

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

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Docket # 14-571
Hearing Date: June 12, 2014

Date: August 12, 2014

ADMINISTRATIVE HEARING DECISION

The Administrative Hearing that you requested has been decided against you upon a de novo (new and independent) review of the full record of hearing. During the course of the proceeding, the following issue(s) and Agency policy reference(s) were the matters before the hearing:

**THE DHS POLICY MANUAL: MEDICAL ASSISTANCE
SECTION: 0352.15 ELIGIBILITY BASED ON DISABILITY**

The facts of your case, the Agency policy, and the complete administrative decision made in this matter follow. Your rights to judicial review of this decision are found on the last page.

Copies of this decision have been sent to the following: You (the appellant), and Agency representatives: Julie Hopkins RN, Antonia Charpentier, and Rita Graterol.

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

DHS POLICIES:

Please see the attached APPENDIX for pertinent excerpts from the Rhode Island Department of Human Services Policy Manual.

APPEAL RIGHTS:

Please see attached NOTICE OF APPELLATE RIGHTS at the end of this decision.

ISSUE: Is the appellant disabled for the purposes of the Medical Assistance Program (MA)?

TESTIMONY AT HEARING:

The Agency representative testified:

- In order to be eligible for Medical Assistance (MA) an applicant must be either aged (age 65 years or older), blind, or disabled.
- The Medical Assistance Review Team (MART) determines disability for the MA Program.
- The MART is comprised of public health nurses, a social worker and doctors specializing in internal medicine, surgery, psychology and vocational rehabilitation.
- To be considered disabled for the purposes of the Medical Assistance Program, the appellant must have a medically determinable impairment that is severe enough to render him incapable of any type of work, not necessarily his past work. In addition, the impairment must last, or be expected to last for a continuous period of not less than twelve (12) months.
- The MART follows the same five-step evaluation as SSI for determining whether someone is disabled.
- The MART reviewed an Agency MA-63 form (Physician's Examination Report), an Agency AP-70 form (Information for the Determination of Disability), and records of Thundermist Health Center.
- Two consultative examination reports were received after the decision was made, and the hearing presentation completed, and therefore, had not been included in their review.
- Records had been requested from Landmark Medical Center, and the Cardiology Association, but none had been received from either source.
- A review of the available records provided diagnoses of chronic obstructive pulmonary disease (COPD), alcohol abuse, a mood disorder, and a history of hypertension.
- Thundermist records noted that his blood pressure had been stable without the use of any medication for more than one year.

- He is regularly prescribed metered dose inhalers (MDIs) to manage COPD symptoms with good effect.
- Two emergency room visits for complaints of shortness of breath occurring in August 2013 and January 2014 were documented.
- The August exacerbation had occurred because he had not been able to afford his prescribed medications.
- He was also continuing to smoke.
- He was advised to stop smoking and to avoid other environmental respiratory irritants.
- Although he had been referred to both cardiology and pulmonary specialists, the Thundermist records did not include any results from visits with those specialists.
- A copy of a September 2013 echocardiogram report showed no evidence of coronary artery disease.
- Thundermist records showed regular behavioral health counseling notes regarding alcohol abuse.
- He had been referred to AA, and had completed multiple detoxifications in the past.
- In January 2014 he expressed his resistance to stopping alcohol use.
- Medication was prescribed for mood disorder, but he stopped taking that medication whenever he resumed alcohol use as he had been instructed.
- Notes also indicated episodic use of marijuana.
- His mood disorder was stable when he was able to remain on the prescribed medications.
- The medical records reviewed did not support the limitations to the degree noted on the MA-63 form completed by the primary care provider.
- He had severe impairments including COPD, mood disorder and alcohol abuse.
- His impairments did not meet or equal any of the Social Security listings.

- Physical and mental residual functional capacity assessments were completed.
- He retains the ability to perform light work.
- Despite intermittent symptoms of depression and alcohol use, he has been able to complete his activities of daily living, regularly attend his appointments, interact appropriately with others, and understand and remember simple instructions.
- Based on his current exertional and environmental restrictions, he would not be able to complete his past relevant work activity as a machinist or a welder which require medium exertional capability, and may involve exposure to respiratory irritants.
- Based on his age of 47, grade 10 education, past relevant work activity and current residual functioning, as well as his ability to be retrained, he is not disabled according to the Social Security medical-vocational rules.
- He was not disabled for the purpose of the Medical Assistance program.

The appellant testified:

- He is currently unemployed.
- He has completed an intensive outpatient program for alcohol dependence.
- He has been living in a sober house arrangement for nearly two months.
- He has had several medical appointments for examination and treatment of varicose veins.
- He requested to present evidence proving that he had completed an intensive inpatient rehabilitation program, and a note affirming that he had remained sober.
- He found that although he had been court ordered to stop drinking in the past, his personal commitment made a significant difference in his ability to succeed at sustaining sobriety.
- He can now remain compliant when taking prescribed medications for depression and anxiety symptoms

- Since he has become eligible for health insurance under the Affordable Care Act, he has received evaluation and treatment for varicose veins which had been previously delayed due to lack of health care coverage.
- He has also been able to acquire reading glasses.
- He had completed consultative examinations ordered by Disability Determination Services (DDS) including pulmonary functions tests (PFTs), and a psychological evaluation, and reports were submitted as evidence.
- He now has psychiatric care, and has experienced improvement with prescribed medication management of his symptoms.
- His anxiety is lower, and he is not as fidgety, or as angry.
- Reduced anxiety has also helped him to stop drinking.
- Anti-depressants, and sleep aids have also been prescribed.
- Depressive symptoms have responded well, and sleep quality is somewhat better, although adjustments are still being made to treatment.
- As his mental conditions have been improved, he finds that the condition most affecting his ability to work is shortness of breath.
- He also has difficulty spelling.
- He has always worked in construction and welding jobs.
- He does not believe he has the skills (such as computer literacy) needed to perform other types of work.
- He also has a legal record including several misdemeanors and a felony conviction that would interfere with his ability to obtain employment.
- He has been actively seeking employment, but has found many work environments would be unsuitable for his conditions.
- If he has to move a lot, he will lose his breath.
- He has some discomfort in his dominant right hand, and repetitive motion sometimes causes it to cramp up.
- He attends physical therapy for an old injury to his elbow.

- Some exercises trigger shortness of breath, and arm exercises with weights cause hand cramping.
- Therapy has improved the elbow.
- Dr Saber has examined the problem with varicose veins.
- Currently he is expected to wear compression stockings, and the plan is to treat the veins with a laser procedure.
- He does not believe that he can walk or stand for 2 hours with the varicose veins in their current condition.
- Dr Saber completed tests, and found no blockage to the arteries in his legs.
- Thundermist has not referred him to a specialist for pulmonary evaluation.
- Although he has been unable to quit smoking, he has made an effort to significantly reduce the number of cigarettes he smokes to benefit his respiratory condition.
- Mental conditions with treatment do not impact his ability to work as significantly as physical impairments do.
- He cannot use household cleaners that have chemical odors due to his respiratory sensitivity.
- When he was admitted to Landmark Hospital last year, he was examined for cardiac conditions, but no abnormalities were found.
- 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 December 30, 2013.
- The Agency issued a written notice of denial of MA dated March 18, 2014.
- The appellant filed a timely request for hearing received by the Agency on March 26, 2014.
- Per the appellant's request, the record of hearing was held open through the close of business on July 10, 2014 for the submission of additional evidence.
- Additional evidence from Dr Saber, Thundermist Health Center, NRI Community Services, and Landmark Hospital that was received by the MART during the held open period was forwarded to the Appeals Office on July 11, 2014 and was added to the record of hearing.
- As of the date of this decision, the MART had not withdrawn the notice under appeal.
- The appellant is not engaging in substantial gainful activity.
- The appellant had severe, medically determinable impairments including chronic obstructive pulmonary disease, borderline intellectual functioning, and alcohol dependence, currently in remission.
- The appellant had non severe hypertension and mood disorder currently medication managed; as well as upper extremity joint pain, and varicose veins which were not expected to meet the durational requirement with prescribed treatment.
- The appellant was born on April 15, 1967, and is 47 years old, which is defined as a younger individual.
- The appellant has a 10th grade education and communicates in English.
- Transferability of work skills is not an issue in this case.
- The appellant retains the ability to perform light physical work with postural and environmental restrictions.
- The appellant retains the ability to perform mental activities that involve simple, routine tasks.

- 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 January 7, 2014 and signed by Thundermist physician, Linda Berman, MD.
- ✓ An Agency AP-70 dated January 2, 2014 and signed by the appellant.
- ✓ Records of Thundermist Health Center (THC) for May 14, 2012 to May 14, 2014.
- ✓ A Certificate of Completion of the NRI Community Services (NRICS) intensive outpatient program dated March 31, 2014.
- ✓ A letter from NRICS counselor, Jason Pyne, LCDP, CCSP dated June 2, 2014.
- ✓ Pulmonary function evaluations from Memorial Hospital for a November 26, 2013 study.
- ✓ A psychological consultative examination report dated October 16, 2013 and signed by psychologist, Wendy Schwartz, PhD.
- ✓ Records of cardiologist, Walid Saber, MD for August 14, 2013 to May 13, 2014.
- ✓ NRICS records (protected) for February 10, 2014 to June 24, 2014.
- ✓ Records of Landmark Medical Center for August 12, 2013 to January 6, 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 a longitudinal treatment relationship with primary care provider (PCP,) Thundermist Health Center, receiving coordination of care for COPD, depressed mood, alcohol abuse, and hypertension. He also provided evidence of two admissions to Landmark Hospital, cardiology evaluation, pulmonary function tests, a consultative psychological evaluation, and proof of sobriety. While his PCP has a relationship which is significant in length, the nature of more specialized treatment and evaluation required in his case has often been overseen and administered by other sources, and limited in extent. The available evidence from all sources will be 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, the agency had received sufficient medical evidence to establish the existence of severe impairments including COPD, mood disorder and alcohol dependence. Records supported that restrictions would limit work activity to light exertional level and simple, routine mental activities. As a result, they were able to rule out past work, but not other work. Additional evidence was submitted during the hearing and after the hearing. As of the date of this decision, the new evidence has not compelled the MART to reverse their original denial. Their rationale for the final decision has not been communicated to this Appeals Officer.

The appellant has alleged that symptoms of respiratory conditions with shortness of breath occurring upon light exertion or greater impair his ability to work. In addition to COPD, he has also presented evidence of a history of hypertension, alcohol abuse in recent remission, mood disorder, borderline intellectual functioning, and varicose veins. He is also being treated with physical therapy for a pre-existing upper extremity injury which is responding well to treatment, and he has been assessed for coronary artery disease, with no abnormalities found.

His respiratory condition was documented throughout the treatment records provided by the appellant's PCP. As he believed that his shortness of breath occurred quite easily, and was the main cause of restrictions impacting work activity, Social Security had ordered pulmonary function tests (PFTs,) which were completed in November 25, 2013 while he was under treatment. The spirometry report indicated that FEV1 was 50% of predicted value without drugs, and improved to 64% with bronchodilation. The tested values at that time indicated a moderate obstructive pattern. During his most recent visit to his PCP, Dr Berman, the physician noted that lungs were clear to auscultation bilaterally, there was good air exchange, and no wheezes, rales, or rhonchi were present. He was advised to continue his prescribed treatment which had good effect, and encouraged him to consider total smoking cessation, although he had previously reduced the number of cigarettes he was smoking per day.

As of June 2014, Dr Brennan documented blood pressure reading at 110/72. Hypertension seemed to have resolved for several months although he had stopped taking anti-hypertensive medications due to adverse side effects. Cardiac evaluation had been completed after an abnormal stress test was taken, however, no abnormalities were found. A cardiac catheterization was performed on October 24, 2013 finding normal left ventricle systolic function, estimated ejection fraction of 55%, normal coronary arteries, and no complications. Progress notes of the most recent cardio follow-up examination completed by Dr Elgabry in May 2014 documented clear lungs and normal respiration, normal heart rate, rhythm, and sounds, no murmurs or bruits, normal pulse, and no sign of edema. Smoking cessation was again recommended. Dr Brennan's opinions relative to functional restrictions, however, are not supported by the THC

progress notes, or specialist evaluations. It is possible that she based some of the characteristics of her opinion on factors that were not durational, untreated, or impacted by alcohol abuse at the time she completed the form. All of the changes, treatment effectiveness and new information must also be considered for the purpose of this decision.

Physical therapy for joint problems in an upper extremity was documented, but not explained. The appellant testified, that the physical therapy was expected to last for a short term, and that the treatment was helping to improve his joint pain and motion.

He had recently received a referral to the Rhode Island Hospital vascular clinic for assessment of painful varicose veins. At the time of the hearing, discussion about treatment had just begun, and he was instructed to wear compression stockings. Diagnostic information was received after the hearing including a bilateral venous insufficiency report from Ocean State cardiovascular & vein center. The anticipated result of vascular surgical procedures recommended to alleviate symptoms of varicose veins is that interference from any discomfort associated with the condition would be significantly reduced or eliminated. The appellant anticipated that the appropriate procedure would be arranged soon, but there is no further information about the process at this time.

The appellant had admitted that he has struggled with significant alcohol dependence. It apparently took some time for him to commit to a program that would help him to stop drinking. During the hearing, he presented evidence of successful completion of a rehabilitation program, and that he had moved to a sober living arrangement. At the date of hearing he had been there for about two months. He also noted that he was better able to follow prescribed treatment for mental health conditions, because he no longer had to worry about the combination of psychiatric medications and alcohol.

In October 2013 when a consultative examination was conducted by Wendy Schwartz PhD, the appellant was still actively abusing alcohol. When he arrived for the evaluation, she was aware that he had been drinking, although he claimed that he drank the night before. He denied history of anxiety or depression. He made some inappropriate comments, and tested at low elementary grade levels for reading, spelling, and math. His full scale intelligence quotient (FSIQ) was 64. Dr Schwartz expressed skepticism about the accuracy of the testing completed during their single meeting. She elaborated that a more realistic estimate of his true intellectual functioning is likely to fall within at least borderline range (70-79 FSIQ); which is believable given the typical 5% margin of error, behavioral factors, and uncertainty of substance influence. Based on his capability to function during the hearing, and according to other evaluations of treatment providers, the suspected lack of authenticity of the test scores completed on the date of the consultative examination appears to be plausible.

Subsequent to the consulting psychologist's findings, the behavioral health records of the PCP have documented substantial improvements. As of March 2014, he was described as alert and oriented in all spheres, cooperative, articulate, appropriate in thought content and process, and showing no signs of memory impairment. Insight and judgment were good. Findings were consistent with previous visits. Periods of decline occurring during the previous year were clearly associated with alcohol abuse, and a psychiatric nurse practitioner at THC noted that she would not make definitive conclusions about certain symptomology until her patient had been able to maintain sobriety for an extended period of time. He has since completed an intensive alcohol rehabilitation program, and was hoping to find a sober living arrangement, which did eventually happen. As of the date of the hearing he had been sober for approximately two months, was pleased with his new, supportive living situation, and appeared motivated to sustain the progress he had made. He testified that he was following prescribed treatment, had less anxiety, anger, and depressive symptoms. He also stated that mental conditions did not significantly impair his ability to work.

In April 2014 an initial psychiatric assessment was completed at NRICS. Details of the NRICS findings will not be discussed due to that agency's policy regarding protection of their records. Generally, mental status findings were highly consistent with those of THC behavioral health, and diagnoses did not identify any original findings.

Although currently in remission, alcoholism has been established as a medically determinable impairment for the purpose of this evaluation. The material nature of the addiction will be addressed at any step that is the last step of the sequential evaluation only if there is a finding of disability based on other factors. (20 CFR 416.935).

In addition to his medical conditions, the appellant also noted that he is challenged to find and keep employment due to legal issues. He has accumulated several misdemeanor charges and a felony, and has served a short prison sentence. The adverse impact of that record on employability is acknowledged, although it is not necessarily impactful when determining disability.

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 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.

Hypertension had stabilized at an acceptable level according to most recent monitoring. Heart rate and rhythm have been within normal range, and no serious residual complications from hypertension affecting the heart or other vital organs have been documented. As a result the condition is considered non-severe. In addition, therapy for upper extremity joint pain, and vascular surgical correction of varicose veins are each anticipated to reduce or eliminate adverse symptoms, and do not meet the duration requirements as disabling conditions.

Physical examinations completed by both the appellant's PCP and a cardiologist indicated that during most recent examinations lungs were clear and respiration was normal, which has been attributed to a treatment plan of at least three different medications. Pulmonary function tests have shown that breathing capacity is moderate. While COPD symptoms are being medically managed, it is also clear that in order to sustain the desired result, the appellant will need to exercise caution with respect to exertion and environmental factors, which could exacerbate his respiratory impairments and accordingly, would pose some limitations to the type of work he could perform.

Based on mental health treatment and evaluation, the records have established that the appellant's mood disorder is being well managed with medication, and that he has successfully achieved sobriety. The primary factor impacting mental work activity is borderline intellectual functioning.

As the appellant has established that he is impaired by a combination of severe conditions including COPD, borderline intellectual functioning, and alcohol dependence along with non-severe hypertension, and mood disorder, 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.

In this matter, listings 3.02 (Chronic Pulmonary Insufficiency), 12.05 (Intellectual Disability), and 12.09 (Substance Addiction Disorders) are reviewed. In this matter, the appellant has submitted a recent pulmonary function study finding that his FEV1 reached 2.64 with bronchodilation, which is well above the critical level of 1.55 required to meet the level of the listing for an adult at a height of 70.5 inches. Intelligence testing provided is invalid, as explained above. However, a psychologist has estimated that he is able to function mentally within a borderline range of capability. That opinion is consistent with other findings of mental health providers and appellant testimony. Evidence has not indicated that he is markedly limited in realms of activities of daily living, social functioning, concentration, persistence or pace. There have been no documented episodes of decompensation. The medical evidence record does not support the existence of an impairment that rises to meet or equal 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 has established that he experiences shortness of breath upon exertion secondary to moderate pulmonary obstructive pattern which is responding positively to treatment. However, he would benefit from limiting physical exertion to light levels of lifting at 10 lbs frequently, and occasional maximum of 20 lbs. Records have not ruled out that he has strength needed to stand walk or sit for 2-hour blocks of time throughout a workday with allowances for customary breaks, although he may require some time for prescribed treatment to varicose veins to eliminate discomfort and restore full functional ability.

Postural: His respiratory condition would limit frequency of climbing, stooping, or crawling.

Manipulative: Although he complained of some hand "cramping", there is no clinical or diagnostic evidence to prove that any condition exists that would result in limitations to reaching, handling, fingering, or feeling.

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

Communicative: Communicative capabilities for hearing and speaking are intact.

Environmental: Due to respiratory impairment and history of hypertension, he should avoid concentrated exposure to extreme cold, heat, wetness, humidity, fumes, odors, dusts, gases, and poor ventilation, as well as working around certain types of machinery.

Mental RFC

Understanding and Memory: The available evidence does not rule out his ability to remember locations and procedures, or to understand and remember short, simple 1-2-3 step instructions.

Sustained Concentration and Persistence: He could be expected to carry out short, simple instructions, to maintain attention and concentration for two-hour blocks of time throughout a workday with allowances for customary breaks. Evidence has not ruled out his ability to perform activities within a schedule, maintain regular attendance, be punctual, sustain a routine without special supervision, work along with others without distraction, make simple work-related decisions, or complete a normal workweek without interruption from psychologically based symptoms.

Social Interaction: Records do not reveal any deficits to ability to interact appropriately with the public, to know when to request assistance, to accept instructions from supervisors, to get along with coworkers, to maintain socially appropriate behavior, or to adhere to basic standards of grooming.

Adaptation: Mental evaluations documented good insight and judgment. No restrictions have been identified that would limit his ability to respond appropriately to change, be aware of normal hazards and take necessary precautions, arrange transportation, or to set realistic goals.

The combination of the appellant's severe and non-severe impairments result in residual functioning adequate for light physical activity with some postural and environmental restrictions, and mental functioning requiring execution of simple, routine tasks. Clearly his past relevant work as a construction worker or a welder would be precluded because of the exertional level required, the likeliness of exposure to environmental irritants, and the skill level needed. As the appellant's conditions impair his ability to perform his past relevant work activity, the sequential evaluation continues 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 47-year old male with a tenth grade education, and a positive work history. He is currently impaired by COPD, borderline intellectual functioning, and substance dependence in remission, and is minimally impacted by mood disorder and history of hypertension. Varicose veins are reasonably expected to be corrected by proposed treatment.

Although he has a history of mood disorder, intellectual disability, and substance dependence, his conditions have been treated. Affective symptoms have been reduced with medication, and he has achieved sobriety through an intensive rehabilitation program. Current evidence shows that he is able to think, communicate, care for his own needs, get along with others, complete usual daily activities, and remember and follow basic instructions. His respiratory impairment, which he considers to be the most limiting condition, does restrict him from performing work exposing him to certain environmental characteristics such as dust, fumes, and damp places. However, special tests show that he still has the breathing capacity to perform some types of work. All impairments which meet the durational requirements have been demonstrated to result in restrictions that would reduce the occupational base both physically and mentally to levels below those required of his past relevant work.

Based on the appellant's age of 47 (younger individual) 10th-grade education (limited), work history (medium exertion, skilled, not transferable), RFC (light exertion with some postural and environmental restrictions), MRFC (simple, routine tasks), and considering vocational rule 202.18 as a guide, along with all non-exertional limitations; the combined factors direct a finding of "not disabled" according to the Social Security regulations. The appellant retains physical and mental ability to perform other work.

After careful and considerate review of the Agency's policies as well as the evidence and testimony submitted, this Appeals Officer concludes that the appellant is not disabled as defined in the Social Security Act, and for the purpose of the Medical Assistance Program.

Pursuant to DHS Policy General Provisions section 0110.60.05, action required by this decision, if any, completed by the Agency representative must be confirmed in writing to this Hearing Officer.


Carol J. Ouellette
Appeals Officer