

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
EXECUTIVE OFFICES OF HEALTH AND HUMAN SERVICES
APPEALS OFFICE**

**Louis Pasteur Building- # 57 Howard Avenue
Cranston, Rhode Island 02920
(401) 462-2132/Fax# (401) 462-0458
TDD# (401) 462-3363**

Docket # 14-1165
Hearing Date: September 16, 2014

Date: October 29, 2014

ADMINISTRATIVE HEARING DECISION

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

**THE DHS POLICY MANUAL: MEDICAL ASSISTANCE
SECTION: 0352.15 ELIGIBILITY BASED ON DISABILITY**

The facts of your case, the Agency policy, 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, Marylou Averill, and Cruz Gomez.

Present at the hearing were: You (the appellant), your witness, and Jennifer Duhamel, RN (DHS Agency representative).

DHS POLICIES:

Please see the attached APPENDIX for pertinent excerpts from the Rhode Island Department of Human Services Policy Manual.

APPEAL RIGHTS:

Please see attached NOTICE OF APPELLATE RIGHTS at the end of this decision.

ISSUE: Is the appellant disabled for the purposes of the Medical Assistance Program (MA)?

TESTIMONY AT HEARING:

The Agency representative testified:

- In order to be eligible for Medical Assistance (MA) an applicant must be either aged (age 65 years or older), blind, or disabled.
- The Medical Assistance Review Team (MART) determines disability for the MA Program.
- The MART is comprised of public health nurses, a social worker and doctors specializing in internal medicine, surgery, psychology and vocational rehabilitation.
- To be considered disabled for the purposes of the Medical Assistance Program, the appellant must have a medically determinable impairment that is severe enough to render him incapable of any type of work, not necessarily his past work. In addition, the impairment must last, or be expected to last for a continuous period of not less than twelve (12) months.
- The MART follows the same five-step evaluation as SSI for determining whether someone is disabled.
- The MART reviewed an Agency MA-63 form (Physician's Examination Report), an Agency AP-70 form (Information for the Determination of Disability), and records of the Providence Center.
- As his application for SSI had already been denied, consultative examination reports were not accessible.
- The MA-63 was completed by a psychiatric clinical nurse specialist after his first visit.
- Diagnoses listed on the MA-63 and within the medical records were not well supported by objective medical facts.
- Diagnoses which were consistent throughout the evidence included adjustment disorder, and cannabis use.
- He contacted the Providence Center in January 2014 following an incident involving a stabbing and subsequent arrest.

- He self-reported a childhood diagnosis of autism.
- He reported no previous legal or mental health history.
- After his initial visit he was prescribed an anti-depressant, but stopped taking it after three days due to residual drowsiness.
- His mental status exams were good except for some intermittent sleep difficulty.
- A new medication to treat anxiety and depressive symptoms was prescribed in late January.
- His mood improved, but unwanted side effects resulted in several changes to his prescribed medication regimen.
- In February 2014, felony charges were dropped.
- At the March appointment he declined to submit to toxicology screening.
- The extent of substance abuse remained in question according to the clinicians evaluating him.
- He regularly attended all cognitive behavioral therapy (CBT) sessions.
- His thought process was organized, and he had adequate attention, concentration, and insight.
- 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.
- He was not disabled for the purpose of the Medical Assistance program.

The appellant, assisted by his wife, testified:

- He is currently unemployed.
- He requested to submit a second MA-63 form completed by psychiatrist, Warren Ong, MD.
- Since the form was completed, his medications had been changed, and he was taking higher doses than previous records indicated.
- His anger issues have gotten worse.
- He is taking medication for ADHD which was diagnosed during childhood.
- He last saw Dr Ong in April or May (2014).
- He had difficulty keeping the jobs he tried.
- He was fired several times, and his earnings were below \$1070/month.
- Since the time when he last worked, his symptoms have gotten worse.
- Although he had ADHD as a child, his school did not offer many special accommodations.
- He got into a great deal of trouble in middle school.
- Although he has a form of autism, it does not impact intelligence, and he managed to complete high school.
- Medication helps somewhat with concentration, but his attention still wanders after 10-15 minutes.
- He often can't sustain attention long enough to finish watching a television program.
- He does not have any special hobbies or interests.
- His autism disorder has been categorized as Asperger's.
- Social interaction is a major barrier for him.
- He tried going to college, but dropped out quickly.
- He has never used cannabis or other street drugs.

- He is typically a very light drinker, although he drank more than usual on the night of the stabbing incident.
- He has been on his new medication regimen for several months.
- He experiences flashbacks.
- He tried joining the Coast Guard, but was medically discharged.
- He suffers from significant anxiety with regular panic attacks.
- He can complete personal care independently, but is often disinterested.
- He relies on his wife to complete household chores, and cooking.
- He relates well to animals, and gets some comfort from his pet cat.
- His anxiety attacks are severe, and occur almost daily.
- Anger outbursts have increased, and he has tried to put holes in the walls.
- His flashbacks involve a stabbing incident.
- He does not sleep well, and typically averages less than five hours of sleep per night.
- His memory is poor and has decreased recently.
- He does not finish anything he starts.
- He does not drive by choice.
- He tries to walk whenever possible because he is uncomfortable riding the bus.
- He has not attended any consultative examination appointments.
- He has not been treated anywhere other than at the Providence Center during the current year.
- 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 April 24, 2014.
- The Agency issued a written notice of denial of MA dated June 25, 2014.
- The appellant filed a timely request for hearing received by the Agency on July 8, 2014.
- Per the appellant's request, the record of hearing was held open through the close of business on October 14, 2014 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 October 14, 2014 and was added to the record of hearing.
- As of the date of this decision, the MART had not withdrawn the notice under appeal.
- The appellant is not engaging in substantial gainful activity.
- The appellant had severe, medically determinable impairments including Asperger's syndrome, panic disorder with agoraphobia, post traumatic stress disorder, and attention deficit hyperactivity disorder.
- The appellant did have a combination of impairments that medically equaled listing 12.06 of the listed impairments in the Social Security listings.
- The appellant is disabled as defined in the Social Security Act.
- The appellant is disabled for the purposes of the Medical Assistance Program.

DISCUSSION OF THE MEDICAL EVIDENCE RECORD:

The record of hearing consists of:

- ✓ An Agency MA-63 dated May 9, 2014 and signed by Marol Kerge, PCNS.
- ✓ An Agency MA-63 dated May 6, 2014 and signed by psychiatrist, Warren Ong, MD.
- ✓ An Agency AP-70 dated April 24, 2014 and signed by the appellant.
- ✓ Records of The Providence Center for January 6, 2014 to September 12, 2014.
- ✓ Hearing testimony.

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

All medical opinion evidence is evaluated in accordance with the factors set forth at (20 CFR 416.927). The appellant established a treatment relationship with The Providence Center staff, and has attended frequent visits throughout the past year. Psychiatrists, psychiatric nurse practitioners, and cognitive behavioral therapists have documented evaluations, progress notes, and treatment reviews encompassing a combination of conditions. An outpatient clinic may be considered a treating source if an ongoing relationship has been established, as is the case in this matter. Dr Ong, whose specialty is psychiatry, has provided a detailed psychiatric evaluation, and at a later date, provided opinions supported by objective findings relative to functioning during the appellant's treatment with medication management, and cognitive behavioral therapy. Controlling weight is, therefore, appropriately assigned to the opinions expressed by Dr Ong, in his authority as a psychiatrist of The Providence Center treating source.

The MART is considered a non-examining source when expressing opinions regarding an individual's condition. At the time of application, the MART review of available evidence resulted in findings that he had a supported diagnosis of adjustment disorder, and claims of several other conditions that had not been verified. Additional information was provided by the appellant during the hearing, and updated records were submitted after the hearing. As of the date of this decision, the Agency has not withdrawn the notice of denial under appeal.

Dr Ong indicated in his psychiatric evaluation of March 31, 2014 that prior to their meeting he had reviewed available background information from several sources, and during the evaluation considered statements from the appellant's wife, as well as his self-reported characteristics, finding him to be a fair historian. The psychiatrist noted that there was reason to suspect both biological and developmental predisposition for his current psychiatric issues. He endorsed the diagnoses of Asperger's disorder, Panic disorder with agoraphobia, post-traumatic stress disorder (PTSD), and attention deficit hyperactivity disorder (ADHD).

Asperger's had been present since childhood. Although he is fairly intelligent, he did require some special education arrangements in order to complete high school. Currently, the condition results in some deficits to social skills, poor tolerance of social interactions, inability to read non-verbal cues, and oddities of affect and manner of speaking. He also displayed some obsessive traits.

PTSD dates back at least to the time after high school when he attempted to serve in the Coast Guard. It was a traumatic experience resulting in his discharge after only three weeks of training. A government assessment of his challenges resulted in psychiatric findings which were the basis for his dismissal. Subsequently, he reported a traumatic experience involving a violent incident which took place in December 2013. He continues to experience chronic, intrusive memories, and nightmares of past experiences, autonomic hyperarousal, fragmented sleep and need for avoidance of triggers.

Dr Ong also noted that panic episodes were recurrent, and resulted in physical symptoms including dyspnea, palpitations, and sweating. His wife testified that despite recent commitment to treatment, he is often explosive, and unable to appropriately manage anger issues. His work history consisted of several very short-term, unsuccessful work attempts, which often ended due to his inability to get along with others in the workplace, and argumentative behavior with his bosses.

He has tried to remain compliant with prescribed treatment regimens. Records documented that in addition to treatments for his anxiety-related conditions, prescribed remedies were recommended as a continued effort to manage symptoms of chronic inattention from ADHD. Progress notes from a recent visit showed some improvement in focus, and reduced impulsivity with treatment medication, although the appellant testified that even with improvement, his ability to stay focused is very limited. When asked to respond with his opinion of his patient's prognosis, Dr Ong indicated that the likeliness of eliminating or reducing the conditions through medication and other treatment was poor. He explained that the impairments were chronic and refractory, which was supported by evidence revealing limited change with treatment, and complaints of further decline.

An assessment of mental activities reveals marked level restrictions to attention, concentration, persistence and pace, interaction with others in the workplace, and ability to respond appropriately to change. Dr Ong opines that the severe, chronic, persistent nature of his mental illness renders him incapable of gainful employment. That opinion is consistent with findings of other staff specialists, his dismissal from the Coast Guard based on psychiatric evaluation, failure to successfully sustain any substantial gainful work activity, legal history, and witness testimony.

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, and has no history of employment qualifying as SGA. 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 a lifelong history of psychiatric conditions believed to have occurred secondary to both biological and developmental predispositions. He struggled with Asperger's syndrome with superimposed ADHD (combined type) throughout childhood. Evidence has added diagnoses of PTSD and panic disorder triggered by events occurring in both childhood and early adulthood. According to the functional limitations identified by the controlling treating source, and the indications that symptoms are not significantly yielding to treatment with medication management and CBT, his mental health impairments are considered severe for the purpose of the sequential 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 12.06 (Anxiety-related disorders), and 12.10 (Autistic and other pervasive developmental disorders) have been considered. Psychiatric evaluations have characterized deficits with respect to reciprocal social interaction. Evidence also supports markedly restricted repertoire for activities and interests. Furthermore, despite a steady record of commitment to treatment throughout the past year, he continues to struggle with symptoms of autonomic hyperactivity, and apprehension. Evidence reveals that he is reliant on others to complete many activities of daily living, has had longstanding difficulty maintaining social functioning, and is markedly restricted to maintain concentration, persistence and pace.

The medical evidence record and interpretation provided by the controlling treating source supports a combination of persistent symptoms that result in the existence of marked level impairment to mental functioning rising to a level that medically equals listing 12.06. As a result, the sequential evaluation ends at step three.

After careful and considerate review of the Agency's policies as well as the evidence and testimony submitted, this Appeals Officer concludes that the appellant is disabled as defined in the Social Security Act, and for the purpose of the Medical Assistance Program.

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


Carol J. Ouellette
Appeals Officer

APPENDIX

0352.15 ELIGIBILITY BASED ON DISABILITY

REV:07/2010

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

0352.15.05 Determination of Disability

REV:07/2010

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

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

0352.15.10 Responsibility of the MART

REV:07/2010

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

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

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