Rhode Island Executive Office of Health and Human Services
Appeals Office, 57 Howard Ave., LP Bldg, 2nd floor, Cranston, RI 02920
phone: 401.462.2132 fax 401.462.0458

Docket #15-376
Hearing Date: April 9, 2015

Date: June 3, 2015

ADMINISTRATIVE HEARING DECISION

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

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

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

Copies of this decision have been sent to the following: You (the appellant), and Agency representatives: Julie Hopkins RN, Mary Averill, and Cruz Gomez.

Present at the hearing were: You (the appellant), a Spanish interpreter, 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.
- 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 James Gallo, MD.
- He did not have a Social Security (SSI) application pending, and there were no consultative examinations available at the time of their review.
- Since that time, he has applied for SSI, and has been denied.
- They subsequently did request consultative examination reports, but none were submitted.
- A review of the available records provided diagnoses of recurrent major depressive disorder (MDD), panic disorder, and anxiety disorder.
- He was being seen monthly in Dr Gallo's office for medication refills and supportive therapy.

- February 19, 2014 he reported to Dr Gallo that he did not feel confident about trying to work.
- None of Dr Gallo's notes included information about any functional limitations that would prevent him from working.
- Dr Gallo uses a checklist type progress note.
- All progress notes showed that he was alert and oriented with intact judgment and insight.
- He reported increased anxiety, but the specific reasons were not identified.
- Most notes also indicated that there was no acute distress.
- The evidence did not support the existence of a medically determinable impairment that would limit functioning, meet the durational requirements or have residual deficits when following prescribed treatment.
- They stopped at step two, as there was no finding of severity.
- He was not disabled for the purpose of the Medical Assistance program.

The appellant testified:

- He is currently unemployed.
- Challenges from his impairment can occur suddenly.
- When that happens, he feels he must just leave.
- He has not been seeking employment, because he feels he may not be able to stay to complete a workday if symptoms escalate.
- He has not worked for nearly two years.
- He worked primarily as a truck driver.
- He left his job because of his condition.
- He made the decision to quit work.

- He was hospitalized at Rhode Island Hospital four times, beginning about two years ago.
- He has been treated by Dr Gallo for more than 15 years.
- He has had no other treatment in the past year.
- Dr Gallo prescribes medications
- He takes his medications as prescribed.
- When taking the medication he notices improvements.
- He is also expected to attend counseling every week.
- He feels his conditions affect his memory, and concentration.
- He is often distracted.
- He has had problems getting along with certain people.
- He sometimes cannot keep a steady work pace to complete tasks in a timely manner, and often gives up easily.
- He relies on his sister to remember things he needs to do.
- He has attended several appointments with Dr Gallo since December.
- He has not attended any consultative examination appointments for his SSI case.
- He requested to submit information about a new medication he has been prescribed which is believes is vitamin D.
- 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 November 26, 2014.
- The Agency issued a written notice of denial of MA dated January 22, 2015.
- The appellant filed a timely request for hearing received by the Agency on February 3, 2015.
- Per the appellant's request, the record of hearing was held open through the close of business on May 7, 2015 for the submission of additional evidence.
- Additional evidence from James Gallo, MD and Robert Rattenni, LMHC that was received by the MART during the held open period was forwarded to the Appeals Office on May 8, 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 did not meet his burden of proof to establish the existence of a severe medically determinable impairment that would have a measurable impact on functional capabilities.
- The appellant is not disabled as defined in the Social Security Act.
- The appellant is not disabled for the purposes of the Medical Assistance Program.

DISCUSSION OF THE MEDICAL EVIDENCE RECORD:

The record of hearing consists of:

- ✓ An Agency MA-63 dated December 2, 2014 and signed by psychiatrist, James A. Gallo, MD.
- ✓ An Agency AP-70 dated stamped December 4, 2014 and signed by the appellant.
- ✓ Records of James A. Gallo, MD for January 22, 2014 to April 20, 2015.
- ✓ Counseling notes of Robert Rattenni, LMHC for November 18, 2014 to April 14, 2015.
- ✓ 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 through the close of business on May 7, 2015 for updated information from Dr Gallo, as well as counseling notes from Robert Rattenni, LMHC. Additional progress reports from both sources were added to the evidence record.

All medical opinion evidence is evaluated in accordance with the factors set forth at (20 CFR 416.927). The appellant had a longitudinal treatment relationship with psychiatrist James Gallo MD, documented by 15 months of brief progress notes, mostly in checklist form. There are no detailed psychiatric or psychological evaluations included, and no history of any hospital admission for psychiatric treatment. When completing the agency MA-63 form, Dr Gallo opined that his patient would be moderately limited to understand, remember, and carry out simple instructions, or to interact appropriately with others in a workplace. He also noted that ability to independently sustain a consistent work pace or to react appropriately to work-related change would be markedly impaired. Although the treatment relationship is of significant duration, limited nature and extent of treatment required has been documented. Consideration is given to his comments as a specialist in the field of psychiatry; however, due to lack of supportive medical documentation of the opinions expressed regarding functional restrictions, controlling weight is not justified. Additional records covering five months of counseling with a licensed mental health counselor have also been submitted. All records and testimony are considered in combination for the purpose of this evaluation.

The MART is considered a non-examining source when expressing opinions regarding an individual's condition. The agency review was based on notes of monthly psychiatry visits, which documented normal mental status characteristics, and failed to identify any significant functional limitations. As a result, the MART found that the evidence had not established the existence of a severe medically determinable impairment.

The appellant has alleged that symptoms of depression and anxiety with panic attacks impair him. He indicated that over the last 1 ½ years his symptoms have increased. Physically he feels fine, and reports no functional restrictions.

He was seen by Dr Gallo because he was feeling depressed, which was apparently triggered by ridicule from a co-worker. A list of supporting symptoms included hopelessness, worthlessness, reduced energy, lack of motivation, sleep disturbance, poor concentration, and social avoidance. Additionally, notes reported anxiety-related panic disorder characterized by racing thoughts, shortness of breath, feeling hot and cold, sweating, and fearing that he was having a heart attack. Dr Gallo has scheduled monthly appointments with him to monitor symptoms and medications. He also sees a counselor weekly with goals of stabilizing feelings of depression and anxiety, developing coping skills, and problem solving; as well as a long-term objective of returning to work.

At the time of his most recent visit on April 20, 2015 he was cooperative, and fully oriented in all spheres. His speech was within normal limits, thought content unremarkable, and he had adequate fund of knowledge. There was no evidence of psychotic features or of any harmful ideations. Memory, judgment, and insight were intact, and his concentration was redirectable. Although his mood was anxious at the time of his appointment, he reported fluctuation of anxiety levels. During previous appointments it was noted that adverse symptoms were to be further evaluated by his primary care physician in the context of decreased levels of testosterone, and vitamins D and B12. There is no information about the results of that significant evaluation, or explanation of specific changes to his treatment regimen based on the findings.

His counselor indicated mental status characteristics at the last meeting of record, consistent to those documented by the psychiatrist. The appellant reported compliance with medication and use of strategies, and testified that he does experience improvement when following the prescribed regimen. Neither treating source has provided any detailed assessment of functioning, nor have they included any evidence of testing of cognitive skills or other measures of performance that would shed light on the appellant's ability to perform basic job skills.

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 has been attending regular visits with a psychiatrist and a mental health counselor within the past year. In order to address his changes in mood, they have prescribed medication management, use of coping strategies, and recommended further evaluation of hormonal and nutritional deficiencies that would benefit his condition. No assessment of the physical factors has been provided, and no other physical impairments have been alleged. Mental health records reveal very basic characteristics of mental status that are predominantly within normal limits. No cognitive testing, or detailed functional evaluations have been submitted.

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

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

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

Carol J. Ouellette

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.