed in the national economy. Using the guidelines in (20 CFR 416.960 (a)-(b)(3)), the RFC assessment is considered together with the information about the individual's vocational background to make a disability decision. 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.

Physical RFC

Exertional: Based on diagnostic imaging and physical examination the appellant could be expected to lift 10 lbs frequently and 20 lbs occasionally as would be required to perform light work activity. No limits to ability to stand, walk, or sit for two-hour blocks of time throughout a workday with allowances for customary breaks has been indicated. He would be limited for frequent pushing and pulling with the upper extremities bilaterally due to reduced sensory capabilities.

Postural: He should avoid frequent climbing, or crawling because of reduced sensation in the fingers.

Manipulative: Handling requires use of both hands, and feeling is limited for all ten digits.

Visual: No restrictions to near acuity, far acuity, depth perception, accommodation, color vision, or field of vision have been indicated.

Communicative: Abilities to hear and to speak are intact.

Environmental: He should avoid concentrated exposure to extreme cold, heat, wetness, humidity, and hazards such as heights or certain types of machinery.

Mental RFC

Understanding and Memory: Evidence does not rule out his ability to remember locations and procedures, or to understand and remember short, simple instructions.

Sustained Concentration and Persistence: Due to the impact of his poor sleep quality he could be overwhelmed to sustain activity or to carry

out detailed assignments. He could, however, be expected to carry out, short, simple, routine assignments, as he had been allowed to do after his injury when he was assigned to a training responsibility. Evidence has not ruled out his ability to sustain concentration for two-hour blocks of time throughout a workday with allowances for customary breaks, to work along with others, and to make simple work-related decisions. As he has had difficulty staying motivated, according to his self-report, he may be best suited for work that is not highly time pressured.

Social Interaction: There is no evidence that would preclude him from being able to recognize and maintain socially appropriate behavior, to know when to request assistance, to accept instructions from a supervisor, or adhere to basic standards of grooming. As he has reported a tendency to avoid others, he would be best suited for tasks that do not involve serving the public in large numbers of working in close team situations.

Adaptation: His psychiatrist noted that he possessed good insight and judgment. He could be expected to respond appropriately to basic, work-related change, to be aware of normal hazards and take precautions, arrange transportation, and to set realistic goals as he has addressed with his therapist.

The appellant has experienced some limitation to mental and physical functioning secondary to his impairments. His physical functioning as supported by the available evidence would reduce his ability to light exertional level work with some manipulative, postural, and environment restrictions. Mentally he would not be likely to exceed simple, routine tasks that are not highly time-pressured and do not require working closely with others. As the appellant has some residual functioning to consider along with other vocational factors, the sequential evaluation continues to Step five.

Step five: At the last step of the sequential evaluation process, consideration is given to the assessment of 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 CFR 416.920(g)). If the individual is able to make an adjustment to other work, he/she is not disabled. If the individual is not able to do other work and meets the duration requirement, he/she is disabled. At step five, it may be determined if the individual is disabled by applying certain medical-vocational guidelines (20 CFR Part 404, Subpart P, Appendix 2). The medical-vocational tables determine disability based on the individual's maximum level of exertion, age, education, and prior work experience. In some cases, the vocational tables cannot be used, because the individual's situation does not fit squarely into the particular categories or because his/her RFC includes significant nonexertional limitations, such as postural, manipulative, visual, or communicative; or environmental restrictions on his/her work capacity. If the individual can perform all or substantially all of the exertional demands at a given level, the medical-vocational rules direct a

conclusion that the individual is either disabled or not disabled depending upon the individual's specific vocational profile (SVP). When the individual cannot perform substantially all of the exertional demands or work at a given level of exertion and/or has non-exertional limitations, the medical-vocational rules are used as a framework for decision-making unless that directs a conclusion that the individual is disabled without considering the additional exertional and/or non-exertional limitations. If the individual has solely non-exertional limitations, section 204.00 in the medical-vocational guidelines provides a framework for decision-making (SSR 85-15).

In summary, the appellant is a 56-year-old male with a limited education and a positive work history. Based on his advanced age, and combination of severe conditions, he is not currently a viable candidate for job retraining, direct entry to a new career, or employment likely to incorporate his previously learned skills. He is currently impaired by symptoms of chronic hand pain and loss of sensation in all fingers; as well as affective disorders, anxiety-related disorders, and a history of substance dependence disorder.

Based on the appellant's age of 56 (defined as advanced age) 11th-grade education (limited), work history (medium, skilled, not transferable), RFC (light exertion with some postural, manipulative, and environmental restrictions), MRFC (simple, routine activity that is not time pressured, and does not require working closely with others), and using vocational rule 202.01 as a guide along with consideration of non-exertional limitations; the combined factors direct a finding of "disabled" according to the Social Security regulations.

Determination of the material nature of DA&A applies in this case (20 CFR 416.935). Under Public Law 104-121, an individual cannot be considered disabled if drug addiction and alcoholism (DA&A) are contributing factors material to the disability determination. The records have indicated that throughout the past year he has reported abstinence from all illegal drugs. His treating sources have accepted that claim, and there is no evidence of negative drug testing. His physicians have been comfortable with prescribing medications that should not be combined with other substances. He has appeared to be compliant with prescribed treatment, and agreed at the last appointment to consider some support for relapse prevention. Although he does admit to using some alcohol, he estimated it was approximately one drink per week. His treatment providers have also accepted that claim. As the substance use activity does not appear to impact the facts that have been established by the medical evidence regarding his physical and mental impairments, it is not material to the determination of disability in this case.

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 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 (20C.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.