



Rhode Island Executive Office of Health and Human Services  
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Docket #14-1935  
Hearing Date: December 11, 2014

Date: February 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 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, Lori Gardiner, and Neil Weintraub.

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

**EOHHS RULES AND REGULATIONS:**

Please see the attached APPENDIX for pertinent excerpts from the Rhode Island 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 Butler Hospital, Kent Center, and Wilcox Health Center.
- Medical records were requested from Dr. DuWors on two separate occasions (July 1 and August 4), but none were received from that source.
- As his SSI case had been denied, there were no consultative examination reports accessible.
- A review of the available records revealed diagnoses of alcohol dependence, recurrent major depressive disorder, hypertension, and a history of polysubstance abuse.
- He was admitted to Butler Hospital with suicidal ideation in August 2013.
- At that time he was regularly drinking alcohol, overusing some of his prescription medication, and also using marijuana.

- He was counseled regarding his polysubstance abuse.
- He was admitted to Kent Hospital in October 2013 after calling 9-1-1 and becoming combative with police.
- He had been using marijuana, benzodiazepines, and alcohol.
- He had not remained medication compliant since his release from Butler.
- Wilcox Health Center record indicated that he had started there as a new patient in January 2014.
- His physical exam was basically normal although he offered complaints of back, neck and joint pain.
- His blood pressure was stable with medication.
- On May 1, 2014 he was given topical treatment for a rash.
- A physical was completed in June in order to obtain information to complete medical paperwork for GPA eligibility.
- The physical exam was normal with the exception of some areas of persistent rash.
- He had not been taking blood pressure medication for about a week and his reading was somewhat elevated.
- He was not receiving treatment at that time for depression or anxiety, so his doctor started him on Prozac, and planned a follow up in eight weeks.
- He self-reported that he was abstaining from drugs and alcohol, although there were no toxicology screenings completed, and no active counseling was indicated.
- The MA-63 form was completed by a doctor examining him for the first time, and the restrictions listed on the form were not supported by the findings of the corresponding examination.
- The medical evidence reviewed did not establish the existence of a medically determinable impairment that would limit functioning, meet the durational requirements, or have residual deficits when following prescribed treatment.
- He was not disabled for the purpose of the Medical Assistance program.

**The appellant testified:**

- He is currently unemployed.
- He wanted to correct the record, noting that he has been participating in counseling with Dr DuWors for the past year.
- He attends counseling sessions with a therapist about twice per month.
- His primary care provider prescribes drugs for blood pressure, as well as an anti-depressant.
- He recently stopped taking the anti-depressant because it was not making him feel well.
- He had been admitted to Butler Hospital in August 2013, and other medications were tried at that time.
- He has had no emergency treatment or hospital admissions throughout 2014.
- Substance use is not a major contributor to his problems.
- He uses alcohol occasionally, but not during the past month, and he stopped marijuana around the time he was hospitalized.
- Difficulty with social interaction is one of his greatest challenges to sustaining work activity.
- He had previous work experience as an auto inspector, and served in the Marine Corp infantry.
- He did some seasonal work with a pool company while going to school, but has not completed a college degree.
- He has experienced difficulty getting along with bosses and co-workers in the past.
- He is presently 36 years old.
- He is able to drive, but often avoids driving, and limits it to short distances.
- He did attend a psychiatric consultative examination with Louis Cerbo, EdD for his Social Security case several years ago.

- He requested to submit a psychological evaluation (completed in 2012) from Dr DuWors as evidence.
- He requested to submit a letter dated August 11, 2014 from Dr DuWors, which listed diagnoses requiring treatment.
- He had completed an administrative hearing represented by legal counsel for his Social Security claim, and had not been found disabled.
- He had attended treatment sessions with Dr DuWors practice that were not included in the evidence record.
- He had not returned to Wilcox Center for additional treatment.
- He avoids going out or interacting with others.
- He lives with his parents, but does not feel motivated to participate in household chores.
- He is physically able to perform activities of daily living, but often chooses not to.
- 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 2, 2014.
- The Agency issued a written notice of denial of MA dated September 15, 2014.
- The appellant filed a timely request for hearing received by the Agency on October 3, 2014.
- Per the appellant's request, the record of hearing was held open through the close of business on January 8, 2014 for the submission of additional evidence.
- At the close of business on January 8, 2014, no new evidence had been received.
- 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 met his burden of proof to establish the existence at the present time of a severe, medically determinable impairment with a measurable impact on functioning.
- 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 June 17, 2014 and signed by primary care provider, Elena Kwetkowski, DO.
- ✓ An Agency AP-70 dated April 22, 2014 and signed by the appellant.
- ✓ Records of Butler Hospital for August 28, 2013 to September 4, 2013.
- ✓ Records of Kent Hospital for October 13, 2013 to October 16, 2013.
- ✓ Primary care records of Wilcox Health Center for January 30, 2014 to June 17, 2014.
- ✓ A psychological evaluation report, undated, but completed in 2012 by clinical neuropsychologist, Robert DuWors, PhD.
- ✓ A list of diagnoses from Dr DuWors dated August 11, 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 for the submission of updated evidence from neuropsychologist, Robert DuWors, PhD. At the close of business on the agreed upon date, no new evidence had been received. The appellant did not request extension of the deadline to submit evidence, and allowed the record to close without the records identified as missing 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 record of hearing consists of hospital records from two admissions in 2013. No emergency records or additional hospital admissions have been documented since October 2013. Although the records provide useful information about his history, there is no follow-up information to establish treatment compliance or effectiveness. A neuropsychologist, Dr DuWors who has known him for several years prepared a list of diagnoses. The only complete evaluation of record, however, is undated. Based on the appellant's age and text of the document it was probably completed mid-year in 2012. He also has a primary care provider who had been monitoring hypertension, and has submitted basic physical examination office notes. As there are no sources providing information covering treatment of frequency, length, nature or extent to establish controlling weight, all records are 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, they found no evidence to establish the existence of a current medically determinable impairment. As a result they stopped at step two of the evaluation with a "not severe" finding.

Additional evidence was submitted during the hearing. As of the date of this decision, that evidence has not compelled the Agency to withdraw the denial under appeal. The final rationale for sustaining the denial has not been communicated to this Appeals Officer.

The appellant has a history of major depressive disorder with anxiety-related symptoms. When undergoing neuropsychological assessment, he had reported traumatic events during his childhood. As an adult, he had tried serving in the Marine Corp for about three years, but had difficulty adjusting, and was discharged early. He had also made attempts to perform several short-term or seasonal jobs. His adult years have not been productive for him, and he seems to lack motivation to achieve a better life for himself.

The medical records consistently report co-occurring substance abuse. Descriptions of heavy alcohol consumption along with marijuana use, overdoses of prescription drugs and a willingness to try anything else he could access appear throughout the records of each treating source. Although he has alleged that he is disabled by mental disorders, there is no acceptable clinical and diagnostic evidence supporting how he would function without the influence of substances. He has been cautioned about combining substances with certain prescribed medications, but had not demonstrated compliance with those instructions in the past.

In order to get benefits, an individual must follow treatment prescribed by his/her physician if this treatment can restore his ability to work. If the individual does not follow the prescribed treatment without good reason, he will not be found disabled. The individual's physical, mental, educational, and linguistic limitations (including any lack of facility with the English language) will be considered to determine if he has an acceptable reason for failure to follow prescribed treatment in accordance with 20 CFR 416.930. Although the presence of an acceptable reason 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 CFR 416.930 (c)). The impact of failure to comply with prescribed remedies is taken into consideration at the final step of the evaluation if there is a finding of disabled.

He had shown little interest in following the prescribed remedies for his conditions, telling one source that it did not seem important to him. He had been prescribed many different medications, but had not taken anything regularly. Patterns of not taking prescribed medication and/or infrequently seeking medical

treatment often undermine complaints of disabling symptoms, but in this case appear to have been an inherent characteristic of his mental disorders. Understandably, compliance had been complicated by substance abuse. He testified that he was receiving regular mental health treatment (at least twice per month), but provided no evidence to support the described treatment schedule or establish how effective it has been. He did self-report abstinence from substances at one point, but had no toxicology screening results or substance abuse counseling records to verify that claim.

In cases where Drug Addiction & Alcoholism (DA&A) have been established to be medically determinable impairments, the material nature of the addiction is addressed at the final step of the sequential evaluation if there should be a finding of disability.

In this matter, his only physical condition reported was hypertension. Because hypertension generally causes disability through its effects on other body systems, the record is examined for any limitations imposed by hypertension to the heart, brain, kidneys, or eyes. Records show no evidence that hypertension has resulted in any end organ damage, or could be expected to affect functioning, even though there is no assurance that he has continued compliance with anti-hypertensive treatments that have been prescribed by his PCP.

#### **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.

The appellant has been treated for hypertension. No residual effects including end organ damage have been indicated by any source. Although his compliance with anti-hypertensive medication is uncertain, the absence of symptoms that would be likely to impact ability to perform basic work activities establishes that the condition is not severe for the purpose of the sequential evaluation.

His treating sources documented a history of substance abuse disorder explained within the neuropsychological evaluation completed in 2012. Additionally there was evidence that he required two emergency hospital admissions in 2013. Subsequent to those events, however, the appellant reported that he had not required any emergency treatment or hospitalization for more than a year. A PCP opined that in June 2014 his prognosis for eliminating or reducing his conditions through treatment was fair to good. That conclusion implied that a qualified treating source believed that there were available medications or other treatments that could be expected to be sufficiently and uniformly effective. The psychologist provided no evidence to the contrary, and the appellant had since self-reported a recent period of abstinence from drugs and alcohol use, which his psychologist accepted and incorporated into his diagnosis list.

He testified that records of a significant treatment history with his psychologist existed, and that he had attended regular treatment sessions in 2014 at a frequency of about twice per month. That specialist did provide diagnoses for which the appellant had been treated, although the findings are completely unsupported by any acceptable clinical and diagnostic evidence to establish that they are current. Previously submitted records from that source are nearly three years old.

In summary, the appellant has alleged that mental disorders including major depressive disorder and anxiety-related symptoms impair him. Evidence reveals that no recent emergency treatment had been required, and that an optimistic prognosis was expressed by a primary care provider. Testimony included the appellant's report of abstinence from substance abuse. The evidence record of hearing does not, however, contain any 2014-2015 clinical or diagnostic mental health assessments, explanation of prescribed treatment methods, proof of compliance and effectiveness of treatments, or documentation supporting sobriety.

At step two of the sequential evaluation, the appellant bears the burden of proof. The record, as it exists, reveals that the appellant has not met his burden of proof relative to the requirement to support allegations of disability with acceptable clinical and diagnostic medical evidence. Although the evidence documented a past history of mental disorders requiring treatment therapy and medication, the records do not establish that his conditions are presently severe, and continue to result in a measurable impact on functional ability. Therefore, the sequential evaluation of disability ends at Step two.

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.