

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

**Louis Pasteur Building- # 57 Howard Avenue
Cranston, Rhode Island 02920
(401) 462-2132/Fax# (401) 462-0458
TDD# (401) 462-3363**

Docket # 14-789
Hearing Date: July 8, 2014

Date: September 2, 2014

ADMINISTRATIVE HEARING DECISION

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

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

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

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

Present at the hearing were: You (the appellant), and 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 three Agency MA-63 forms (Physician's Examination Report), an Agency AP-70 form (Information for the Determination of Disability), and records of Thundermist Health Center (THC), Dr Breen, and NRI Community Services (NRICS).
- They notified their client in advance of the hearing that NRICS medical records are protected per that agency's policy and would not be released to him at the hearing.
- They requested copies of consultative examination reports (if any) from the Social Security Disability Determination Unit (DDU), but none had been received as of the date of hearing.
- SSI had been denied and an appeal request was pending.
- He was found eligible for health insurance under the MAGI (modified adjusted gross income) program.

- He had been on unemployment at least until February 2014, and was able to perform some side jobs up until then.
- A review of the available medical records revealed that arthroscopic partial left knee meniscus surgery was performed in January 2014, and that he had been treated for COPD (chronic obstructive pulmonary disease), hypertension (Htn), depression, and a history of alcohol dependence.
- He had been receiving counseling since 2011 to successfully maintain sobriety.
- Notes from his March 2014 follow up visit after knee surgery revealed that he had 80% to 90% improvement, and good range of motion.
- Thundermist records indicated that hypertension was well managed with medication.
- Anti-depressants were being monitored by a psychiatrist.
- There was no evidence establishing significant limitations to memory, concentration, or ability to interact socially, despite restrictions expressed by a clinician responding on the agency form.
- He is treated for COPD with prescribed metered dose inhalers (MDI).
- He should avoid exposure to respiratory irritants and extreme heat or cold.
- He was advised to stop smoking, and was attempting to try a tobacco cessation program.
- In January 2014 he was medically cleared for knee surgery.
- In February 2014, a THC objective respiratory exam was within normal limits and oxygen saturation on room air was at 98%.
- The MART considered his conditions including left knee injury s/p surgical repair, COPD, and depression to be severe at step two of the sequential evaluation process.
- They did not find that his impairments met or equaled any of the Social Security listings.
- A physical residual functional capacity assessment was completed, determining that he could do light work.

- A mental residual functional capacity assessment was also done, which concluded that he can understand and remember instructions, interact well with others, keep medical appointments, and sustain sobriety.
- They next found that his current condition precluded his ability to do his past relevant construction work requiring medium exertion.
- Based on his age, education, past relevant work experience, and ability to be retrained, they found that he was not disabled.
- He was not disabled for the purpose of the Medical Assistance program.

The appellant testified:

- He is currently unemployed.
- He is now seeing a pulmonary specialist who has ordered a CT scan of the lungs, and a sleep study that could be important to the determination.
- He is doing well maintaining sobriety, and is very pleased with that improvement.
- The knee surgery has significantly improved an old injury.
- He can function better with the correction made to the left knee, but cannot kneel on it.
- At the time the PCP completed the MA-63 form, he was recovering from knee surgery and somewhat limited for that reason.
- He thinks that he currently has a respiratory infection.
- Respiratory conditions affected his ability to perform his past work.
- He has frequent congestion, and he becomes short of breath with minimal exertion.
- Social Security ordered a consultative psychological examination that he attended.
- He has a sleep study scheduled to evaluate effects of COPD on sleep patterns.

- He will follow up with the pulmonary specialist, Dr Khamiees, after the sleep study results become available.
- He was scheduled to see PCP, Dr Berman the day after hearing, and would be able to request updated records at that time.
- He is planning to speak with his psychiatrist, about the effectiveness of his prescribed medication, as he has been feeling moody lately.
- He did not find his moods to be disruptive, but a close friend noticed changes.
- He is aware that his past alcohol dependence was self-medication.
- Positive effects of psychiatric medications gave him the strength to achieve sobriety.
- He wishes he had accepted the treatment years ago.
- He can perform daily activities independently, but often does not have the energy, and appreciates help he receives from others to complete chores such as cooking meals.
- He has past work experience as a construction worker, production worker making and assembling military equipment, warehouse materials handler, and mechanic.
- He has had tests and a post-operative evaluation completed at Landmark Hospital, but has no record of recent hospital admission there.
- He had completed an in-home sleep study, but results were not informative enough for the treatment provider.
- 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 January 23, 2014.
- The Agency issued a written notice of denial of MA dated April 8, 2014.

- The appellant filed a timely request for hearing received by the Agency on May 5, 2014.
- Per the appellant's request, the record of hearing was held open through the close of business on August 5, 2014 for the submission of additional evidence.
- Additional evidence from Thundermist Health Center and Wendy Schwartz, PhD that was received by the MART during the held open period was forwarded to the Appeals Office on August 6, 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 (COPD), left knee injury s/p surgical repair, depressive disorder, and generalized anxiety disorder (GAD), depression, alcohol dependence in sustained remission, and non-severe hypertension.
- The appellant did not have an impairment or combination of impairments that met or medically equaled any of the listed impairments in the Social Security listings.
- Based on the appellant's residual functioning, he retains the ability to perform sedentary work.
- The appellant was born on [REDACTED] and is 49 years old, which is defined as a younger individual.
- The appellant has some post high school technical education and communicates in English.
- Transferability of job skills is not an issue in this case.
- 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 February 21, 2014 and signed by Shari Green, PCNS.
- ✓ An Agency MA-63 dated February 13, 2014 and signed by primary care physician, Linda Berman, MD.
- ✓ An Agency MA-63 dated February 10, 2014 and signed by Christopher Breen, MD.
- ✓ An Agency AP-70 dated February 18, 2014 and signed by the appellant.
- ✓ Records of Thundermist Health Center (THC) for September 16, 2011 to July 15, 2014.
- ✓ Records of Christopher Breen, MD dated March 20, 2014.
- ✓ Records of NRI Community Services (NRICS) (protected records) for January 2, 2013 to February 21, 2014.
- ✓ A consultative examination report dated March 27, 2014 and signed by Wendy Schwartz, PhD.
- ✓ Hearing testimony.

Medical and other evidence of an individual's impairment is treated consistent with (20 CFR 416.913). The appellant requested to hold the record of hearing open for the addition of updated and missing medical evidence. At the close of business on August 5, 2014, additional records from THC including a copy of the July 2014 CT scan and a consultative psychological examination report were received. Pulmonary examination and sleep study results were not submitted as discussed during the hearing. The appellant allowed the record to close without a request for extension of the deadline to submit the missing evidence.

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 appellant has a longitudinal treatment relationship with THC for primary care, as well as with NRICS for mental health and substance dependence treatment. These sources have each had frequent contact with the appellant; have made assessments of his conditions, and have prescribed remedies. Great weight is given to the opinions of the mental health providers, as applicable to the specific nature of treatment offered. However, physical findings have varied significantly throughout the period of time since the application was filed, and opinions of the primary care source seem to reflect symptoms occurring during periods of exacerbation or surgical recovery, and do not establish existence of restrictions expected to remain at the expressed levels

for a significant period of duration. The record also includes one note from orthopedic specialist, Dr Breen, and a consult report of Dr Schwartz, which will be considered in combination with the more substantive treating source information.

The MART is considered a non-examining source when expressing opinions regarding an individual's condition. At the time of application, the MART review of available evidence resulted in findings that the appellant had severe conditions including chronic obstructive pulmonary disease (COPD), left knee meniscus tear (s/p surgical repair), and depression, although his impairment did not rise to a level adequate to meet or equal the Social Security listings. They determined that he retained functioning required to perform light work which would rule out his ability to return to past relevant work activity, but did not rule out potential to perform other work. Additional evidence was submitted after the hearing. The new information has not compelled the MART to reverse their original decision. The final rationale for that outcome has not been communicated to this Appeals Officer.

The appellant has alleged that symptoms of COPD, disorder of the left knee (status post surgical repair on January 28, 2014), and depression impair him. Medical evidence records also document a history of hypertension (Htn), generalized anxiety disorder (GAD), and alcohol abuse currently in sustained remission for more than two years.

Evidence documents that the appellant had suffered a meniscus tear of the left knee which he has described as an "old injury". In January 2014, arthroscopic repair by partial meniscectomy was performed by Christopher Breen, MD. The medical evidence contains only one follow up note with respect to the outcome of that surgical procedure. On March 20, 2014, less than two months later, Dr Breen documented a follow up examination finding that range of motion was excellent, there was no residual swelling, tenderness, or pain in the calf, alignment was neutral, crepitus was minimal, portals pristine and overall neurovascular condition was intact. He estimated that 80%-90% improvement had been achieved which the appellant testified was the best they had hoped for. He continues to be limited primarily to kneel placing direct weight on the left knee joint, and had informed the physician that he would wear knee pads to protect the joint in that situation. He was doing "reasonably well". PCP, Dr Berman, also noted that he was doing well following knee surgery, and that gait was normal. No pain complaints were indicated by either physician.

Hypertension has been treated with prescribed medication. Records of a February 2014 office visit indicated that his blood pressure was at goal with use of prescribed anti-hypertensive medication. Subsequent records documented a rise in the blood pressure, but attributed that change to a two week period during which he had not taken the prescribed medication proven to result in good control of the condition. 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 at this time.

Symptoms of COPD seemed to be the primary cause of concern for the appellant. He had been treated for the disorder throughout the time represented by the available records. As the effectiveness of treatment plays an important role in the determination of disability the likelihood that his prescribed treatment can reduce or eliminate adverse symptoms is considered. Dr Berman noted in February, 2014 that he was compliant with use of prescribed remedies, and that he was achieving good relief with inhalers. Progress notes documented no shortness of breath, lungs were clear bilaterally, and there was evidence of good air exchange. While he did have a "mild" cough at the time, it was noted that he was still smoking, and cessation was encouraged.

The appellant returned for an office visit with the PCP in April 2015. Increased coughing despite good treatment compliance was noted, and he was referred to pulmonary specialist Dr Khamiees. In addition, Dr Berman had ordered diagnostic images. A chest x-ray with front and lateral views was completed on May 28, 2014 with no acute findings. A CT scan performed on July 15, 2014 identified "Mild COPD involving the upper lobes bilaterally. No other significant abnormalities demonstrated." No records of the pulmonary expert or results of a sleep study have been submitted. However, the available clinical and diagnostic findings demonstrate that his current condition could be expected to result in some environmental restrictions as typically recommended for patients with respiratory issues.

Shari Green, PCNS, had completed an Agency MA-63 form in February 2014 acknowledging the appellant's 2-year sustained recovery from alcohol dependence, and identifying the primary diagnosis of generalized anxiety disorder (GAD). After noting that NRICS had worked with him since 2011, she submitted opinions to the Agency noting that with respect to mental functioning, he showed no limitations to memory and ability to carry out instructions, ability to maintain work pace, or to respond appropriately to change in a work environment. Additionally, she found that he experienced slight limitations to maintaining attention and concentration, ability to make simple work-related decisions, and interpersonal skills. As the NRICS clinical records are protected, and will not be detailed in this decision, it can be noted that the available records do support the conclusions of the practitioner.

Dr Berman, PCP, expressed opinions which were not supported by available medical records on another MA-63 form. Although the mental characteristics indicated were all noted to be moderately impaired, her progress notes for the same month noted the contrary, stating "good eye contact, oriented x 3, normal speech, judgment intact, appropriate mood and affect", which did not justify

moderate level impairment. Additionally, Dr Berman's thoughts about physical restrictions were provided shortly after the appellant had undergone knee surgery, and did not include information regarding improvement to physical functioning following the recovery period.

Likewise, the orthopedic surgeon responded to the questions regarding physical limitations immediately after the surgical procedure was completed. He gave a fair to good prognosis. Although he suggested walking and standing were limited at that time, he noted that his patient was "very motivated". The improvement was documented during a subsequent follow-up visit as discussed earlier. The primary restriction remaining was for kneeling.

Finally, a consultative psychological evaluation was completed for his Social Security case. Dr Schwartz noted that he was alert and oriented in all spheres, was able to sustain focus throughout the evaluation, speech was normal, and thought process was logical. Judgment was good, and there was no evidence of delusions, hallucinations, ideas of reference, obsessions or compulsions. No harmful ideation was present, and no cognitive loss was suspected. He denied memory deficits, and anxiety symptoms. His expressions were broad, gross motor skills normal, he was cooperative, showed broad affect, established good rapport, and maintained good eye contact. He was able to recall specifics as needed, had a good sense of humor, and had sustained sobriety for 2 years. He is able to cook, clean, shop and pay bills, likes to fix things, and aspired to become a counselor helping other with dependence on alcohol. He has friends and showed no indication of problems with authority figures. She did note that they discussed challenges to physical activity which the appellant explained would be limited by COPD and his knee condition, which he accommodated by completing activities in shorter sessions and taking breaks as needed. He also admitted to low frustration tolerance decreased motivation, and a legal record. Findings of the consultative examiner were much more detailed than records of the treating sources, but providers' notes were consistent in their conclusions.

Appellant testimony was credible. He did acknowledge that certain facts had not yet been established, and that tests were pending which may have created a more accurate picture of his conditions had they been available at the time of application. Additional time was allowed for submission of evidence he wished to include, and the determination is based on all available clinical evidence and testimony as explained above.

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 demonstrated with acceptable evidence that he has successfully sustained remission from alcohol dependence for more than two years, and that he has been compliant with treatment for depression and anxiety symptoms. He cited the effectiveness of that treatment to be the reason for his success in overcoming the addiction. After sustaining sobriety for an extended period of time and complying with medication management of symptoms along with counseling, mental health issues appeared to result in minimal impact on functioning to perform basic work activities. Although he suspected that he would need to discuss a change in medication with his psychiatrist, records do not document any change in symptoms, diagnosis, treatment or indicate resulting limitations. Mental health conditions are considered non-severe for the purpose of this evaluation.

Hypertension has been medication managed. Blood pressure goals had been reached when he was medication compliant. Evidence has not established the existence of any residual effects of hypertension on vital organs. The condition is also non-severe for the purpose of the sequential evaluation.

While the appellant had experienced injury of a weight bearing joint some time ago, recent surgical repair of the left knee was rated as highly successful, although some effects on physical activity remain. He had some difficulty with weight bearing as required to kneel. Walking, and standing duration was reduced by the combination of his musculoskeletal condition and COPD.

The appellant expressed that he found COPD to be his most limiting condition, as sustained exertion would result in shortness of breath and the need to take breaks from activities. Based on clinical and diagnostic findings, chronic pulmonary insufficiency and injury of a weight bearing joint meet the de-minimis standard for severity. The sequential 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 1.03 (Surgical arthrodesis of a major weight-bearing joint), 3.02 (Chronic pulmonary insufficiency), 12.04 (Affective disorders), 12.06 (Anxiety-related disorders), and 12.09 (Substance addiction disorders) are reviewed. Evidence has not established that his surgically repaired musculoskeletal condition is accompanied by an inability to ambulate effectively as defined in 1.00B2b. While records do establish the existence of COPD, a recent CT scan revealed that the level of insufficiency was "mild", and no testing revealing chronic impairment of gas exchange has been indicated.

As sobriety from alcohol dependence is being well managed, treatment for anxiety and depressive symptoms is examined. Evidence shows that he has been compliant with prescribed treatment, which apparently has reduced symptoms, although some adjustments may still be required. There is no evidence that symptoms have resulted in marked level restrictions of activities of daily living, maintaining social functioning, concentration, persistence or pace, or that they have resulted in repeated episodes of decompensation of extended duration.

The medical evidence record does not support the existence of an impairment or combination of impairment that would rise to a level to meet or equal any of the Social Security listings. The sequential evaluation proceeds to step four.

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: Medical evidence does not rule out the appellant's ability to lift 10 lbs at a time, and occasionally lift 20 lbs. Based on good results of knee surgery and documented level of COPD symptoms, medical reports do not preclude him from being able to stand or walk for two-hour blocks of time throughout a workday with allowances for customary breaks. However, the combined effects of musculoskeletal and respiratory conditions would limit his total endurance to less than six hours per workday according to primary care follow up evaluations. No post-surgical restrictions to sitting have been indicated. He would be limited for repetitive use of foot controls on the left side. This combination of exertional functions would be compatible with sedentary work activity.

Postural: Due to injury and repair of a weight bearing joint, he should avoid frequent climbing, stooping, and crouching, and avoid totally any work activity requiring kneeling, or crawling; as indicated by follow up records of the orthopedist. These postural restrictions would not significantly erode the sedentary occupational base.

Manipulative: No restrictions to reaching, handling, fingering, or feeling have been documented.

Visual: No limitations to near acuity, far acuity, depth perception, accommodation, color vision, or field of vision are known.

Communicative: Hearing and speaking capabilities are intact.

Environmental: Based on his diagnosis of COPD, and need to control hypertension, he should avoid concentrated exposure to extreme cold, heat, wetness, humidity, fumes, odors, dusts, gases, and poor ventilation. Environmental restrictions do not result in significant erosion of the sedentary occupational base.

Medical evidence records have established that the appellant is limited by symptoms secondary to severe impairments including COPD, and left knee injury status post surgical repair, as well as non-severe hypertension, substance dependence in full sustained remission, and affective disorders. Mental restrictions have not been demonstrated to have more than a minimal impact on functioning as required to perform basic work activity. Physical restrictions, however, have reduced exertional functioning to sedentary level with some postural and environmental limitations.

The appellant has a past relevant work history as a construction laborer, a production worker making and assembling military equipment, a warehouse materials handler, and a diesel mechanic. Due to the exertional requirements, and exposure to environmental irritants involved in his past jobs, his current residual functioning would preclude his ability to sustain similar work activities. As return to past work activity can be ruled out at this step, the sequential evaluation proceeds to step five.

Step five: At the last step of the sequential evaluation process, consideration is given to the assessment of the individual's RFC together with his/her age, education and work experience to determine if he/she can make an adjustment to other work in the national economy (20 CFR 416.920(g)). If the individual is able to make an adjustment to other work, he/she is not disabled. If the individual is not able to do other work and meets the duration requirement, he/she is disabled. At step five, it may be determined if the individual is disabled by applying certain medical-vocational guidelines (20 CFR Part 404, Subpart P, Appendix 2). The medical-vocational tables determine disability based on the individual's maximum level of exertion, age, education, and prior work experience. In some cases, the vocational tables cannot be used, because the individual's situation does not fit squarely into the particular categories or because his/her RFC includes significant nonexertional limitations, such as postural, manipulative, visual, or communicative; or environmental restrictions on his/her work capacity. If the individual can perform all or substantially all of the exertional demands at a given level, the medical-vocational rules direct a conclusion that the individual is either disabled or not disabled depending upon the individual's specific vocational profile (SVP). When the individual cannot perform substantially all of the exertional demands or work at a given level of exertion and/or has non-exertional limitations, the medical-vocational rules are used as a framework for decision-making unless that directs a conclusion that the individual is disabled without considering the additional exertional and/or non-

exertional limitations. If the individual has solely non-exertional limitations, section 204.00 in the medical-vocational guidelines provides a framework for decision-making (SSR 85-15).

The appellant is a 49-year old male with post high school technical education, and a positive work history. He is impaired by a combination of severe and non-severe impairments resulting in residual functioning for sedentary work activity with some postural and environmental restrictions. No significant mental barriers to functioning have been established.

Based on the appellant's age of 49 (younger individual) education (high school or more), work history (skilled, medium to heavy exertion, not transferable), RFC (sedentary physical activity with some postural and environmental restrictions), and using vocational rule 201.21 as a guide while considering any non-exertional impairments; the combined factors direct a finding of "not disabled" according to the Social Security regulations. The appellant retains the ability to perform other types of 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

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.