

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

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Docket #14-1330
Hearing Date: October 2, 2014

Date: November 17, 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, Kong Prak, and Rita Graterol.

Present at the hearing were: You (the appellant), and Julie Hopkins, 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 NRI Community Services (NRICS), Arbour-Fuller Hospital, and Family Care Center(FCC).
- The MA-63 was completed after one visit with the signing physician, and on page four indicated that his condition was not disabling.
- SSI had been denied and was under appeal, but no consultative examination reports were accessible from that source.
- A review of the available records revealed diagnoses of left lateral epicondylitis, history of a C6-C7 fusion and right elbow surgery, recurrent major depressive disorder (MDD), cannabis abuse, and alcohol dependence.

- A FCC physician completed the MA-63 form indicating that he had treated the condition of tennis elbow (epicondylitis), which was expected to resolve in 6-8 weeks' time.
- A FCC report of July 2014 described a normal physical exam.
- There were no range of motion limitations described for his cervical spine or for his elbow.
- In June 2014 he was treated at Arbour-Fuller Hospital for MDD with psychotic features.
- At that time, he reported regular marijuana use for a period of four months.
- He was started on medication to manage anger, impulsivity, and poor sleep, with good effect.
- He was stable, calm and cooperative and without any evidence of delusions or hallucinations at the time of his discharge.
- He started outpatient care with NRICS in June 2014.
- There were no records which documented facts regarding his past cervical spine or elbow surgeries.
- There was no objective evidence of any problems with chronic pain or limitations to range of motion.
- The diagnoses alone did not provide proof of chronic impairment.
- Mental health records covered only one month, and did not provide a longitudinal picture of medication response or compliance.
- The evidence did not support the existence of a medically determinable impairment that would limit functioning, meet the durational requirements, or have residual effects when following prescribed treatment.
- He was not disabled for the purpose of the Medical Assistance program.

The appellant testified:

- He is currently unemployed.
- He had a cervical spine fusion of the C6-C7 vertebrae performed in 2005.
- The pain continued after his surgery, but is presently getting worse, and radiating to both upper extremities.
- He is restricted to 5lbs when lifting with his dominant right arm.
- He is able to lift 10-15 lbs with his left arm.
- He requested to submit a physician note (dated October 7, 2011) releasing him from work, and noting that the condition was permanent.
- He has not been able to work since 2010 when he was injured at [REDACTED] Industries.
- He also requested to submit an updated MA-63 completed by NRI Community Services practitioner, Cathy Lindbeck, PCNS and dated August 28, 2014.
- He was treated at Sturdy Memorial Hospital in June 2014 for chest pain.
- He had an MRI of the c-spine three days earlier as ordered by the Family Care Center.
- He is expecting to attend a follow up visit to discuss the radicular pain.
- He had surgery on his elbow in 2012 and his wrist in 2013.
- He had attended physical therapy, but continued to have problems with his strength.
- Significant lifting restrictions impacting his upper extremities still remain.
- He is currently taking medications for nerve pain, for sleep aid, and for psychiatric symptoms.
- Family Care Center prescribes all of his medication.
- The medications are working to reduce his symptoms, but not eliminate them.

- He checks with his doctor when he feels an increase of the medication doses is needed.
- He manages his own household chores.
- He does not drive for reasons unrelated to his conditions.
- He has not used alcohol for about 18 months.
- He used marijuana for pain at one point prior to hospital admission, but has not been a regular drug user.
- He agrees that he is only slightly limited in ability to remember and carry out instructions, to sustain attention and concentration, to make simple work-related decisions, and to interact appropriately with co-workers and supervisors, as indicated by his treatment provider.
- His physical impairments are worse than mental limitations.
- He tried returning to work, but any pushing and pulling motions caused problems with his neck.
- In the past he has worked as a furniture mover, printer repairman, and stock handler.
- He cannot grasp and hold objects for long.
- Two of his fingers on the right hand are very weak.
- He has been diagnosed with tennis elbow in his left arm.
- He has already had injections in the left elbow, but they only helped for a week or two.
- Family Care Center had evaluated the left arm.
- 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 21, 2014.
- The Agency issued a written notice of denial of MA dated July 29, 2014.
- The appellant filed a timely request for hearing received by the Agency on August 15, 2014.
- Per the appellant's request, the record of hearing was held open through the close of business on October 30, 2014 for the submission of additional evidence.
- As of the close of business on October 30, 2014, no additional evidence had been received, and no request for extension of the held open period was made by the appellant.
- 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 has not demonstrated with acceptable clinical and diagnostic evidence that he has severe, medically determinable impairments which could be expected to meet the durational requirements.
- 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 30, 2014 and signed by David Bica, DO.
- ✓ An Agency MA-63 dated August 28, 2014 and signed by Cathy Lindbeck, PCNS.
- ✓ An Agency AP-70 dated May 20, 2014 and signed by the appellant.
- ✓ Records of Arbour-Fuller Hospital for June 4, 20-14 to June 10, 2014.
- ✓ Records of NRI Community Services (NRICS) aka Community Care Alliance for June 12, 2014 to June 25, 2014 (protected records).
- ✓ Records of Family Care Center (FCC) for July 15, 2014.
- ✓ A Physician's Work Release Notice dated October 7, 2011 and signed by Dr. Graff.
- ✓ A letter from ██████████ Industries documenting his last active date of employment on April 20, 2010.
- ✓ Hearing testimony.

Medical and other evidence of an individual's impairment is treated consistent with (20 CFR 416.913). During the development of the hearing record, it was noted that additional medical evidence existed that could be supportive of the appellant's case, including recent diagnostic imaging, Memorial Hospital Family Care Center records, and four months of updated progress notes with NRI Community Services. Per the appellant's request to allow time for the submission of that evidence, the record was held open until the close of businesses on October 30, 2014. When the held open period expired, no additional evidence had been received. The appellant made no request for extension of the deadline to submit the evidence. He allowed the record to close without including the evidence which he identified as missing.

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 complete record of hearing consists of information from six days of treatment at Arbour-Fuller Hospital, 2 weeks of evaluation at NRICS, and a single visit to FCC. Evidence does not represent treatment at a frequency, length, or of a nature and extent adequate to merit that controlling weight be assigned to any source. All available evidence and testimony will be considered in combination for the purpose of this evaluation.

The MART is considered a non-examining source when expressing opinions regarding an individual's condition. At the time of application, the agency reviewed evidence of a normal physical examination, and effective medication management of mental symptoms. As a result, they determined that the appellant's conditions had responded well to treatment and would not be expected to result in significant impairment that would meet the durational requirements.

The appellant has alleged that he is impaired by post-surgical limitations of the cervical spine, as well as the right elbow and wrist. Records add information regarding treatment of Major Depressive Disorder (MDD). Two treating sources have completed MA-63 forms noting restrictions to functioning expected to result from his conditions.

A complete physical examination was performed at FCC in July 2014. Vital signs were normal, a normal EKG was reviewed, lungs were clear, cardiac rate and rhythm were regular, musculoskeletal ROM was full, and extremities were without any noted abnormalities. The office notes did document surgical history of cervical spine fusion, and repair of lateral epicondylitis in the right elbow, and carpal tunnel release at the right wrist. The appellant testified that surgeries were completed between 2005 and 2012. He also acknowledged that he had not sought subsequent treatment until 2014.

David Bica, DO of FCC indicated that with conservative management and physical therapy, right upper extremity pain could be expected to resolve within about 6-8 weeks. He also explained that after evaluation of orthopedic conditions, the appellant's diagnosis was not disabling, and that he had no impairments that would affect his ability to work.

Symptoms, including pain are evaluated in accordance with the standards set forth at (20 CFR 416.929). The appellant had alleged that pain from his neck radiated into both upper extremities, and limited his ability to lift, push or pull. The appellant must show evidence of a medically determinable impairment which could reasonably be expected to cause the type and level of pain that he alleges he suffers. As a significant amount of time has passed since surgical correction was completed, he was expected to submit updated MRI reports which had been completed to document his current condition. Those reports were not submitted, and no other support for ongoing physical medical conditions which would result in debilitating pain has been found. He is able to complete activities of daily living independently.

Following an admission to Arbour –Fuller Hospital in June 2014 for treatment of a first episode of situational MDD, he was started on medication management for symptoms of anger, impulsivity, and occasional auditory hallucinations. He denied that symptoms were triggered by use of drugs or alcohol, although he tested positive for marijuana. His testimony, therefore, was not credible when he

stated that he had not used any substances for about 18 months. Upon release he was stable, calm, cooperative, and with normal speech and motor activity. His mood was good, affect euthymic; he had no delusions, hallucinations or harmful ideations. Insight and judgment were good, and cognition was grossly intact. His global assessment of functioning was 55, indicating moderate symptoms.

Subsequently, he established a treatment relationship with NRICS. A psychiatric clinical nurse specialist, PCNS, Cathy Lindbeck reported that his prognosis for eliminating or reducing conditions through medication or other treatment was good. In August 2014 she found that his mental activities were just slightly limited with respect to memory, attention, concentration, social interaction and making simple decisions. The appellant testified that her observation was correct. Although medication caused some drowsiness and decrease of energy, it was helping to reduce racing thoughts. There was some misunderstanding about the diagnoses on the part of the appellant, due to the provider's list of conditions that may need to be ruled out (R/O) in the future. Those conditions such as bipolar disorder, and post-traumatic stress disorder have not been medically determined at this time. He also testified, that he felt it was his physical impairment that resulted in his inability to work, not necessarily mental symptoms.

CONCLUSION:

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

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

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

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

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

In this matter, the appellant has established that he has had past physical medical conditions which have required surgical repair. With a reasonable degree of medical certainty, the procedures performed to correct the cervical spine condition, epicondylitis, and carpal tunnel syndrome would have been expected to significantly reduce or eliminate symptoms. The fact that he did not seek treatment for nearly two years also undermines claims of disabling characteristics. Slight limitations to activity as a precaution to avoid re-injuring the neck or right extremity could reasonably be expected. Otherwise, these conditions do meet the durational requirements to establish disability. Allegations that they have worsened, or that new conditions have occurred, have not been proven with acceptable clinical and diagnostic medical evidence.

Additionally, his situational MDD symptoms showed great improvement with compliance to prescribed remedies during the early stages. There is no evidence to support that severe restrictions to mental activities exist currently. The appellant minimized the impact of mental health conditions in his testimony.

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.