



Rhode Island Executive Office of Health and Human Services
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Docket # 15-397
Hearing Date: April 9, 2015

Date: June 16, 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, Antonia Charpentier, and Rita Graterol.

Present at the hearing were: You (the appellant), your witness, 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 her incapable of any type of work, not necessarily her past work. In addition, the impairment must last, or be expected to last for a continuous period of not less than twelve (12) months.
- The MART reviewed an Agency MA-63 form (Physician's Examination Report), an Agency AP-70 form (Information for the Determination of Disability), and records of Thundermist Health Center (THC), and Community Care Alliance (CCA).
- She had previously been denied for SSI, but had reapplied.
- Consultative examination reports were requested, but none had been received as of the date of hearing.
- A review of the available records provided diagnoses including hypertension (Htn), post traumatic stress disorder (PTSD), generalized anxiety disorder (GAD), chronic pain secondary to trauma in 2004, and a history of opioid abuse with methadone maintenance.
- She started treatment with CCA in July 2012, and had participated regularly in substance abuse and relapse prevention counseling.

- CCA has requested that specific details of their mental health records not be released to the appellant.
- It was indicated that she was taking certain medications, but it was unclear who was prescribing her treatment remedies.
- Blood pressure was well controlled with medication.
- She offered complaints of right leg pain and swelling beginning in April of 2014.
- The objective examination note indicated trace edema in the right leg, normal peripheral pulses, and normal motor strength.
- It was recommended that she wear compression stockings and elevate the leg as needed, but to remain physically active.
- THC provided refills for Clonidine; however, there were no behavioral health notes in their records.
- There was not much information describing anxiety symptoms.
- Records lacked identification of who was prescribing and monitoring the methadone maintenance treatment.
- The medical records reviewed did not support the existence of a medically determinable impairment that would limit functioning, meet the durational requirements, or have residual deficits when following prescribed treatment.
- She was not disabled for the purpose of the Medical Assistance program.

The appellant, assisted by a witness, testified:

- She is currently unemployed.
- She sometimes loses feeling in her right leg which can cause her to trip and fall.
- She cannot sit or stand for a long period of time.
- She does not think she is capable of working a consistent schedule because she has good days and bad days.
- Dr Born at Rhode Island Hospital was the physician that best understood the nature of her nerve damage.
- She was last seen by Dr Born at University Orthopedics in the summer of 2014, when he completed an office examination and told her that there was nothing further he could do for her because the sciatic nerve had been cut, and there are no specific procedures to correct that injury.
- No pain medication was prescribed because she was on methadone maintenance.
- He did suggest that she could have a new EMG to check the extent of the nerve damage.
- The EMG she had at the time of the accident (in 2004) was so painful, she chose not to repeat it.
- She does discuss her pain with her primary care provider (PCP) at THC.
- She cannot stand long enough to take a shower, and usually has to sit on the edge of the bathtub.
- She can sit longer in a supportive seat, and prefers a higher seat to make the return to standing less difficult.
- Lifting results in a "pulling" feeling in her back.
- When she over exerts herself, she is set back for several days.
- She can lift ten lbs, but cannot hold it for too long.
- Her roommates help her to lift and carry groceries.

- Recently she has noticed a decline in her memory.
- Recall of her accident is affecting her emotionally, especially when experiencing disturbing dreams.
- The accident affected her family and her whole life.
- She can complete tasks she enjoys, but does not retain instructions or persevere at many activities.
- Her witness described a situation in which she had to help her complete instructions by breaking them down and presenting the steps gradually.
- She likes talking to people and helping people, as it takes the focus off of her own problems.
- She knows how to drive, but would have to drive with her left foot only due to the damage on the right side.
- She is 42-years old and has an eleventh-grade education.
- She had worked as a dietary aid, and as an activity aid at a local health center.
- She loved working in the Alzheimer's unit.
- She last worked in April 2004, and never returned to work activity after her accident.
- She had considered signing up for a work training program just to appear that she is trying to help herself and is not lazy.
- She does not, however, think that she can perform the suggested jobs such as janitorial work or customer service, because of the limitations imposed by her conditions.
- Anxiety symptoms interfere with her activities of daily living.
- She does do dishes, and can mop floors if she can take breaks as needed.
- She has not had physical therapy since 2006.
- The orthopedist did not recommend any further physical therapy at the last visit.

- Immediately after the accident she was hospitalized, and when she was discharged she was given a boot to wear.
- She did not use the device as frequently as recommended.
- Methadone maintenance and counseling take place at Discovery House.
- Additionally, she is living in a sober house where regular tox screens are performed.
- She has been sober since February 29, 2008.
- She had not attended any consultative examination appointments for her SSI case as of the date of hearing.
- She requested to hold the record of hearing open for the submission of additional evidence.

FINDINGS OF FACT:

- The appellant filed an application for Medical Assistance (MA) on October 15, 2014.
- The Agency issued a written notice of denial of MA dated January 9, 2015.
- The appellant filed a timely request for hearing received by the Agency on February 4, 2014.
- 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 from University Orthopedics, Discovery House, Thundermist Health Center, and Community Care Alliance.
- As of the close of business on May 7, 2015 no additional evidence had been received, and the appellant had not requested extension of the deadline.
- 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 anxiety-related disorders, and right leg neuropathic pain; as well as non-severe hypertension.
- 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, she retains the ability to perform simple, routine, sedentary work activity with postural and environmental restrictions.
- The appellant is 42 years old, which is defined as a younger individual.
- The appellant has an eleventh-grade education and communicates in English.
- The appellant is not disabled as defined in the Social Security Act.
- The appellant is not disabled for the purposes of the Medical Assistance Program.

DISCUSSION OF THE MEDICAL EVIDENCE RECORD:

The record of hearing consists of:

- ✓ An Agency MA-63 dated October 29, 2014 and signed by Jennifer Hopgood, FNP.
- ✓ An Agency AP-70 dated October 29, 2015 and signed by the appellant.
- ✓ Records of Thundermist Health Center for April 2, 2013 to October 29, 2014.
- ✓ Records of Community Care Alliance (protected records) for July 10, 2012 to March 11, 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 for the submission of records from several sources that were identified as missing during the hearing. Release forms were prepared for the appellant. Written instructions and contact information was provided to both parties. At the close of business on May 7, 2015 (the agreed upon date), no new evidence had been submitted. The appellant did not request extension of the deadline to submit evidence, and allowed the record to close without including clinical and diagnostic evidence from existing treating sources.

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 had a treatment relationship of significant length with THC and with CCA (formerly NRI Community Services). She has provided progress notes from THC where she has been a patient since at least 2013, and has been seen by several different staff members for women's health services and general physical examinations. Progress notes document about six months of routine care, not specifically focused on the details of alleged impairments. CCA had provided record of a significant period of nearly three years of substance relapse prevention counseling and mental status assessments. There is no evaluation of a psychiatrist during that timeframe. Records do not include evaluations of physicians specializing in neurology or psychiatry, and do not provide detail significant to justify controlling weight of opinion. All available records and testimony 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. The Agency review of available records revealed that the appellant had successfully sustained sobriety, and had demonstrated prolonged participation in her relapse prevention program initiated in July 2012. Physical medical records made reference to complaints of right lower extremity pain, but examination notes documented trace edema, and expressed no limitations to activities resulting from that condition. Consequently, the MART evaluation stopped at step two due to lack of evidence establishing the existence of a severe, medically determinable impairment.

The appellant has alleged that symptoms of a right leg injury of the sciatic nerve along with anxiety-related disorders, and hypertension currently impair her. Most of her conditions developed following a motor vehicle accident in 2004. Records also address substance addiction disorder which has been in full sustained remission since 2008 with the use of methadone maintenance which is administered by Discovery House. No records from that source are available for this decision.

Hypertension has been treated with medication management, and available blood pressure readings appear stable and within a desired range. Because hypertension generally causes disability through its effects on other body systems, the record is examined for any limitations imposed by hypertension to the heart, brain, kidneys, or eyes. Records show no evidence that hypertension has resulted in any end organ damage, or could be expected to affect functioning. It appears to be effectively medication managed at this time.

Examination notes at the time of the most recent appointment of record in October 2014 revealed that she was in no acute distress; had regular heart rate and rhythm, and that lungs were clear bilaterally with good air exchange. There was no mention of her leg injury on that date. Six months earlier, a nurse practitioner had documented decreased swelling of the right leg with use of compression stockings. She denied calf pain or paresthesia. No deformities of the extremities were indicated, and no cyanosis. Normal peripheral pulses were observed. Some edema was detected. She was advised to continue wearing compression stockings, to keep the leg elevated when at rest, and she was encouraged to stay physically active. Recommendation to discuss a change of birth control options suggests that the edema could have been a side effect of medication, and not necessarily related to the nerve condition.

Symptoms, including pain, fatigue, etc. are evaluated in accordance with the standards set forth at (20 CFR 416.929). The appellant has explained that she was severely injured more than ten years ago, and that damage to the sciatic nerve in her right leg was a consequence of the attempt to surgically repair a pelvic fracture. She has not presented any current medical evidence of recent assessments of the condition that would support the existence of pain at a level

alleged. There is no evidence of limited range of motion, strength, sensation, or reflexes, and no required assistive devices.

There is no neurological assessment providing objective medical findings regarding the right lower extremity. She testified that she experiences intermittent loss of feeling in the right extremity causing her to fear that she could trip and fall. There is no evidence; however, that she has ever actually taken such a fall, or required additional care for that problem. During the last known orthopedic evaluation in 2014 (not submitted), she admits she declined an EMG update, and was told there is no correction for the nerve damage she had suffered. In order to manage the discomfort, she has explained that she needs to sit more often, and that her ability to lift would be limited to 10 lbs.

While suitability for narcotic pain treatment is limited by past substance dependence, methadone is the only prescribed remedy that might benefit pain. There is no significant indication of ongoing attempts to treat right leg pain with physical therapy, heat or cold, chiropractic manipulation, injectable medications, acupuncture, aquatic therapy, or massage therapy. The evidence record contains inadequate information to support the restrictions noted on the agency MA-63 form, which describes functioning below sedentary level. Furthermore, her PCP has encouraged her to make efforts to remain active.

She expressed a positive attitude about work activity. Past employment in a nursing home helped her to realize that she enjoyed helping people, which shifted the focus away from her own problems. She was interested in trying a training program to return to employment, although she determined that the suggested jobs were not good matches for her current capabilities.

Her substance addiction has been in full sustained remission for more than seven years. When Drug Addiction & Alcoholism (DA&A) has been established as a medically determinable impairment within the sequential evaluation, the material nature of the addiction is addressed at any step that is the last step in a particular case only if there is a finding of disability (20 CFR 416.935).

The primary care provider documented the diagnosis of anxiety, and opined that she was functioning at a moderately limited level for all mental activities. Her most recent mental status assessment from her behavioral health provider supported her claims that she had been compliant with treatment medications, and applied behavioral skills. Behavior, speech, mood, affect, and cognitive functioning were all at baseline. No psychotic features were indicated.

CONCLUSION:

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

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

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

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

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

The appellant had been involved in a motor vehicle accident in 2004 and sustained a shattered pelvis. During a surgical procedure to repair the injury to the pelvis, the sciatic nerve was damaged. A nurse practitioner at THC had reviewed the x-rays along with progress reports from orthopedic surgeons which confirm the occurrence of the described injury. The appellant has alleged that continuing right leg pain limits her ability to walk, stand, or sit for adequate periods of time to allow for performance of basic work activities. The only adverse symptoms discussed within the available records were some swelling (corrected with compression), and trace edema, which evidence suggested could be related to medication.

She has also been treated for hypertension which is currently stable, and without residual effects. Behavioral health is monitored by CCA staff and anxiety is also well controlled. Substance dependence is in remission. She currently resides in a sober living facility, and is compliant with relapse prevention recommendations. Although there were no records received from Discovery House which would provide details of her efforts to sustain sobriety, she clearly has been successful, as the addictive behavior has been in full sustained remission for more than seven years.

Mentally, her treatment providers each endorsed moderately limited functioning secondary to anxiety-related disorders including panic disorder, and post traumatic stress. She appeared to be compliant with prescribed treatment recommendations and symptoms were stabilized.

Based on the available evidence, the appellant has severe impairments including right lower extremity neuropathic pain, and anxiety-related disorders. Her hypertension condition is non-severe, but considered in combination with severe conditions for the purpose of this evaluation.

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 11.04 (peripheral neuropathies), and 12.06 (Anxiety-related disorders) have been reviewed. Persistent disorganization of motor function has not been established or attributed to peripheral nerve dysfunction affecting more than one extremity, and resulting in a marked degree of interference with ambulation. Additionally, with respect to anxiety disorder, the records do document some past traumatic experiences. However, records do not demonstrate that marked level restrictions to concentration, persistence, pace, social functioning, activities of daily living, or repeated episodes of decompensation of extended duration have occurred. 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: The appellant has testified that she can lift up to ten lbs, which is consistent with her PCP opinion. Evidence does not rule out her ability to stand, walk, or sit for two-hour blocks of time throughout a workday with allowances for customary breaks. She would be limited for use of foot controls with the right lower extremity due to nerve damage.

Postural: She should avoid frequent climbing, balancing, stooping, kneeling, crouching, or crawling due to the right lower extremity injury.

Manipulative: No restrictions to ability for reaching, handling, fingering, or feeling have been established.

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

Communicative: No limitations to hearing or speaking have been demonstrated.

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

Mental RFC

Understanding and Memory: Evidence has not ruled out her ability to understand and remember simple, routine instructions, or to remember locations and procedures.

Sustained Concentration and Persistence: She could be expected to carry out 1-2-3 step instructions, maintain attention and concentration for two-hour blocks of time with allowances for customary breaks, to sustain a routine without extraordinary supervision, and make simple work-related decisions.

Social Interaction: She has enjoyed helping others in the past, and evidence has not ruled out ability to interact appropriately with the public, nor does it preclude her ability to know when to request assistance, to accept instructions from supervisors, get along with coworkers, maintain socially appropriate behavior, or to adhere to basic standards of grooming.

Adaptation: She could be expected to respond appropriately to basic work related change, be aware of normal hazards and take precautions, arrange transportation, and set realistic goals.

The appellant retains the ability to perform sedentary exertional level work with some postural and environmental restrictions, for simple, routine tasks. She has past relevant work experience as a dietary aid and as an activity aid in a nursing facility, which she felt well suited to socially. As current physical restrictions would limit her ability to return to that type of work, the sequential evaluation continues to Step five.

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

The appellant is a 42-year-old female with and 11th-grade education and primary language of English. She has overcome substance addiction for more than seven years, and remains committed to her relapse prevention counseling program and methadone maintenance. She is also treated for anxiety-related symptoms, and treatment providers have found that her mental activity functioning, although somewhat limited by her symptoms, is stable at baseline level. Her benign hypertension is well-controlled with medication, and has not resulted in any end-organ damage. Her primary physical impairment involves pain and intermittent loss of sensation in the right lower extremity secondary to nerve damage. Her current limitations preclude her ability to return to past relevant work activity.

Based on the appellant's age of 42 (younger individual), 11th grade education (limited), work history (semi-skilled, light work, not transferable), RFC (sedentary work activity with postural and environmental restrictions), MRFC (simple, routine mental activities), her ability to be retrained, and using vocational rule 201.25 as a guide, along with consideration of non-exertional impairments; the combined factors direct a finding of "not disabled" according to the Social Security regulations. The appellant retains the ability to perform other work.

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.