



Rhode Island Executive Office of Health and Human Services
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Docket #15-383
Hearing Date: April 7, 2015

Date: June 5, 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 Marcos, 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 an Agency MA-63 form (Physician's Examination Report), an Agency AP-70 form (Information for the Determination of Disability), and records of The Providence Center (TPC).
- TPC records were received without a complete psychiatric evaluation included.
- Records were requested from Butler Hospital, but there was no record of admission to the hospital in 2014.
- Consultative examination reports were requested from DDU (Disability Determination Unit), but were not accessible due to recent denial and case closure.
- A review of the available records provided diagnoses of recurrent major depressive disorder (MDD), post traumatic stress disorder (PTSD), and a history of polysubstance abuse.

- Limited records received from TPC included an office visit on November 4, 2014.
- He reported feeling depressed and anxious following his recent release from the ACI (Adult Correctional Institution).
- He was attending a sober program.
- On November 13 he reported still feeling anxious, especially when attending group meetings.
- He was concerned that his medication supply was low.
- He was pleasant, oriented, and appeared to be stable during the session.
- A physician's note was received for a November 17 appointment which discussed his need for medication refills.
- He had been sober for over two years, including the time he was incarcerated.
- He was regularly attending substance relapse groups.
- His medications were adjusted to eliminate any chance of side effects.
- The medical evidence reviewed did not support the existence of a medically determinable impairment that would limit functioning, meet the durational requirements, or have residual deficits when following prescribed treatments.
- They stopped at step two (of the sequential evaluation process).
- He was not disabled for the purpose of the Medical Assistance program.

The appellant testified:

- He is currently unemployed, and has never performed substantial gainful work activity.
- He brought letters from a counselor and a doctor (actually a medication profile) from TPC to submit as evidence.

- When he follows recommendations for medication and counseling, he is noticing improvements of his symptoms.
- Currently, he is waiting for SSI to be determined.
- Even with treatment, he does not believe he can work.
- When he is with a number of people, he cannot focus on work because he feels panic.
- Sometimes he hears voices.
- Also, he feels very depressed.
- He is better when he keeps taking the medication, but he can't stop taking it, because the symptoms return.
- He is able to clean and do laundry.
- He sometimes has difficulty understanding instructions.
- Sometimes he has memory problems, which he believes have worsened subsequent to the time he had spent in prison.
- He is able to concentrate adequately to complete tasks.
- He likes to go to church several days per week.
- He was not always nervous about being with people, but acquired that fear while serving time in prison.
- He has been depressed about his family history.
- He is not able to drive, but does know how to use public transportation.
- During the past year he had also been treated at Memorial Hospital until he changed over to TPC.
- He has not attended any consultative examination appointments arranged by DDS or by his attorney for his SSI case.
- He has not performed any substantial gainful work activity (SGA) during the past fifteen years.

- He once worked in a garage washing cars more than five years ago, but did not reach the SGA income level.
- He is 49 years old and has an eleventh grade education.
- He is verbally bilingual in Spanish and English, but reads and writes in Spanish.
- When he was in the ACI he received psychiatric treatment and was given medication during that time.
- He had applied for the MA program in order to obtain a finding of disability that would qualify him for Bridge Fund cash benefits.
- 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 5, 2014.
- The Agency issued a written notice of denial of MA dated January 28, 2015.
- The appellant filed a timely request for hearing received by the Agency on February 9, 2015.
- At the hearing of March 7, 2015, the appellant requested to submit a letter from a case manager at The Providence Center (exhibit 1), and a current medication profile (exhibit 2), which were added to the evidence record.
- Per the appellant's request, the record of hearing was held open through the close of business on May 5, 2015 for the submission of additional evidence.
- Additional evidence from The Providence Center that was received by the MART during the held open period was forwarded to the Appeals Office on May 6, 2015 and was added to the record of hearing.
- No records from RI Department of Corrections (RIDOC) or any hospitals were received.

- 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 MDD, PTSD, intellectual developmental disorder, antisocial personality, and a history of substance abuse currently in sustained remission.
- 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 simple, routine tasks that are not highly time pressured, and do not require working closely with others.
- The appellant is 49 years old, which is defined as a younger individual.
- The appellant has an 11th grade education.
- The appellant communicates in both Spanish (primary), and English.
- The appellant has no reported substantial gainful work history.
- 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 November 20, 2014 and signed by Providence Center psychiatrist, Omer Cermik, MD.
- ✓ An Agency AP-70 dated November 6, 2014 completed with the help of a friend and signed by the appellant.
- ✓ Records of The Providence Center (TPC) for November 4, 2014 to February 20, 2015.
- ✓ A letter dated April 3, 2015 and signed by Jesus Berrio, case manager at The Providence Center.
- ✓ A medication profile as of February 20, 2015.
- ✓ Hearing testimony.

Medical and other evidence of an individual's impairment is treated consistent with (20 CFR 416.913). The record of hearing was held open through the close of business on May 5, 2015 for addition of updates from The Providence Center (including a psychiatric evaluation), as well as for treatment records from the RIDOC. At the close of business on May 5, 2015, TPC records had been submitted, but no RIDOC information had been received. The appellant did not request extension of the deadline to submit additional evidence, and allowed the record to close without that information.

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

All medical opinion evidence is evaluated in accordance with the factors set forth at (20 CFR 416.927). The appellant has submitted a recent psychiatric evaluation and progress notes from TPC compiled since his return to their care in November 2014. Other evidence of record includes a letter from a caseworker, and a list of medications. The evaluating psychiatrist completed the Agency MA-63 form. His opinion as a specialist is taken into consideration, although the frequency, length, nature, and extent of treatment during that November 2014 to February 2015 period does not justify assigning controlling weight of opinion to that source. All records and testimony will be 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 application, the Agency received some progress notes from the month of November 2014 only. Attempts were made to obtain more information from The Providence Center, and from Butler Hospital, but the requested records were not available at the time of the

inquiry. Additionally, the appellant had not reported on his application that RIDOC had provided treatment of his mental conditions during his incarceration in 2014, and therefore, those records were never requested. Based on the limited information documenting one month of evaluation, they were unable to establish the existence of a severe impairment that could be expected to meet the durational requirements. Their evaluation stopped at step two.

The appellant has alleged that symptoms of major depressive disorder (MDD), and post traumatic stress disorder (PTSD) impair him. Records also revealed that he had diagnoses of intellectual disorder, personality disorder, and a history of polysubstance abuse, and that he had sustained sobriety for more than two years. Currently he attends relapse prevention sessions regularly. The material nature of Drug Addiction & Alcoholism (DA&A) as a medically determinable impairment will be addressed at any step that is the last step in the sequential evaluation process provided that a finding of a disability has first been established. (20 CFR 416.935).

He attended office visits in November 2014 with TPC psychiatrist, Christine Scully and a licensed social worker. Notes indicated that he was returning to treatment for the first time since 2009, following a significant period of incarceration. He was on parole, and living in a sober house. He was previously eligible for SSI from 2010 to 2012, but that ended with his incarceration. He has reapplied since his release, but has been denied twice and his attorney has requested an administrative hearing. The rationale for the denial is unknown, and not necessarily linked to disability status.

The TPC social worker noted that he was pleasant and fully engaged in his treatment process. He was attending at least one meeting per day to maintain sobriety. His speech was coherent with no language abnormalities, and thoughts were linear and organized. He was, however, experiencing auditory hallucinations sometimes involving harmful commands. Since that first visit, medication management has been restarted. The appellant testified that he did realize improvement of symptoms when following prescribed treatment, and had learned that if he stopped taking prescribed medication, the symptoms would return, especially auditory hallucinations.

A second TPC psychiatrist, Omer Cermik, MD completed the agency MA-63 form in November 2014 evidently based on prior records. A history of psychiatric hospitalizations was noted, although the most recent occurred about three years ago. Dr Cermik described the appellant's current MDD symptoms as including psychotic features, ruminations, and racing thoughts; and endorsed PTSD symptoms secondary to exposure to repeated episodes of violence and trauma. The physician opined that relative to mental functional capabilities, the appellant would be markedly limited to perform most basic work-related activities. Marked limitations were not well supported within the treatment notes. Diagnoses were explained, and characteristics of his conditions that would result in some

limitations were indicated, but not to the level of marked impairment. Additionally, his prognosis indicated that there was a fair expectation that he could reduce or eliminate the adverse effects of his condition through treatment with medication and counseling, if he remained compliant. He has been admirably committed to following prescribed treatment recommendations since that time.

Dr Cermik documented a complete psychiatric evaluation performed on January 7, 2015, just two months after he reengaged with TPC. His estimate of intellectual functioning fell in the below average range. He noted a history of difficulty learning in school, especially language and mathematical skills. He has no relevant work experience. He attributed anxiety-related symptoms to a series of violent experiences both as a witness and as a victim. He has had three psychiatric hospitalizations in the past, but not in the last three years. Medication and counseling was made available to him during his period of incarceration. However, the appellant did testify that his time in prison increased his social anxiety, and Dr Cermik documented his apprehension about functioning in groups and speaking to people.

During the evaluation, the psychiatrist described his mental status indicating that he was alert and oriented in all spheres, and showed no signs of active delusions or hallucinations, and no suicidal or homicidal ideation. However, his mood was dysphoric and anxious, affect was anxiety ridden, intellect and fund of knowledge were below average, he was distracted, and showed poor insight. He was diagnosed with MDD with psychotic features, panic disorder, and post-traumatic stress disorder, and unspecified intellectual & personality disorders.

When he responded to the Agency AP-70 questions, the appellant indicated that he performs activities of daily living (ADLs) independently, and is able to walk, and enjoy sports and music. He is able to go out regularly. He can get to meetings, doctor appointments, and church; and also visit or speak on the phone with friends and relatives. Although he does not drive, he can use public transportation, and has others in his life that he can rely on for rides.

The evidence record provides facts relative to his mental health treatment with TPC for approximately 3 ½ months since his return to that agency. No other mental health treatment has been documented. The appellant has not alleged that he is limited to perform any physical activities, and no evidence of any physical impairment has been provided.

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. He has reported that within the past fifteen years, he has not performed any work activity that meets the definition of substantial, gainful activity. 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 returned to treatment at TPC following an absence of several years. The first complete psychiatric evaluation completed after resuming the treatment relationship revealed an increase in depressive symptoms and anxiety, which the appellant attributed to his time spent in prison. The evaluating psychiatrist also assessed unspecified intellectual disability and personality disorders. Characteristics of those conditions were described in terms of impact on functioning with respect to reduced general fund of knowledge, language, and mathematical abilities. His difficulties with certain social interaction and with traumatic recollections were also described.

The available evidence has established the existence of severe medically determinable impairments relative to major depressive disorder, post-traumatic stress, intellectual developmental disorder, antisocial personality, and history of substance abuse in sustained remission.

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 12.04 (Affective disorders), 12.05 (Intellectual disability), 12.06 (Anxiety-related disorders), 12.08 (Personality disorders), and 12.09 (Substance addiction disorders) are reviewed. This appellant is not dependent upon others for personal needs, and has not provided a valid IQ score that would demonstrate marked level restrictions. Evidence has not established impact on long-term functioning resulting from maladaptive patterns that could be expected to result in marked level restrictions. Furthermore, disturbance of mood has been characterized by multiple symptoms and intrusive recollections which do impact functional capabilities, but do not rise to the level of marked impairments to ADLs, concentration persistence, and pace, or social functioning; and have not resulted in repeated episodes of decompensation of extended duration or in complete inability to function independently. 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.

Mental RFC

Understanding and Memory: Fund of knowledge has been assessed by a psychiatrist to be below average. Language barrier also complicated understanding. Available assessments have ruled out the likeliness that he could manage detailed instructions. Evidence has not ruled his ability to remember locations and basic procedures. He could be expected to understand and remember short, simple, routine instructions.

Sustained Concentration and Persistence: Although he was distracted at times, examiners found him redirectable. He testified that he does have adequate concentration to complete tasks. Although he would be overwhelmed by detailed instructions, he could be expected to carry out short, simple, and routine activities. To complete a normal workday, he would need to maintain attention for two-hour blocks of time throughout a workday with allowances for customary breaks, which has not been ruled out by the available evidence. He has been able to manage ADLs and attend meetings and scheduled appointments. He has demonstrated that he can sustain a routine without special supervision. Due to anxiety and panic disorders, he would be best suited for tasks that are not highly time pressured.

Social Interaction: He presented at his appointments, and at the hearing as cooperative and pleasant. He could be expected to recognize and maintain socially appropriate behavior. Evidence did not rule out his ability to request necessary assistance, accept instructions from a supervisor, or to adhere to basic standards of grooming. Due to his anxiety about working with groups of people, or speaking with unfamiliar people, he would be best suited for jobs not requiring him to serve the public in large numbers, or to participate in team assignments.

Adaptation: He could be expected to respond to basic work-related change. He showed adequate judgment to be aware of normal hazards and take precautions. He demonstrated an ability to arrange transportation, and participated with his treatment providers in setting of realistic goals.

The appellant in this case has a history of affective and anxiety-related disorders. No physical impairments have been alleged or proven. Current mental residual functioning is adequate for understanding, and carrying out simple, routine instructions for tasks that are not highly time-pressured, and do not involve working closely with others. As the appellant has no history of substantial gainful work activity for which functional abilities can be assessed, the evaluation continues to Step five.

Step five: At the last step of the sequential evaluation process, consideration is given to the assessment of the individual's RFC together with his/her age, education and work experience to determine if he/she can make an adjustment to other work in the national economy (20 CFR 416.920(g)). If the individual is able to make an adjustment to other work, he/she is not disabled. If the individual is not able to do other work and meets the duration requirement, he/she is disabled. At step five, it may be determined if the individual is disabled by applying certain medical-vocational guidelines (20 CFR Part 404, Subpart P, Appendix 2). The medical-vocational tables determine disability based on the individual's maximum level of exertion, age, education, and prior work experience. In some cases, the vocational tables cannot be used, because the individual's situation does not fit squarely into the particular categories or because his/her RFC includes significant nonexertional limitations, such as postural, manipulative, visual, or communicative; or environmental restrictions on his/her work capacity. If the individual can perform all or substantially all of the exertional demands at a given level, the medical-vocational rules direct a conclusion that the individual is either disabled or not disabled depending upon the individual's specific vocational profile (SVP). When the individual cannot perform substantially all of the exertional demands or work at a given level of exertion and/or has non-exertional limitations, the medical-vocational rules are used as a framework for decision-making unless that directs a conclusion that the individual is disabled without considering the additional exertional and/or non-exertional limitations. If the individual has solely non-exertional limitations, section 204.00 in the medical-vocational guidelines provides a framework for decision-making (SSR 85-15).

In summary, the appellant is a 49-year-old male with an 11th-grade education, verbally bilingual in Spanish and English, and with no significant work history. He has been diagnosed with and treated for severe impairments including affective, anxiety-related, intellectual, and personality disorders.

Although functioning has been reduced by symptoms of anxiety-related conditions, and limited education and work experience, many positive elements of his residual functional capabilities exist. He has made an active commitment to treatment, is compliant with prescribed remedies (medication, counseling, and relapse prevention), reports effective management of psychotic symptoms with medication (current treatment has suppressed auditory hallucinations), has not been hospitalized since 2012, has achieved more than two-years of sobriety from cocaine and alcohol, and has demonstrated capabilities necessary to complete ADLs independently, to use public transportation, to attend meetings or appointments, and to maintain some contact with friends and relatives.

Based on the appellant's age of 49 (younger individual) 11th-grade education (limited), work history (none), MRFC (simple, routine work that is not highly time pressured, and does not involve working closely with others); the combined factors direct a finding of "not disabled" according to the Social Security regulations.

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

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



Carol J. Ouellette
Appeals Officer

APPENDIX

0352.15 ELIGIBILITY BASED ON DISABILITY

REV:07/2010 .

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

0352.15.05 Determination of Disability

REV:07/2010

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

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

0352.15.10 Responsibility of the MART

REV:07/2010

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

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

- i. If the Department finds a medically severe combination of impairments, then the combined impact of the impairments will be considered throughout the disability determination process.
 - ii. If the individual does not have a severe medically determinable impairment or combination of impairments, the Department will find that he/she is not disabled.
 - c. The Department will not consider the individual's age, education, or work experience at Step 2.
 - d. Step 2 is a de minimis standard. In any case where an impairment (or multiple impairments considered in combination) has more than a minimal effect on the individual's ability to perform one or more basic work activities, adjudication must continue beyond Step 2 in the sequential evaluation process.
4. Step 3

A determination is made whether the individual's impairment or combination of impairments meet or medically equal the criteria of an impairment listed in the Social Security Administration's Listings of Impairments (20 C.F.R. Pt 404, Appendix 1 to Subpart P).

 - a. If the individual's impairment or combination of impairments meets or medically equals the criteria of a listing and meets the duration requirement, the individual is disabled.
 - b. If it does not, the analysis proceeds to the next step.
5. Step 4

A determination is made as to the individual's residual functional capacity (RFC) and whether, given the RFC, he/she can perform his/her past relevant work (20 C.F.R. sec. 416.920(e)).

 - a. An individual's RFC is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments.
 - i. In making this finding, all of the individual's impairments, including impairments that are not severe will be considered (20 C.F.R. sec. 416.920(e), 416.945, and Social Security Ruling ("S.S.R.") 96-8p as applicable and effective).
 - ii. The Department will assess the individual's RFC in accordance with 20 C.F.R. sec. 416.945 based on all of the relevant medical and other evidence, including evidence regarding his/her symptoms (such as pain) as outlined in 20 C.F.R. sec. 416.929(c).
 - b. It must be established whether the individual has the RFC to perform the requirements of his/her past relevant work either as he/she has actually performed it or as it is generally performed in the national economy.

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

0352.15.15 Evidence

REV:07/2010

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

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

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

0352.15.20 Drug Addiction and Alcohol

REV:07/2010

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

0352.15.25 Need to Follow Prescribed Treatment

REV:07/2010

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

352.15.30 Conduct of the Hearing

REV:07/2010

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

NOTICE OF APPELLATE RIGHTS

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