



Rhode Island Executive Office of Health and Human Services
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Docket # 14-1893
Hearing Date: December 9, 2014

Date: March 16, 2015



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 regulation(s) were the matters before the hearing:

**EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES (EOHHS)
MEDICAID CODE OF ADMINISTRATIVE RULES (MCAR)
SECTION: 0352.15 ELIGIBILITY BASED ON DISABILITY**

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

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

EOHHS RULES AND REGULATIONS:

Please see the attached APPENDIX for pertinent excerpts from the Executive Office of Health and Human Services Medicaid Code of Administrative Rules (MCAR).

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 Dr Mirrer, and Dr Sampath.
- They were unable to access any consultative examination reports from Social Security.
- No records were received from Dr Santoro, or from Elite Physical Therapy.
- A review of the available records revealed a history of reconstruction of a left knee ACL (anterior cruciate ligament) tear, diabetes, obesity, and disc herniation at L3-L4 with moderate stenosis, lumbosacral spondylosis, disc degeneration with stenosis at L5-S1.
- He underwent knee surgery prior to November 13, 2013 when he reported to Dr Mirrer that he had returned to work full time.
- He experienced occasional flare ups of knee pain with increased activity.

- Overall, he was doing well, accordingly to his doctor, and did not need to follow up for 6 months.
- On December 2, 2013 he reported a sudden onset of low back pain related to a fall on ice in November.
- The objective examination revealed decreased range of motion of the lumbar spine with decreased sensation extending into the lower extremities.
- He was referred to physical therapy to address the adverse symptoms.
- In February 2014, it was noted that physical therapy had not been helpful.
- He had a positive straight leg raise on the right side, and continued pain symptoms.
- The effects of pain and side effects of pain medications were taken into consideration.
- An MRI was ordered, after which he was referred to a neurosurgeon to address abnormalities.
- Dr Mirrer counseled him about weight loss to benefit his spine condition as well as diabetes.
- Obesity was considered alone as well as in combination with other physical conditions.
- As conservative treatment measures had failed, neurosurgeon, Dr Sampath, decided to do some additional diagnostic testing prior to recommending surgery.
- An EMG was ordered by Dr Sampath.
- He had radiculitis originating at L5-S1.
- Decompression surgery was planned during the July 2014 visit.
- At the time of the September 8, 2014 decision, they had not received any records indicating if the surgery had taken place.
- There were no post-operative treatment records, and no primary care notes regarding his diabetes diagnosis and treatment.

- Notes signed by two of his doctors indicated that he should be released from work activity until November 3, 2014.
- His conditions including disorders of the spine, left knee ACL reconstruction, and diabetes were severe for the purpose of the sequential evaluation.
- His impairments did not meet or equal any of the Social Security Listings.
- A residual functional capacity (RFC) assessment was completed based on the records available for review, and determined that he could perform sedentary work.
- His current RFC would preclude his ability to perform his past relevant work as a customer service representative at Lowe's as he described it.
- Based on his age of 40, college education, past work experience, sedentary RFC, and ability to be retrained; while using vocational rule 202.20 along with consideration of non-exertional limitations; the combined factors resulted in a finding of "not disabled".
- He was not disabled for the purpose of the Medical Assistance program.

The appellant testified:

- He is currently unemployed.
- He was told that he did have neuropathy secondary to diabetes, as well as the sciatic nerve pain also affecting the lower extremities.
- Pain from his back condition radiates into both lower extremities with the right being worse than the left.
- He had experienced changes of sensation in his feet from diabetic neuropathy even before his back injury occurred.
- He has been treated for diabetes by his primary care provider, Dr Santoro.
- He experiences some pain whether he is sitting or standing.
- He tried taking Cymbalta for pain as prescribed by his doctor, but had unpleasant side effects and could not continue.

- He believes that his functional limitations have decreased since Dr Santoro completed the MA-63 in July 2014.
- At that time he was primarily relying on orthopedic specialist, Dr Mirrer for his care.
- After trying physical therapy for about 4 months, Dr Mirrer eventually referred him to a neurosurgeon, Dr Sampath who ordered an EMG, and recommended surgical repair.
- Both his PCP and orthopedist thought that he could benefit from the surgery, but advised against having surgery at that time due to the presence of diabetes and excess weight.
- Subsequently he was referred to another neurosurgeon, Dr Oyelese, at Rhode Island Hospital, who in turn sent him to a pain specialist, Dr Carayannopoulos.
- He was scheduled for injections which have not proven effective to date.
- He had an MRI of the spine completed on March 5, 2014.
- He has not attended any consultative examination appointments for his Social Security case.
- He has osteoarthritis in both knees following two surgeries.
- He had surgery on the left knee for ACL reconstruction in 2007 after a work-related injury.
- He returned to work on light duty for several years with physician instructions that he should remain seated to work.
- Dr Mirrer recently told him that the degree of arthritis in his knees has progressed from mild to moderate.
- He has not been to physical therapy for quite a while, as he did not benefit from that treatment.
- His physical therapist did not feel they could do much for him.
- A neurosurgeon indicated that a spinal fusion of 2 or 3 levels was needed to correct his condition.
- 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 June 23, 2014.
- The Agency issued a written notice of denial of MA dated September 9, 2014.
- The appellant filed a timely request for hearing received by the Agency on September 22, 2014.
- Per the appellant's request, the record of hearing was held open through the close of business on January 6, 2015 for the submission of additional evidence.
- Per the appellant's request for extension of the held open period, the record closure date was moved to February 3, 2015.
- Additional evidence from Dr Mirrer, Dr Carayannopoulus, Dr Olyese, and Dr Santoro that was received by the MART during the held open period was forwarded to the Appeals Office on February 4, 2015, 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 degenerative disc disease, spinal stenosis, bilateral radiculopathy, diabetes mellitus, diabetic neuropathy, osteoarthritis of the knee joints bilaterally, and morbid obesity; and non-severe conditions including hypertension and hyperlipidemia.
- 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 less than sedentary work.
- The appellant was born on [REDACTED], 1974 and is 40 years old, which is defined as a younger individual.
- The appellant has some post high school education and communicates in English.

- Transferability of job skills is not an issue in this case.
- 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 July 23, 2014 and signed by primary care physician (PCP) Ralph Santoro, MD.
- ✓ An Agency AP-70 dated June 23, 2014 and signed by the appellant.
- ✓ Records of orthopedic surgeon, Franklin Mirrer, MD for November 13, 2013 to November 5, 2014.
- ✓ Records of neurosurgeon, Prakash Sampath, MD for May 2, 2014 to July 18, 2014.
- ✓ An MRI report from Imaging Institute dated March 5, 2014.
- ✓ Work status records for the period from May 23, 2014 to November 3, 2014.
- ✓ Records of pain management specialist, Alexios Carayannopoulos, DO for October 30, 2014 to November 17, 2014.
- ✓ Records of neurosurgeon, Adetokunbo Oyelese, MD, PhD for September 10, 2014 to November 12, 2014.
- ✓ Records of internist, Ralph Santoro, MD for December 4, 2013 to December 28, 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 has submitted evidence from a primary care physician, an orthopedic specialist, two neurosurgeons and a pain management specialist. The evidence from various sources is consistent. His care has been managed by PCP, Dr Santoro who has made referrals to specialists. Length and frequency of his interaction with the evaluating specialists is limited. While they have completed examinations, one neurosurgeon recommended surgical intervention after the first visit, and the neurosurgeon consulted for a second opinion referred him to a pain management physician to exhaust conservative treatment measures and to gathered additional information that might justify more aggressive treatment in the context of significant risk factors imposed by diabetes and obesity. As a result, the records of all treating sources are considered in combination for the purpose of this decision.

The MART is considered a non-examining source when expressing opinions regarding an individual's condition. At the time of application, not all of the appellant's treating sources had responded to the request for medical records. Their review of the available information led to a determination that his residual functioning was adequate to perform sedentary work activity. At the fifth step, however, an incorrect vocational rule associated with light work capability and unskilled or no work history was the stated reason for the finding of not disabled. While inaccurate, the substitution of the light rule did not harm the appellant in this case. Additional evidence was submitted after the hearing. As of the date of this decision, the Agency has not withdrawn the notice of denial under appeal based on any new evidence or process corrections. The final rationale for that decision has not been communicated to this Appeals Officer.

The appellant has alleged that symptoms including multilevel degenerative disc disease (DDD) with bilateral radicular pain, osteoarthritis (OA) of the knee joints status post surgical repair of the left ACL and a right meniscus tear, and diabetes mellitus (DM) with neuropathy impair him. Records also discuss benign hypertension, hyperlipidemia, and the impact of morbid obesity on his endocrine and musculoskeletal conditions.

He has been under medication management for hypertension and hyperlipidemia. Because hypertension and hyperlipidemia generally cause disability through their effects on other body systems, the record is examined for any limitations imposed by the conditions on the heart, brain, kidneys, or eyes. Records show no evidence that these particular conditions have resulted in any end organ damage, or could be expected to directly affect functioning. Both are considered benign at this time, as they are medication managed and monitored by a PCP.

DM with associated neuropathy has been documented throughout the evidence records. Medication adjustments and ongoing testing of DM reflects efforts to establish the best combination of treatments to control that disease. Repeated recommendations for weight loss have been made, and appear to be the primary concern for controlling DM at this time. Per the appellant's testimony, neuropathy impacting the feet and lower extremities has been present for quite some time. PCP notes indicate that he was getting some results from use of Neurontin for neuropathic pain, and that he had lost 10 lbs.

The records reveal some complaints of recent pain in both the knee joints. The appellant explained that he had a history of surgical interventions in each knee. An ACL reconstruction on the left side was completed in 2007, and he also had a meniscus tear in the right knee repaired. Current evaluation of the knee conditions indicates that they are generally stable, although there is now evidence of progression of the degenerative arthritis which has reached a moderate level of wear and tear. Interference with knee range of motion has occurred secondary to occasional effusion, and has been treated by draining fluid

when it reaches a level restricting movement. Problems with the weight-bearing joints led to reduction of his work capability to light work or less, which his employer accommodated for several years. He has not returned to work, as finds that his residual functioning is no longer adequate for even light duty.

Subsequent to a back injury (not work related), he has been unable to perform his past work with accommodations since November 2013, and still does not find that he can resume work activity with the combination of conditions that currently limit him. He indicated that chronic back and leg pain are primarily the reasons for his functional limitations. After several months of physical therapy which did not result in improvement of his conditions, an EMG was performed. Results revealed evidence of moderate L5 and S1 radiculitis with abnormal reflex, and with denervation in the L5-S1 innervated muscles including paraspinals. An MRI was ordered which showed anterolisthesis L5 on S1 secondary to bilateral pars defects with superimposed disc bulge, as well as facet arthropathy causing abutment of the traversing bilateral S1 nerve roots, and severe bilateral foraminal stenosis with abutment of the exiting bilateral L5 nerve roots. In addition he has a disc bulge and focal protrusion at L3-L4 with moderate central stenosis, foraminal stenosis, and also abutment of the bilateral L3 nerve roots. His orthopedist had referred him to a neurosurgeon who recommended surgical intervention to perform a spinal fusion. As his PCP and orthopedist both had concerns regarding his tolerance of such a procedure due existing risk factors relative to his diabetic condition, and obesity, a second opinion was sought. Dr Oyelese completed that second evaluation and was committed to ruling out all conservative options prior to considering any surgery.

He was scheduled for transformational epidural steroid injections (ESI) at the comprehensive spine center. At the time of hearing, the injections that had been completed had little effect on his overall condition. He was apparently expecting to try more ESI treatments. Records of all sources document good compliance efforts. He has reported symptoms and changes, has kept appointments, has followed treatment recommendations, and has only delayed or rejected options with good cause based on precautionary warnings of his treating physicians.

Obesity is a medically determinable impairment that is often associated with disturbances of the musculoskeletal and other body systems. In this matter the combined effects of obesity on musculoskeletal impairments impacting multiple levels of the spine and bilateral knee joints, as well as obesity's adverse impact relative to poorly controlled diabetes, is greater than the effects of these condition when considered separately. Additional and cumulative effects of obesity must be considered to accurately determine residual functioning.

Symptoms, including pain, are evaluated in accordance with the standards set forth at (20 CFR 416.929). The appellant must show a medically determinable impairment which could reasonably be expected to cause not just pain, or some pain, or pain of some kind of severity, but the pain the claimant alleges he

suffers. Evidence documents visits with his PCP, orthopedic specialist, two neurosurgeons and a pain management specialist who have each addressed complaints of pain. Clinical and diagnostic evidence including X-ray, MRI and EMG reports, support the existence of low back pain due to DDD, stenosis, and nerve impingement resulting in radiculopathy, as well as bilateral knee pain, and diabetic neuropathy. Records do prove that he has medically determinable impairments that could reasonably be expected to result in the pain he describes. He has indicated that prolonged standing, walking and sitting are all aggravating factors. Physical therapy was ineffective after several months of compliance. ESI treatment had been initiated, but had not provided adequate relief as of the date of hearing. He does take medication for nerve pain which has been noted to reduce neuropathic pain somewhat, but reports that his overall pain level when considering all conditions still remains high on a daily basis. Although surgical intervention has been discussed, his physicians are in agreement that he is not a good surgical candidate due to risk factors present from diabetes and obesity. His PCP had opined at the time of application that he was limited to sedentary level exertional activity, and that he had a fair prognosis for eliminating or reducing his conditions. Subsequently, he has completed more diagnostic evaluations and has attempted additional conservative treatments as recommended, without achieving significant results. He manages some activities of daily living (ADLs) independently in short sessions, and describes frequent sleep interference from pain.

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.

Treatment has been prescribed to control hypertension and hyperlipidemia. As those conditions are not expected to result in more than a minimal impact on the appellant's ability to perform basic work activity, they are considered non-severe for the purpose of this decision.. Conditions including DDD with stenosis and radiculopathy, diabetes with neuropathy, bilateral knee pain and morbid obesity are severe based on the available clinical and diagnostic evidence. All conditions are considered in combination throughout 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 1.02 (Major dysfunction of a joint(s)), 1.04 (Disorders of the spine), 11.14 (Peripheral neuropathies), and guidelines at 1.00B2b (Inability to ambulate effectively) and 1.00Q (Effects of obesity) have been reviewed. Although the appellant underwent surgical repair of the knee joints several years ago, evidence reveals worsening osteoarthritis and complaints of chronic pain. As the weight-bearing joints are also impacted by obesity, continued joint pain and stiffness is probable. However, evidence does not include any recent images identifying progression of degenerative condition of the knees. Diagnostic evidence relative to the spine, however, does support existence of disc herniation, multilevel degenerative disc disease, stenosis, facet arthritis, and

nerve root compromise accompanied by bilateral radicular pain. Use of the spine is also further impacted by obesity which limits range of motion and duration of activity. Examinations have revealed positive straight leg raises, and chronic neuropathy in his feet despite normal reflexes at the knee and ankles. Neither the back pain, knee pain, nor neuropathic pain when considered in combination with obesity has resulted in inability to ambulate effectively to the degree defined in 1.00B2b. Therefore, 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 does not rule out his ability to lift up to 10 lbs as required of sedentary level work. During the period of time when he has been unable to return to even sedentary work responsibilities due to exacerbation of his back condition, additional diagnostic evidence has identified more complex damage to the spine than previously known. Examination reports support his claim that standing, walking and sitting are limited to less than two hours, and that he requires frequent opportunities to alternate positions. This exertional restriction would lower his exertional functioning to less than sedentary activity.

Postural: Due to both the combination of musculoskeletal impairment, neuropathic condition of the feet, and complications from obesity, he should avoid frequent climbing, balancing, stooping, kneeling, crouching, and crawling

Manipulative: No restrictions of reaching, handling, fingering, or feeling have been identified.

Visual: Near acuity, far acuity, depth perception, accommodation, color vision, and field of vision are not impaired.

Communicative: Hearing and speaking capabilities are intact.

Environmental: Due to hypertension, arthritis and diabetes conditions he should avoid concentrated exposure to extreme cold, heat, wetness, and humidity. Musculoskeletal restrictions and obesity would preclude his use of certain types of machinery, and exposure to hazards such as heights.

The appellant's present physical condition, as supported by available clinical and diagnostic evidence, would limit his residual functional capability to a less than sedentary level of activity with some additional postural and environmental restrictions. Current conditions preclude his ability to perform his past relevant work as a Lowe's associate or as a ship fitter requiring medium exertion or greater. As a result, 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).

In summary, the appellant is a 40-year-old male with some post high school education, and a positive work history. The appellant had severe, medically determinable impairments including degenerative disc disease, spinal stenosis, bilateral radiculopathy, diabetes mellitus, diabetic neuropathy, osteoarthritis of the knee joints bilaterally, and morbid obesity, as well as non-severe conditions

including hypertension and hyperlipidemia. His combination of conditions when considered in the context of musculoskeletal and neuropathic pain and with obesity support the existence of adverse impact relative to residual functioning which is greater than the effects of his conditions when considered separately. His options for surgical treatment of severe musculoskeletal conditions are presently limited by his other conditions, particularly diabetes and obesity. Physician approved conservative treatments do not result in a level of improvement that would significantly increase his functional capabilities.

Based on the appellant's age of 40 (younger individual), education (high school or more), work history (medium, skilled, not transferable), RFC (less than sedentary exertional level with some postural and environmental restrictions), the combined factors direct a finding of "disabled" according to the Social Security regulations.

After careful and considerate review of the Agency's policies as well as the evidence and testimony submitted, this Appeals Officer concludes that the appellant is 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.