



Rhode Island Executive Office of Health and Human Services
Appeals Office, 57 Howard Ave., LP Bldg, 2nd floor, Cranston, RI 02920
phone: 401.462.2132 fax 401.462.0458

Docket # 14-2021
Hearing Date: January 13, 2015

Date: February 20, 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 rules and regulations, 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, Rosemarie Victoria, and Cruz Gomez.

Present at the hearing were: You (the appellant), a Spanish interpreter, 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 her incapable of any type of work, not necessarily her past work. In addition, the impairment must last, or be expected to last for a continuous period of not less than twelve (12) months.
- The MART follows the same five-step evaluation as SSI for determining whether someone is disabled.
- The MART reviewed an Agency MA-63 form (Physician's Examination Report), an Agency AP-70 form (Information for the Determination of Disability), and records of The Providence Center.
- They were unable to access any consultative examination reports from Social Security because the case had already been denied.
- As a doctor from the Olneyville Health Center had completed the MA-63 form, they requested records from that source, but none were available for the time frame requested.
- A review of the available records revealed diagnoses including persistent asthma, anxiety, recurrent major depressive disorder, post traumatic stress disorder and a history of multiple thoracic fractures in 2008, as well as a history of polysubstance abuse.

- No objective physical exam notes or tests to support the limitations noted on the MA-63 form were received.
- A diagnosis alone is not considered evidence of any functional limitations.
- The Providence Center (TPC) notes indicated that she had been known to that agency since 2007.
- Her case with TPC outpatient behavioral health had been closed since March 2014 due to non-compliance with keeping appointments.
- The initial evaluation received was completed in June 2014 by a licensed social worker.
- It discussed her past history as well as her desire to return to treatment.
- The treatment plan included mental health and substance abuse counseling.
- At a subsequent appointment in July 2014 they discussed current stressors and coping skills.
- She was experiencing increased stress due to family issues.
- There were two appointment notes associated with cognitive behavioral therapy (CBT) at TPC.
- No psychiatric examination was included.
- At the time of the decision, it was unclear as to whether or not she had remained compliant with mental health treatment, and there were no records of any physical issues.
- The available medical evidence did not support the existence of a medically determinable impairment that would limit functioning, meet the durational requirements, or have residual deficits while following prescribed treatment.
- They stopped at step two (of the sequential evaluation process).
- She was not disabled for the purpose of the Medical Assistance program.

The appellant testified:

- She is currently unemployed.
- She had a letter from her primary care physician (PCP), Dr Khatib, who had been her doctor for 18 years.
- She requested to submit office notes from the PCP from October 25, 2014 listing several diagnoses, and documenting a routine physical examination.
- She has not worked since 2004.
- She has performed work as a cashier and as a factory worker operating machines to make shoelaces.
- She had to stand to do her jobs.
- She has experienced significant memory loss.
- She cannot remember verbal instructions, and needs help getting from place to place because she gets lost easily.
- When she fell she experienced a brain injury.
- Her psychiatrist attributed her loss of mental functioning to that injury.
- She woke up from a coma and was informed that she could have difficulty remembering things.
- She began counseling at TPC after her brother-in-law killed her son.
- She has been going to TPC every week.
- She has an appointment with the psychiatrist at the end of the month.
- She does not recall when the psychiatrist last performed a complete evaluation.
- She believes that Social Security completed consultative evaluation, but is unsure of where or when that was.
- She relies on her daughter to keep the records, but her daughter could not be with her today.

- She hopes that her daughter, her attorney or one of her doctors will have examination reports from her SSI case.
- Repair of her vertebrae fractures required hardware placement.
- She believes Social Security ordered an x-ray of the spine.
- She is taking medication for her thyroid condition which she has had for 14 years.
- Sometimes it makes her feel too weak to get out of bed.
- Often her bones hurt which is related to the thyroid condition also.
- Her PCP has conducted tests to measure her breathing because of the asthma symptoms.
- She has not required any emergency treatment for asthma within the past year.
- Hepatitis C was diagnosed about 4-5 years ago.
- Hepatitis was monitored at Rhode Island Hospital when she used to go there.
- She does not know if liver functions tests have been completed.
- She sees Dr Khatib every three months, and he performs blood work regularly.
- She is able to manage personal care independently.
- Her daughter helps with household chores, because she does not have enough strength.
- She also has forgotten about things on the stove.
- She needs someone to accompany her whenever she goes out, due to her memory problems.
- She 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 August 1, 2014.
- The Agency issued a written notice of denial of MA dated October 22, 2014.
- The appellant filed a timely request for hearing received by the Agency on October 23, 2014.
- Per the appellant's request, the record of hearing was held open through the close of business on February 10, 2015 for the submission of additional evidence.
- Additional evidence from The Providence Center and providence Community Health Center that was received by the MART during the held open period was forwarded to the Appeals Office on February 11, 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 has severe, medically determinable impairments including major depressive disorder, post-traumatic stress disorder, and unspecified personality disorder, and non-severe conditions including medically managed asthma, osteoarthritis, and hypothyroidism, as well as substance abuse disorder in sustained remission, and distant history of multiple thoracic fractures and head injury.
- The appellant does have a combination of impairments that meet listing 12.04 (Affective disorders) of the Social Security listings.
- The appellant is disabled as defined in the Social Security Act.
- The appellant is disabled for the purposes of the Medical Assistance Program.

DISCUSSION OF THE MEDICAL EVIDENCE RECORD:

The record of hearing consists of:

- ✓ An Agency MA-63 dated July 24, 2014 and signed by primary care physician (PCP), by Pervez Khatib, MD.
- ✓ An Agency AP-70 dated July 23, 2014 and signed by the appellant.
- ✓ Records of The Providence Center (TPC) for June 24, 2014 to January 9, 2015.
- ✓ Records of Providence Community Health Center (PCHC) of Olneyville for October 29, 2014 to February 4, 2015.
- ✓ 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 four weeks to allow for the submission of additional evidence. At the close of business on February 10, 2015, additional information from TPC and from PCHC had been received. No consultative examination reports were submitted.

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. In this matter, the appellant clearly was not capable of understanding and remembering instructions for completing the evidence record. Although written instructions were provided, it is uncertain as to whether or not she or anyone assisting her understood the written instructions for obtaining Social Security examination reports, or if the appellant had even been mistaken about their existence. The medical evidence available as of the date of this writing, and as noted above, will be considered for the purpose of this decision.

All medical opinion evidence is evaluated in accordance with the factors set forth at (20 CFR 416.927). The record consists of an MA-63 form and 3 months of office notes from the appellant's PCP of 18 years. She and the PCP have had a longitudinal treatment relationship. The progress notes are very general with respect to certain conditions, and did not include diagnostic information to support some of the conditions that the appellant reported. She also had been a patient of TPC over the course of many years, although not continuously. She restarted treatment there last year and records of visits with a psychiatrist, a cognitive behavioral specialist, and a licensed social worker were included for the past 6 months. The psychiatrist's notes did include references to her past treatment history with summaries dating back into 2012. Both physicians have a longitudinal treatment relationship with the appellant, and those opinions that have been supported within the available evidence can be given great weight.

The MART is considered a non-examining source when expressing opinions regarding an individual's condition. At the time of application, a physician examination report was received from a source that had not provided any medical records to support opinions expressed relative to functional limitations. Additional requests for that evidence were made without a response. Mental health records available at that time consisted primarily of distant history and did not document her recent restart of treatment. As a result, the MART found that the existence of disabling conditions had not been established by acceptable evidence.

Additional evidence was submitted during the held open period after the hearing. As of the date of this decision, the Agency has not found evidence to compel them to withdraw the notice under appeal. Their final rationale for upholding the denial has not been communicated to this Appeals Officer.

The appellant has alleged that late effects of a subdural hematoma secondary to a traumatic brain injury sustained in 2008 during a fall from a second floor impair her. She has claimed that years later she experiences significant confusion, memory loss, weakness and lethargy, as well as mood changes. She requires treatment for major depressive disorder (MDD), post traumatic stress disorder (PTSD) related to another tragedy in her life, and unspecified personality disorder. The appellant also testified that she requires help with basic activities of daily living; especially preparing food, remembering medications, money management, laundry, cleaning, and errands. She emphasized her inability to leave her home alone, as she cannot remember directions to or from locations. Additionally, in that fall of 2008 she fractured four vertebrae of the thoracic spine which she has reported to be the reason for residual severe back pain and reduced mobility. Medication management has been prescribed for hypothyroidism, osteoarthritis of the knees, and asthma; and she claims that hepatitis C was diagnosed 4 or 5 years ago, but was uncertain about any efforts to treat the condition.

The appellant's testimony was credible, but often incomplete, which she attributes to her impaired memory. She was advised in writing on at least two occasions, and again verbally prior to hearing that she had a right to request assistance of legal counsel and/or witnesses. She does have an attorney managing her Social Security SSI case, and a daughter that assists her with detailed activities, but elected to proceed with the administrative hearing without any assistance.

Lab results were documented in November 2014 indicating that thyroid function with medication management was well within normal range. No resulting adverse effects of her thyroid condition have been documented.

Asthma was considered mild, but persistent. It has recently been well-controlled with prescribed medications, and there is no evidence of emergency treatment within the past year.

Osteoarthritis of the knees is being treated with oral medication. No diagnostic images were provided or reported by a physician. There is no assessment revealing any adverse impact on gait, range of motion, or strength, of the knee joints.

While the appellant has alleged that hepatitis C was diagnosed years ago, the PCP has not mentioned the diagnosis nor documented any treatment that may have been offered. Her most recent physical examination completed on February 4, 2015 was essentially normal. Notes indicated that she is not overweight, has no systemic, cardiac, pulmonary, or ortolaryngeal abnormalities. Her physician was primarily concerned about her mental status, noting evidence of significant depressive symptoms, poor sleep quality, and change of appetite. Referrals to TPC behavioral health program were made.

The appellant had a treatment history with TPC on and off for more than 6 years. A new initial evaluation report was completed by a psychiatrist when she decided to restart treatment in 2014. He diagnosed recurrent, severe MDD, PTSD, unspecified personality disorder, and noted that cocaine and alcohol use were in remission. Substance remission was confirmed by random toxicology screens over a period of many visits. The appellant testified that she had sustained sobriety for about 3 years. The psychiatrist, noted her history of head trauma, and stated that she had inadequate skill level for employment.

At the time of the most recent visit of record in November 2014, she appeared disheveled, and with dysphoric mood. She was irritable and anxious, and her affect was restricted. Although he noted no overt psychosis during that visit, the appellant cited several experiences with bad dreams and auditory hallucinations which were documented within office notes of various dates. She was experiencing insomnia, although medications were being tried to lessen that problem. Both her appetite and energy level were reduced. Fund of knowledge was below average, and insight was poor. At a previous visit, Dr Cermik discussed the history of head trauma followed by 15 days in a coma, and nearly a month of hospitalization. He suspects that her memory was reduced, and learning disabilities increased. He estimated her math and reading capabilities to be at 3rd-grade level. Her global assessment of functioning (GAF) scores ranged between 40 and 45 within a period of treatment compliance. That level of performance would indicate serious symptoms with periods of impaired reality.

During a follow-up visit with Cassandra Munoz, LICSW, in January 2015 she was depressed, anxious, claimed that her medication was not adequately reducing symptoms of insomnia or depression, and reported that she was hearing voices

again. This assessment occurred after 6 months of biweekly visits, and several individual sessions of cognitive behavioral therapy (CBT).

It is important to note that the appellant in this matter has reported some adverse vocational factors. She testified that she had not worked for the past ten years, and submitted a written work activity report noting her last employment involved cashiering at a fast food restaurant, which was not sustained to meet the guidelines of substantial gainful activity. The only other work activity she could recall was a factory job requiring her to add threads to a machine which made shoelaces. That most likely was done more than 15 years ago. She has no applicable past relevant work experience for the purpose of this evaluation and no transferable skills. Additionally she has a 7th grade education, which falls at the low end of the limited education category. After sustaining a traumatic brain injury, her psychiatrist approximates her skill levels in math and reading to be at 3rd grade level. Dr Cermik has also opined that she lacks skills required for competitive employment of any kind. Her PCP has also assessed mental activity functioning as markedly limited in every category.

According to POMS (DI 25020.010) (3a), the basic mental demands of competitive, remunerative, unskilled work would include the abilities (on a sustained basis) to: Understand, carry out, and remember simple instructions, make judgments commensurate with the functions of unskilled work, respond appropriately to supervision, coworkers and work situations, and deal with changes in a work setting. Although she is not yet closely approaching retirement age as would be adjudicated under the Lifetime Commitments Special Medical Vocational profile, she meets all other requirements. Also, mental restrictions that result in a substantial loss of the ability to perform any of the 4 basic mental demands of unskilled work would be a stand-alone limitation which is the equivalent of less than sedentary when used as a framework.

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 she 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.

Physical conditions including hypothyroidism, asthma, and osteoarthritis are currently being effectively medication managed, and result in minimal impact on her ability to perform basic work activities. Therefore, the conditions are considered not severe for the purpose of this decision. A diagnosis of hepatitis C was never confirmed, and the record lacks evidence indicating continuing problems secondary to her history of vertebral fractures, although the claim is believable. With no diagnostic evidence to support hepatitis or disorder of the spine, those conditions are regarded as unproven based on available records. Substance addiction has been in remission for three years.

MDD, PTSD, and personality disorder are under treatment with medication management and cognitive behavioral therapy. As of the last visit of record, she found that she was not responding well to treatment. The appellant has described reduced cognitive ability secondary to traumatic brain injury which has been endorsed by her PCP and her psychiatrist. Both physicians have completed mental status and other examinations and expressed that marked limitations exist that would impact various categories of basic mental demands required to sustain work activity of any level. Her mental diagnoses are considered severe. The evaluation continues to step three.

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.

The appellant has severe conditions including MDD, PTSD, and personality disorder. In this matter, listings 12.02 (Organic mental disorder), 12.04 (Affective disorders), 12.06 (Anxiety-related disorders) and 12.08 (Personality disorder) have been reviewed. The appellant's traumatic brain injury (TBI) occurred 6 years ago. Evidence does not include a comparison of functioning or of measured intellectual ability that would demonstrate a measurable loss of specific cognitive abilities. Neither has the medically documented history established that the incident was direct cause for organic mental disorder. Clearly her medical history could have resulted in organic changes, although the specific evidence available does not demonstrate that connection. However, there is evidence of persistent disturbance of mood, loss of interest in activities, appetite disturbance with weight fluctuations, sleep disturbance, difficulty concentrating, and some auditory hallucinations. Evidence has identified resulting deficits to concentration, persistence and pace, social functioning, and activities of daily living. Both examining physicians (including a specialist in psychiatry) are given great weight of opinion due to the longitudinal treatment relationships, and nature of treatments they have prescribed or recommended. Their assessments have concluded that the restrictions identified above do reach marked levels of impairment in all categories. Dr Cermik noted that she did not possess adequate skills to perform any work activity regardless of whether or not it had worsened over time. Evidence has established the existence of an impairment which rises to the level of listing 12.04. As a result, the appellant is disabled.

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.