



Rhode Island Executive Office of Health and Human Services
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Docket # 15-174
Hearing Date: April 16, 2015

Date: June 19, 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, Beth Francoeur, and Rita Graterol.

Present at the hearing were: You (the appellant), and Jennifer Duhamel, 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.
- The MART follows the same five-step evaluation as SSI for determining whether someone is disabled.
- 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 reviewed two Agency MA-63 forms (Physician's Examination Report), an Agency AP-70 form (Information for the Determination of Disability), and records of Foundry Sports Medicine, and Dr Kaufman.
- As a Social Security application was pending, they requested any available consultative examination reports, but none were received.
- Social Security was again denied in February 2015.
- A review of the available evidence revealed diagnoses including left hip (trochanteric) bursitis, recurrent major depressive disorder, and a history of alcohol dependence.
- Dr Kaufman's records included a few progress notes from January 2012.
- In January 2012 he was on probation and parole, homeless, and had been without previous treatment for alcohol abuse.

- He was interested in counseling, but not in any medication management.
- At that time he felt that he had a physical disability more than a psychiatric disability.
- He did not follow up there again until January 7, 2014.
- He reported episodic alcohol use, and was engaging in treatment at Safe Haven.
- A trial of an anti-depressant was started, but he declined other remedies that could not be combined with alcohol.
- On November 21, 2014 he reported that he had been accepted to Safe Haven, but he had not started taking his anti-depressant.
- He continued drinking in smaller amounts and declined detox.
- Subsequent progress notes indicated that his moods were stabilized on medication, and that he continued with some alcohol use.
- June 2014 notes had indicated that he had stopped taking the medication because he felt better.
- He was able to move to an apartment and he was looking for work.
- He planned on going to ORS (Office of Rehabilitation Services) for some (vocational) assistance.
- The records reviewed showed no signs of depressive symptoms.
- Foundry Orthopedics records discussed his diagnosis of left hip bursitis in September 2014.
- He was able to ambulate without any assistive device, and had a physical therapy plan designed to increase the range of motion in his hip.
- The last physical therapy note was dated December 2014, and documented his report of good results with anti-inflammatory medication.
- His last orthopedic note in November 2014 included a home exercise program and discussion of weight management.
- Effects of pain and side effects of pain medication were considered.

- His impairments including left hip bursitis, recurrent major depressive disorder, and alcohol dependence were considered severe for the purpose of the sequential evaluation.
- His impairments did not meet or equal any of the Social Security listings.
- They completed a residual functional capacity assessment finding that he retained the physical ability to perform light work, which would accommodate his past relevant work.
- They stopped at step four finding him not disabled.
- He was not disabled for the purpose of the Medical Assistance program.

The appellant testified:

- He is currently unemployed.
- Recently his condition (left hip bursitis) has worsened.
- Dr Llado suggested that he have an injection with the expectation that it would make walking more comfortable.
- Dr Murphy thought the pain remedy would help him to sleep, and cautioned him about avoiding strenuous activity.
- His treating sources thought that physical therapy (PT) would help to build up his muscles.
- He did not try PT sooner because he did not previously have health insurance.
- They are now evaluating to determine if there is an additional problem with the leg.
- He wishes he could return to work, but he knows he cannot hide his (right arm) injury from an employer.
- His arm was severely scared after a fall through a window, and resulted in laceration with extensive nerve damage.
- He wanted to reveal the arm to show the size of the injury and the excessive scarring that remains several years after the incident.

- The nerve damage restricts his ability to use his dominant right hand.
- Employers have expressed concerns about liability.
- Rhode Island Hospital treated him for the right upper extremity injury eleven years ago.
- His physical therapist said that his nerve damage will not improve.
- ORS obtained records from Social Security relative to the upper extremity condition and advised him that it showed moderate to severe limitations.
- His left upper extremity is fully functioning.
- He understood that he needed to establish the existence of a disability as of September 2014 when he applied for MA.
- He was sent to a consultative examination appointment in December 2014 as part of the Social Security disability determination process.
- The doctor was given medical records prior to the appointment, and he knew about the injury to the right arm, and about the hip (trochanteric bursitis) prior to performing the consultative evaluation.
- The neurosurgeon who operated on his right arm (in 2003) tried to restore as much functioning as possible, but advised him that reduced functioning secondary to the nerve damage was likely to remain.
- He has difficulty holding onto large objects.
- He must visually verify that he is grasping something because he has lost sensation, and cannot actually feel it.
- His physicians have recommended that he never use power tools.
- He is unable to write much more than to sign his name.
- Fine manipulation is significantly limited as demonstrated by his difficulty trying to pick up dimes in PT exercises.
- He attended PT sessions until February 2015.
- Sessions were put on hold pending further physician evaluation of the effectiveness of injections.

- He attends PT at Foundry Orthopedics where he also sees an orthopedic physician.
- The first injection to the hip was done on April 8, 2015.
- A follow-up call to check on progress with the injection was made the day prior to hearing.
- He reported limited results, and was instructed to continue taking his anti-inflammatory medication.
- He requested to submit discharge instructions from R I Vascular Institute which indicated that he could resume normal activities as tolerated.
- He has been scheduled for further evaluation of his back and his leg.
- Although Dr Llado thought he could manage to perform medium work in the past, he now knows that functioning is more limited than that.
- In February he arranged to have updated medical records submitted.
- He is currently taking anti-depressant medication which he restarted last month.
- He may have to a change to a new psychiatrist because his current treating source is expected to close.
- His depressive disorder seems a little better with medication.
- His caseworker already left the clinic, but he does speak with the psychiatrist when he visits.
- He does not see his level of alcohol use as problematic.
- 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 September 15, 2014.
- The Agency issued a written notice of denial of MA dated December 26, 2015.
- The appellant filed a timely request for hearing received by the Agency on January 12, 2015.
- Per the appellant's request, the hearing scheduled for March 10, 2015 was rescheduled to April 16, 2015.
- The appellant submitted discharge instructions from Rhode Island Vascular Institute dated April 8, 2015. (Appellant exhibit #1).
- Per the appellant's request, the record of hearing was held open through the close of business on May 14, 2015 for the submission of additional evidence.
- Additional evidence from Foundry Orthopedics, psychiatrist Craig Kaufman MD, a consultative examination report of internist William Palumbo MD, two Agency MA-63 forms, and an Agency AP-70 form that was received by the MART during the held open period was forwarded to the Appeals Office on May 15, 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 diminished sensation of the dominant right hand status post laceration, osteoarthritis and trochanteric bursitis of the left hip, depressive disorder, and alcohol dependence.
- 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 retains the ability to perform less than sedentary work with some postural, environmental, and manipulative restrictions, as well as social and adaptive barriers.

- The appellant is 53 years old, which is defined as closely approaching advanced age.
- The appellant has some post-high school 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.
- DA&A is not material to the disability in this case.
- 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 September 30, 2014 and signed by psychiatrist, Craig Kaufman, MD.
- ✓ An Agency MA-63 dated February 24, 2015 and signed by psychiatrist, Craig Kaufman, MD.
- ✓ An Agency MA-63 dated October 18, 2014 and signed by orthopedist, Roald Llado, MD.
- ✓ An Agency MA-63 dated March 2, 2015 and signed by orthopedist, Roald Llado, MD.
- ✓ An Agency AP-70 dated September 15, 2014 and signed by the appellant.
- ✓ Records of Foundry Sports Medicine orthopedist, Roald Llado, MD for September 25, 2014 to April 18, 2015.
- ✓ Records of Mental Health Association of Rhode Island/ACCESS-RI psychiatrist, Craig Kaufman, MD for January 3, 2012 to April 14, 2015.
- ✓ A consultative physical examination report of internist, William Palumbo, MD dated December 19, 2014. (This report was erroneously labelled as a psychiatric evaluation.)
- ✓ Hearing testimony.

Medical and other evidence of an individual's impairment is treated consistent with (20 CFR 416.913). The evidence record was held open for the submission of updates from Foundry Sports Medicine (including orthopedic evaluations and physical therapy notes), updated progress notes from Dr Kaufman, and addition of a consultative examination report from William Palumbo, MD. All reports were submitted during the held open period along with two new Agency MA-63 forms (physical and mental), and an updated Agency AP-70. All evidence and testimony is considered in combination for the purpose of this evaluation.

All medical opinion evidence is evaluated in accordance with the factors set forth at (20 CFR 416.927). The appellant has a longitudinal treatment relationship with psychiatrist, Dr Kaufman, and care with orthopedist, Dr Llado of significant duration. Both specialists have provided clinical documentation of medical attention. Dr Kaufman provided progress notes regarding mental functioning and response to treatment, which changed the restrictions originally noted on the MA-63. Dr Llado refrained from updating psychical restrictions pending the outcome of a new evaluation. Reports of the treating physicians, an examining consultant physician, and testimony of the appellant are considered in combination for the purpose of this decision.

The MART is considered a non-examining source when expressing opinions regarding an individual's condition. At the time of their last review, the MART found sufficient evidence to establish the existence of severe impairment relative to left hip bursitis, major depressive disorder, and alcohol dependence. Although they did not find that any impairment or combination of impairments rose to the level required to meet or equal any of the Social Security listings, they did conclude that the resulting restrictions would limit his physical work capability to light exertion. They determined that light work functioning did not preclude his ability to perform his past relevant work, and stopped at step four finding him "not disabled". Although they identified an affective disorder and a substance dependence disorder among the severe conditions, no mental residual functioning facts were discussed. There is no information regarding the impact of the combined conditions. They were uninformed of the right upper extremity impairment prior to the hearing.

Additional evidence was submitted during the hearing and after the hearing. As of the writing of this decision, the MART has not withdrawn the agency notice under appeal. Their final rationale for that decision has not been communicated to this Appeals Officer.

The appellant alleged that symptoms of left hip trochanteric bursitis, chronic pain, reduced functioning of the left lower extremity, and paralysis of the dominant right hand secondary to a right upper extremity injury impair him. The records also revealed osteoarthritis of the left hip, mental health treatment for major depressive disorder, and a history of alcohol dependence currently in "partial remission".

In 2003, he fell through a window and sustained lacerations to his right upper extremity severing nerves and tendons. He has a large scar on his right forearm. He is unable to fully utilize the right hand. He experiences constant numbness of the right hand, particularly in digits one through four. He demonstrated that the injury has limited his ability to perform fine manipulations. Although strength for grasping was 5/5 bilaterally, he is unable to feel objects held or grasped in his right hand; and a neurologic assessment was notable for "decreased" sensation, and "significantly limited" fine manipulation. The appellant explained that he can

no longer safely hold and use tools, as had been required of his long career as a property manager. Additionally, he cannot write well, and is typically unaware of injury to the area affected by the paralysis. Physical therapists have told him that they cannot restore functioning lost due to nerve damage.

He has also been treated for bursitis and osteoarthritis of the left hip, and radiation of pain into the left lower extremity. The orthopedic physician has prescribed injections, physical therapy, weight management, and anti-inflammatory medication as treatment for his condition. The prognosis for eliminating or reducing symptoms with medication and/or other treatment was "fair to good" according to Dr Llado's response when completing the later agency MA-63 form. The appellant did not find that much relief was achieved with intra-articular hip injection, but has continued to be compliant with taking anti-inflammatory medication. According to a consultative examination report and physical therapy records, there was no evidence of joint swelling or muscle atrophy. Range of motion was full for all extremities, and straight leg raising tests were negative bilaterally.

Symptoms, including pain, are evaluated in accordance with the standards set forth at (20 CFR 416.929). The appellant has presented evidence of left hip bursitis, which could reasonably be expected to cause pain in the hip joint and lower extremity as described. Radiographic images reviewed by the orthopedist also revealed degenerative osteoarthritis. Symptoms were exacerbated by ambulation, stair climbing and lying on his left side. Pain often interferes with his sleep. He was advised to modify activity level to his pain tolerance, and to continue to follow prescribed treatments. His physician and physical therapists have set goals of reducing pain, and increasing range of motion. Although he testified that his orthopedist had come to realize that he was more limited by his symptoms than originally thought, additional evaluation of the lower extremity had not been completed. The physician reduced his prognosis from the earlier response he had given. Evidence has not established a need for any assistive devices, yet he noted that tolerance for walking is limited to about 1 hour total per day. He requires some assistance for completing activities of daily living such as household chores, transportation to appointments and errands, and certain personal care such as dressing, which is also impacted by loss of right hand function, in addition to hip pain.

The appellant has also been diagnosed by a psychiatrist with recurrent major depressive disorder, and a history of alcohol abuse disorder to which he attributes loss of work and loss of relationships. Treatment with anti-depressants has been sporadic in the past. The appellant had agreed to participate in counseling, but had rejected use of anti-depressant medications for some time. It appears that warnings about combining the medication with alcohol were at least part of the problem. More recently, records documented trial periods of medication use, during which he admitted he was feeling better.

Total sobriety has not been achieved, however, and the physician notes "partial remission", and has encouraged him to continue to consider formal treatment.

In order to get benefits, an individual must follow treatment prescribed by his/her physician if this treatment can restore his/her ability to work. If the individual does not follow the prescribed treatment without good reason, he/she will not be found disabled. The individual's physical, mental, educational, and linguistic limitations (including any lack of facility with the English language) will be considered to determine if he/she has an acceptable reason for failure to follow prescribed treatment in accordance with 20 CFR 416.930. Although the presence of an acceptable reason 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 CFR 416.930 (c)).

In this case, the depressive symptoms appear to have been related to his substance dependence disorder. The appellant has attempted on his own to significantly reduce alcohol consumption, and to subsequently comply with treatment medication. He testified that he did not find his current, occasional use of alcohol as a barrier to his wellness. The last two months of psychiatric treatment notes did document good progress in reducing alcohol use, and that there had been no periods of intoxication.

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. Determination of the material nature of DA&A will be addressed at any step that is the last step of the sequential evaluation, if there is first a finding of disability based on all other factors. (20 CFR 416.935).

He has provided updates of psychiatric follow-up with Dr Kaufman. At the time of the most recent evaluation the mental status report indicated that that he was well groomed, pleasant, and made good eye contact. He was oriented in all spheres, and perception was within normal limits. There was no pathology for a formal thought disorder, and no indication of harmful ideations. Attention, memory, judgment, and insight were all intact. He had resumed compliance with prescribed anti-depressant medication management. The psychiatrist noted that he was primarily concerned about physical inability to sustain employment because of hip and arm conditions. The appellant had also testified during the hearing that he was more physically impaired than mentally limited.

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 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 was diagnosed with trochanteric bursitis of the left hip in September 2014. Subsequent diagnostic images also revealed osteoarthritis in the hip joint. He has been complaint with prescribed treatment remedies including NSAIDS, physical therapy, home exercise, intra-articular injection, and activity modification. However, at the time of the last examination of record, there was some tenderness at the greater trochanter, reduced range of motion and his gait was antalgic. He had missed some physical therapy sessions due to pain, and reported minimal symptomatic improvement while following the recommended treatments. While his orthopedic surgeon had hoped to resolve the pain symptoms within twelve months, limited progress has changed the expectation. This condition is severe, and now anticipated to meet the durational requirements.

Laceration of the right forearm and resulting damage to nerves and tendons is considered to have reached maximum improvement, as surgical repair was completed in 2003. Although he underwent rehabilitation with physical therapy, the sensory damage was not expected to be reversed. Evidence has documented reduced sensation diminishing both fine and gross manipulation in the dominant right hand. Although grasp strength is adequate, permanent sensory damage has made it difficult to fully utilize the dominant right hand. That restriction affects personal care, and creates a safety issue with respect to his

ability to use tools, or to sense injury, as would be critical to perform his past relevant employment duties.

According to POMS DI 22001.015 Severe/Non-Severe Impairment(s)—Where the medical evidence establishes even a slight abnormality which has no more than a minimal impact on the claimant's ability to perform basic work activity, but the evidence shows that the claimant cannot perform his/her past relevant work because of the unique features of that work, a denial at the "not-severe" step is inappropriate. The inability to perform past relevant work in such instances warrants further evaluation of the individual's ability to do other work considering age, education and work experience. The reduced functioning of the right hand is a severe condition for the purpose of this evaluation.

Psychiatric treatment notes relative to major depressive disorder and substance dependence have shown good progress. Medication has reduced symptoms, mental status is good, and he has managed to abstain from drinking to the point of intoxication on his own. For the purpose of this evaluation, substance dependence is considered a severe impairment requiring assessment according to the guidelines for affective disorders.

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), 1.08 (Soft-tissue injury), 12.04 (Affective disorders), and 12.09 (Substance dependence disorders) are considered. With respect to the hip pain, there is no diagnostic imaging identifying joint space narrowing, bony destruction, or ankylosis of a weight-bearing joint which results in inability to ambulate effectively, as defined in 1.00B2b. Injury to the right hand has been addressed with surgical procedures attempting to restore as much functional ability as possible. Post surgical rehabilitation was tried, but the conclusion was that due to extensive nerve and tendon damage, maximum benefit had been achieved. Despite the efforts to restore functioning, the appellant still experiences paralysis in the right hand affecting some gross and fine manipulation. His left hand is fully functional. Partial loss of use of the dominant hand is clearly disruptive, but below the level of severity to meet a listing reserved for cases involving loss of function in two extremities with complete disruption of ambulation, handling or fingering. He gets around on his own, and manages many ADLs with minimal assistance.

Mental assessments have clearly shown improvement with reduced alcohol dependence, and decreased depressive symptoms. Depression has not been demonstrated to have resulted in marked level mental activity impairments to activities of daily living, social functioning, concentration, persistence or pace, or in repeated episodes of decompensation 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: Evidence has not ruled out his ability to lift 10 lbs frequently and 20 lbs occasionally, as strength is intact in all extremities. He could be expected to walk, stand, or sit for 2-hour blocks of time throughout a workday with allowances for customary breaks. Repeated pushing or pulling would be limited for the right upper extremity due to sensory damage of the right hand, and use of foot controls would be reduced for the left lower extremity by left hip bursitis. These restrictions would place exertional functioning with the light work range.

Postural: He should avoid climbing, balancing, stooping, kneeling, crouching, or crawling based on his combination of musculoskeletal conditions.

Manipulative: Evidence has established that he experiences loss of feeling, and reduced ability for handling, and fingering with the right hand. Such manipulative impairment creates significant erosion of the light work occupational base, and would reduce work capability to the next level of sedentary activity. However, most sedentary work requires good use of

hands and fingers to perform required tasks. Limitations to fingering and fine manipulation in the dominant hand would further erode the occupational base to a less than sedentary framework. (POMS DI 25015.020B7).

Visual: Near acuity, far acuity, depth perception, accommodation, color vision, and field of vision are intact.

Communicative: No restrictions of hearing or speaking capabilities have been demonstrated.

Environmental: Due to joint pain from bursitis and osteoarthritis, he should avoid extreme cold, heat, wetness, and humidity. He would need to exercise caution around hazards such as certain types of machinery because of right hand paralysis.

Mental RFC

Understanding and Memory: He could be expected to remember locations and procedures, to understand and remember short, simple instructions, and certain detailed instructions.

Sustained Concentration and Persistence: Evidence does not rule out ability to carry out short, simple instructions, carry out detailed instructions, and maintain attention and concentration for extended periods. He could perform activities within a schedule, maintain regular attendance, be punctual, sustain a routine without special supervision, work along with others without distraction, make simple work-related decisions, and complete a normal workweek without interruption from symptoms provided he sustains sobriety.

Social Interaction: Restrictions are not indicated in his ability to interact appropriately with the public, request assistance, get along with coworkers, maintain socially appropriate behavior, or adhere to basic standards of grooming. He may at times have difficulty with accepting instructions and criticism from supervisors based on his exaggerated response to events that do not go his way.

Adaptation: He has demonstrated some lack of tolerance for change. Records do not rule out his ability to be aware of normal hazards and take precautions, arrange transportation, or to set realistic goals.

The appellant's current physical capabilities allow for less than sedentary work activity with postural, environmental, and manipulative restrictions that significantly erode the occupational base that he could sustain. Mentally, he is capable of understanding, remembering, and carrying out a variety of tasks, although he may have some social and adaptive barriers to overcome. As he clearly could not resume his long time career as a property maintenance manager, the sequential evaluation proceeds 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).

The appellant is a 53-year-old male with some college education and a positive work history. He is currently impaired by severe, permanent sensory loss in his dominant right hand, and trochanteric bursitis with osteoarthritis in the left hip; which is not responding to therapeutic treatments as expected. In addition, his cessation of alcohol dependence is in early remission, and depressive symptoms have just recently begun to respond to medication management. He is unable to resume his past relevant work due to symptoms of his impairments.

Based on the Social Security Administration's definitions of the appellant's characteristics: age 53 (closely approaching advanced age, not a likely candidate for vocational rehabilitation), post-high school education (high school or more), work history (medium exertion, skilled, not transferable), RFC (less than sedentary exertion, with some postural, manipulative, and environmental restrictions), and MRFC (some social and adaptive restrictions); the combined factors direct a finding of "disabled" according to the Social Security regulations.

As the appellant is disabled, further consideration of the material nature of DA&A as a contributing factor is needed (20 CFR 416.935). The appellant's physical impairments are musculoskeletal, and not affected in any way by alcohol use. Substance dependence is being monitored and no recent episodes of

intoxication have been indicated. It is likely that his most significant barriers to employment would remain at the same level of impairment, despite use of a substance such as alcohol. As a result, alcohol dependence is not a material factor in this determination of disability, and the finding remains the same.

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.