

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

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Docket # 14-1259
Hearing Date: September 18, 2014

Date: December 15, 2014



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 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, Felix Namaka, and Cruz Gomez.

Present at the hearing were: You (the appellant), 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), notes from Dr Sahar, and records of Blackstone Orthopedics and Sports Medicine, and Elite Physical Therapy.
- He had been denied for SSI, but no consultative examination reports were received from that source.
- A review of the available records revealed that he had undergone a right shoulder arthroscopy, and a superior labril repair, and had also been diagnosed with cervical spondylosis with mild canal stenosis and foraminal stenosis.
- The MA-63 form was completed by an orthopedic surgeon, and documented time out of work after surgery.
- Additional records were requested from the primary care physician (PCP), but no response had been received as of the hearing date.

- Referrals had been made to a neurosurgeon and a psychiatrist, but there were no records from those sources.
- The limited office notes received from his PCP, did not provide clear evidence of medically determinable impairments.
- The initial orthopedic evaluation was completed in January 2014.
- Conservative treatment was prescribed for right shoulder pain radiating down his right arm, as well as some localized neck pain.
- Range of motion (ROM) was limited in the right upper extremity.
- He had a good response to the injections to the subacromial region.
- Surgery was performed on May 28, 2014.
- A follow-up examination on June 10, 2014 revealed that he was generally doing well, using pain medication to manage post-surgical pain, and was neurovascularly intact.
- The impact of pain on physical functioning and any side effects of pain medication were taken into consideration.
- Physical therapy (PT) was expected to start within a few weeks following the surgical repair.
- No post-operative PT records were received.
- Further improvement could be expected following surgical repair.
- Conditions considered to be severe for the purpose of the sequential evaluation included right shoulder condition status post arthroscopy and labrum repair, cervical spondylosis with mild canal stenosis from C5-T1, and severe foraminal stenosis.
- Review of the Social Security musculoskeletal listings relative to disorders of the spine and joints resulted in a conclusion that his conditions did not rise to the level described.
- His residual functioning was expected to accommodate light work activity.
- He would be unable to return to his past relevant work as a truck driver.

- Taking into account his age, education, past relevant work experience, his ability to be retrained, residual functional capacity, non-exertional restrictions, and using the vocational rules as a guide, they concluded that he was not disabled according to the Social Security guidelines.
- He was not disabled for the purpose of the Medical Assistance program.

The appellant testified:

- He is currently unemployed.
- There was information missing from the Agency review.
- He saw his PCP in September and received another letter excusing him from work until the next follow up in November 2014.
- He underwent EMG testing to evaluate the nerve response in the upper extremities.
- He had tried injections for pain management and expected to be scheduled for a second appointment.
- He also had a visit with a spine doctor who indicated that his current symptoms were new problems, and that he should follow up with a neurosurgeon.
- The last EMG was done about three years ago, prior to surgery, and there are no current plans to have the test repeated.
- He is also seeing a psychiatrist for severe depression and anxiety symptoms.
- A consultative psychiatric examination was completed for his Social Security case.
- He anticipates problems obtaining refills of his inhaler, because there is no generic form available that would be covered by his health insurance.
- He can no longer see physician at the Rhode Island Free Clinic, and needs time to make arrangements for some services.
- Movement of his head results in pain radiating down his back.
- His hand often locks up.

- He is right handed.
- He is currently seeing a psychiatrist and a counselor at Angell Street Psychiatry.
- The medication prescribed by the psychiatrist is not really working.
- The counselor is evaluating for ADHD.
- He has always known that attention deficit was a problem for a long time, although it had not been formally diagnosed.
- He had not worked for about five years.
- He was working as a truck driver from 2005-2009.
- He performed some security work, which only lasted about 3 months.
- He also has experience as a limousine driver.
- He occasionally repaired appliances, but never did that as a steady job.
- He cannot stand or walk for two hours.
- Sitting for long periods is also difficult.
- He believes that an MRI showed that he had arthritis in his back.
- He has been working with Federal Hill House Association vocational rehabilitation services.
- 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 3, 2014.
- The Agency issued a written notice of denial of MA dated July 21, 2014.
- The appellant filed a timely request for hearing received by the Agency on July 31, 2014.

- Per the appellant's request, the record of hearing was held open through the close of business on October 16, 2014.
- Per the appellant's request for extension of the held open period, the deadline for submitting evidence was changed to November 13, 2014.
- Additional evidence from East Side Primary Care, Federal Hill House Association, Dr Cielo, Pawtucket Memorial pain management, Blackstone Orthopedics, and Angell Street Psychiatry that was received by the MART during the held open period was forwarded to the Appeals Office on November 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 cervical spine stenosis and cervical radiculopathy; as well as and non-severe conditions including depressive symptoms, anxiousness, and a history of right shoulder arthroscopy with labrum repair.
- 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 light work with some postural, manipulative, and environmental restrictions.
- The appellant was born on [REDACTED], 1968 and is 46 years old, which is defined as a younger individual.
- The appellant has a high school equivalent education and communicates in English.
- Transferability of job skills is not an issue in this case.
- 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 April 8, 2014 and signed by Jonathan Gastel, MD.
- ✓ An Agency AP-70 date stamped April 9, 2014 and signed by the appellant.
- ✓ Records of Blackstone Orthopedics and Sports Medicine for April 4, 2014 to September 15, 2014.
- ✓ Records of East Side Primary Care physician, Christoph Sahar, MD dated January 6, 2014 to October 16, 2014.
- ✓ Records of Elite Physical Therapy for February 10, 2014 to April 17, 2014
- ✓ A work excuse note from Christoph Sahar, MD dated September 11, 2014.
- ✓ Records of neurosurgeon, Deus Cielo, MD dated April 28, 2014.
- ✓ Federal Hill House Association vocational testing and evaluation report for period from August 18, 2014 to September 10, 2014.
- ✓ Records of Angel Street Psychiatry for August 7, 2014 to September 12, 2014.
- ✓ Records of Memorial Hospital pain management center for April 8, 2014 to September 16, 2014.
- ✓ 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 November 13, 2014 including the time requested at hearing, and an extension of four weeks requested on October 15, 2014. Updated evidence from six treating or examining sources was submitted. No information was added from the Rhode Island Free Clinic, or the Disability Determination Services psychiatric evaluation completed for the Social Security case as discussed during the hearing.

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 a longitudinal treatment relationship with a primary care physician who coordinated care for several different conditions, and an orthopedic surgeon who had operated on his right shoulder in May 2014. Great weight is given to the opinion of the treating physicians with regard to the specific conditions addressed in their respective practices. Additionally he has submitted a single evaluation of a neurosurgeon, two treatment visits with a pain specialist, office notes of a clinical social worker, and

a report from a vocational rehabilitation evaluator. All reports are considered in combination for the purpose of the sequential evaluation.

The MART is considered a non-examining source when expressing opinions regarding an individual's condition. At the time of application the MART found sufficient evidence of severe musculoskeletal impairment which did not rise to the level of any Social Security listing, but opined that it did limit functioning to light work exertional level. After considering all factors impacting the physical functioning and an associated vocational rule, they concluded that he was not disabled according to Social Security guidelines, as he retained the ability to perform some types of work.

Additional information from six treating sources was submitted after the hearing. As of the date of this decision, the Agency had not withdrawn the denial notice under appeal, and therefore stands by their determination that the appellant has severe conditions which result in a reduction of functioning, but that he is not disabled for the purpose of the MA program. Their final rationale for that conclusion has not been communicated to this Appeals Officer.

The appellant has alleged that symptoms of cervical stenosis with radiculopathy, right shoulder status post arthroscopy and labrum repair, as well as depression, anxiety and ADHD impair him. Records document surgical repair of the right shoulder conditions on May 28, 2014, surgical follow up therapy and assessments, diagnosis of multilevel cervical spine abnormalities supported by MRI, pain management procedures, psychiatric counseling, and vocational rehabilitation evaluation.

Following surgical intervention to correct the right shoulder condition, he was able to complete the recommended physical therapy. Overall improvement was indicated, with specific increase in range of motion, and strength noted. Some pain with prolonged lifting was recognized. At the most recent follow up appointment in October 2014 with the orthopedic surgeon, the specialist documented marked post-surgical improvement of the right shoulder. He had full range of motion without significant pain, and strength was normal. The physician subsequently made a referral for further pain management of cervical spine stenosis, and radiculopathy.

Due to complaints of cervical spine pain with right upper extremity radicular pain, he had been evaluated in April 2014 by a neurosurgeon, Dr Cielo. Shoulder shrugs were strong bilaterally, extension at full strength, muscle tone was normal, sensation was intact throughout, reflexes and gait were normal, there was no tenderness or reduced range of motion in the spine. An MRI did reveal multilevel neuro foraminal stenosis explaining his chronic neck pain, and radicular pain, and conservative treatment by epidural steroid injections (ESI) was recommended. At the time of hearing, the appellant reported that the first round of ESI had not produced significant results, and that a second procedure

had been prescribed. On October 6, 2014 a cervical epidural steroid injection with Epimed catheter was administered by the pain management specialist, Dr Todorov. He was told that if this procedure did not provide relief, he should return to consult further with the neurosurgeon.

The only office visit documented after that last pain treatment was with PCP, Dr Sahar. The October 16, 2014 progress notes indicated that the reason for the appointment was to evaluate chronic neck and low back pain. There was no indication of acute distress. With respect to the neck, he noted no Battle's sign, no torticollis, or asymmetry. Neurological factors mentioned included firm hand grip and gait within normal limits. Musculoskeletal examination findings revealed full strength in all extremities. No further examination was completed, and no increase in pain or other disorders of the spine were indicated. Had severe symptoms existed ten days after the last ESI treatment, it seems unlikely that the PCP would have omitted that information from the progress notes. A note was prepared excusing him from work activity until November 2014, when he could reassess.

Symptoms, including pain, are evaluated in accordance with the standards set forth at (20 CFR 416.929). The appellant has presented diagnostic imaging supporting medically determinable impairment relative to cervical spine stenosis which could reasonably be expected to cause pain and/or other numbness radiating down the spine and the dominant right upper extremity as alleged. He has indicated that the pain is constant. Pain symptoms are of significant duration, and have been acknowledged by his primary care physician, and a pain management specialist. Records note that he has complained that pain is aggravated by prolonged lifting. He has been treated with medication, physical therapy, and epidural steroid injections. During a recent job training program he complained constantly of pain and numbness of the right arm and hand, and had difficulty grasping. Vocational evaluators concluded that his impairments would rule out certain work activity, but noted that he had chosen a sedentary vocational goal as a freight broker.

The appellant had also indicated that he had been diagnosed with ADHD, which he believed he struggled with for a long time without an actual diagnosis being made. Records contain very little information about the impact of ADHD on functioning, treatment recommendations or effectiveness. Vocational assessment information noted some distractibility, but no significant effect on his overall understanding, memory or concentration.

A clinical social worker at Angell St Psychiatry has been counseling him regularly for depressive symptoms. His depression, as described within the evidence record, is situational as it relates to unfortunate life events such as periods of homelessness, decline in health, job loss, and problems paying child support. Evidence does not include a complete evaluation of a psychologist or psychiatrist which would support the diagnoses of mental health problems, and identify

characteristics of symptoms that might affect mental functioning. No cognitive testing was indicated.

At the time of the most recent visit with the Jack Keating, LICSW, his attitude was pleasant and cooperative, he was alert and oriented in all spheres, motor activity was normal, he displayed full range of affect, there were no abnormalities of speech, thought process, thought content, or perception, and no harmful ideations presented. Distractibility was observed, and insight and judgment were fair. Mood was depressed and anxious, but ADHD was not affirmed, although there is a note that it requires further assessment. He was to continue therapy and his medication regimen, and was expected to return as needed.

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 not performed any substantial work activity within the past five years. 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 certainly had experienced a serious right shoulder arthroscopy and labrum repair. Follow-up with the orthopedic surgeon has documented marked improvement, and no significant restrictions to range of motion, strength, or sensation. The surgical intervention appears to have been quite successful.

He has also been counselled for several months in order to address symptoms of situational anxiety and depression. ADHD has not been well supported by the evidence. While these particular physical and mental conditions cannot be ignored, evidence has not established that they result in more than minimal impact on functioning, and therefore, are considered as non-severe impairments for the purpose of the sequential evaluation.

Clearly, the only condition that has been proven to be severe in this case is cervical spine stenosis with pain radiating to the dominant right upper extremity. The existence of this condition has been supported by clinical and diagnostic evidence, and could be expected to limit physical activity. The sequential evaluation continues with consideration of the combination of all severe and non-severe impairments.

Step three: A determination is made whether the individual's impairment or combination of impairments meet or medically equal the criteria of an impairment listed in the Social Security Administration's Listings of Impairments (20 CFR Part 404, Subpart P, Appendix 1). If the individual's impairment or combination of impairments meets or medically equals the criteria of a listing and also meets the duration requirement (20 CFR 416.909), the individual is disabled. If it does not, the analysis proceeds to the next step.

In this matter, listings 1.02 (Major dysfunction of a joint), and 1.04 (Disorders of the spine) has been taken into consideration. While there is evidence of multilevel cervical stenosis with nerve involvement resulting in some loss of sensation in the right upper extremity, there is no indication of extreme muscle weakness, or atrophy, severe burning or painful dysesthesia, or lumbar complications affecting ability to ambulate. Additionally, there is no evidence of extreme loss of functioning to either upper extremities, or inability to carry out activities of daily living independently. As a result, the medical evidence record does not support the existence of an impairment that rises to the level of the listings.

Step four: A determination is made as to the individual's residual functional capacity (RFC) and whether, given the RFC, he/she can perform his/her past relevant work. (20 CFR 416.920(e)). An individual's functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, all of the individual's impairments, including impairments that are not severe must be considered. The individual's RFC will be assessed in accordance with (20 CFR 416.945) and based on all relevant medical and other evidence including evidence regarding his/her symptoms (such as pain) as outlined in (20 CFR 416.929). Next, it must be established whether the individual has the RFC to perform the requirements of his/her past relevant work either as he/she had actually performed it or as it is generally performed in the national economy. Using the guidelines in (20 CFR 416.960 (a)-(b)(3)), the RFC assessment is considered together with the information about the individual's vocational background to make a disability decision. If the individual has the RFC to do his/her past relevant work, the individual is not disabled. If the individual is unable to do any past relevant work, the analysis proceeds to the fifth and final step in the process.

Physical RFC

Exertional: Evidence associates the reduced ability to prolong lifting with the right upper extremity. No limitation on the left side has been established. Ability to sit, stand, or walk throughout a workday for two-hour blocks of time with allowances for customary breaks has not been ruled out. Partial loss of function of one arm is a stand-alone limitation affecting all ranges of work. Accordingly, light work activity rules are used as a framework (POMS DI 25020.005A5).

Postural: He should avoid jobs requiring frequent climbing, balancing, or crawling.

Manipulative: As evidence indicates that he experiences some limitation to handling, grasping, and turning secondary to reduced sensation of the right hand, the impact on the work activity has been taken into consideration under exertional functioning. ADLs are intact.

Visual: No restrictions to near acuity, far acuity, depth perception, accommodation, color vision, or field of vision have been indicated.

Communicative: Hearing and speaking capabilities are intact.

Environmental: He should avoid extreme cold, heat, wetness and humidity, as well as hazards such as heights, and certain types of machinery requiring use of hand controls.

The available evidence has not established that more than minimal limitations to mental activities exist. Physical functioning is limited by his combination of severe and non-severe conditions to a level of light exertion. Physical conditions have been treated, and could be expected to continue to improve in the near future, especially in the area of pain reduction. Current ability to perform sedentary activity is consistent with the findings of a recent vocational rehabilitation evaluation. Residual functioning would preclude his ability to perform past relevant work as a delivery truck driver due to his reduced exertional capacity. The sequential evaluation proceeds to step five.

Step five: At the last step of the sequential evaluation process, consideration is given to the assessment of the individual's RFC together with his/her age, education and work experience to determine if he/she can make an adjustment to other work in the national economy (20 CFR 416.920(g)). If the individual is able to make an adjustment to other work, he/she is not disabled. If the individual is not able to do other work and meets the duration requirement, he/she is disabled. At step five, it may be determined if the individual is disabled by applying certain medical-vocational guidelines (20 CFR Part 404, Subpart P, Appendix 2). The medical-vocational tables determine disability based on the individual's maximum level of exertion, age, education, and prior work experience. In some cases, the vocational tables cannot be used, because the individual's situation does not fit squarely into the particular categories or because his/her RFC includes significant nonexertional limitations, such as

postural, manipulative, visual, or communicative; or environmental restrictions on his/her work capacity. If the individual can perform all or substantially all of the exertional demands at a given level, the medical-vocational rules direct a conclusion that the individual is either disabled or not disabled depending upon the individual's specific vocational profile (SVP). When the individual cannot perform substantially all of the exertional demands or work at a given level of exertion and/or has non-exertional limitations, the medical-vocational rules are used as a framework for decision-making unless that directs a conclusion that the individual is disabled without considering the additional exertional and/or non-exertional limitations. If the individual has solely non-exertional limitations, section 204.00 in the medical-vocational guidelines provides a framework for decision-making (SSR 85-15).

The appellant is a 46-year old male with a GED and additional vocational training for major appliance repair, HVAC, and truck driving. He is status post successful arthroscopic repair of the right shoulder, with no significant residual limitation indicated. He attends counseling for depressive symptoms and anxiousness related to his current adverse personal circumstances. Impairment secondary to cervical spine stenosis at multiple levels, and associated radicular pain and numbness of the right upper extremity has resulted in limitations to physical functioning which has reduced his exertional capacity to light exertional level work activity. He has been following treatment recommendations of his PCP and a pain management specialist. Recent ESI treatment to manage pain has been administered. Consideration of his physical limitations, pain symptoms, and mental stress, results in an expectation that his functioning would be reduced to a level below that required to perform his past relevant work.

Based on the appellant's age of 46 (younger individual), GED and vocational education (high school or more), work history (medium to heavy, semi-skilled, not transferable), RFC (light work activity with some postural, manipulative, and environmental restrictions), and using vocational rule 202.21 as a guide along consideration of non-exertional factors; the combined characteristics direct a finding of "not disabled" according to the Social Security regulations. The appellant retains the ability to be retrained, and 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.