

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

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Docket # 14-896  
Hearing Date: August 7, 2014

Date: October 23, 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, Linda Champagne, and Rita Graterol.

Present at the hearing were: You (the appellant), and Julie Hopkins, 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 her incapable of any type of work, not necessarily her past work. In addition, the impairment must last, or be expected to last for a continuous period of not less than twelve (12) months.
- The MART follows the same five-step evaluation as SSI for determining whether someone is disabled.
- The MART reviewed two Agency MA-63 forms (Physician's Examination Report), an Agency AP-70 form (Information for the Determination of Disability), and records of The Providence Center.
- No records were received from the request sent to Memorial Hospital.
- Her Social Security application for disability benefits had been denied, and no consultative examination reports were accessible.
- A review of the available medical records revealed that she had been diagnosed with Adjustment Disorder, Major Depressive Disorder, and noted a history of alcohol abuse.
- An initial intake appointment was completed at the Providence Center in November 2013 as required by her probation agreement upon release from the ACI.

- At the time of the intake interview, she was not taking any medication.
- She was collecting unemployment benefits.
- She was going through a divorce and under considerable stress at that time.
- She was to meet with a clinical social worker to learn coping skills.
- Much of her anxiety was related to court and legal issues.
- Her affect, behavior, and mood were noted to be stable.
- Memory, attention, and ability to concentrate were intact at all appointments reviewed.
- February 21, 2014 she discussed recent charges relative to leaving the scene of an accident.
- Although the incident was upsetting, she was able to cope.
- On April 3, 2014 she was depressed about limited visits with her daughter.
- The restrictions noted on the MA-63 form are not supported by the available evidence.
- Many of the issues she was facing were situational and time limited.
- There were no physical functional limitations documented.
- She was able to perform activities of daily living without significant limitations.
- The records reviewed did not present any restrictions to her ability to understand, remember or carry out simple instructions.
- No limitations to ability to maintain concentration or to respond appropriately to others in the work place were indicated
- She had been able to attend all of her medical and counseling appointments.

- The available evidence did not establish the existence of a medically determinable impairment that would limit functioning, meet the durational requirements, or have residual deficits when following prescribed treatment.
- She was not disabled for the purpose of the Medical Assistance program.

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**The appellant testified:**

- She is currently unemployed.
- She is on medication for depression and cannot work at the present time.
- She has been under the care of a medical doctor, Dr Malik, and a clinical therapist, James Norman at The Providence Center.
- She has appointments with the therapist for counseling every two weeks.
- She sees a psychiatrist, Dr Cermik, every three months for treatment evaluation.
- She was a paralegal and office manager for twenty four years.
- She was unable to continue working in her husband's law office because of stress from marital problems.
- Although she did not have a previous history of mental illness, she has been depressed due to recent personal situations.
- She views herself as very smart and capable, and believes that her skills contributed to the success of the law firm.
- She is two courses short of completing her college degree.
- Her doctors have advised her to take gradual steps toward progress.
- She is overwhelmed by her husband's behavior relative to unauthorized travel with her daughter, and is seeking legal action to correct that.
- Her symptoms are distracting and interfere with her ability to concentrate, which was not a problem in the past.
- Her memory has declined.

- She is taking the prescribed medication as recommended.
  - She believes that she has been in control of alcohol abuse for about one year.
  - She has not been treated at any other medical facility other than The Providence Center.
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- She had previously collected unemployment benefits which have ended.
  - She requested to hold the record of hearing open for the submission of additional evidence.

**FINDINGS OF FACT:**

- The appellant filed an application for Medical Assistance (MA) on March 20, 2014.
- The Agency issued a written notice of denial of MA dated May 22, 2014.
- The appellant filed a timely request for hearing received by the Agency on May 30, 2014.
- Per the appellant's request, the record of hearing was held open through the close of business on September 11, 2014 for the submission of additional evidence.
- Additional evidence from The Providence Center that was received by the MART during the held open period was forwarded to the Appeals Office on September 12, 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 Major Depressive disorder, Post Traumatic Stress Disorder, and alcohol dependence.
- 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, she retains the ability to perform simple, routine work that is not highly time-pressured.
- The appellant was born on [REDACTED] and is 56 years old, which is defined as defined as advanced age.
- The appellant has some college 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 March 26, 2014 and signed by Tariq Malik, MD.
- ✓ An Agency MA-63 dated April 3, 2014 and signed by clinical therapist, James Norman, LICSW.
- ✓ An Agency AP-70 dated March 31, 2014 and signed by the appellant.
- ✓ Records of The Providence Center for November 7, 2013 to July 25, 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 provided a treatment record for approximately eight months at The Providence Center (TPC) outpatient clinic. An outpatient clinic may be considered a treating source if an ongoing relationship has been established. Records document counseling sessions, and some visits with a medical doctor and a psychiatrist. The opinions of the treating professionals at TPC are given great weight for the purpose of this evaluation due to the nature of the treatment provided, and monitoring by a specialist in psychiatry.

The MART is considered a non-examining source when expressing opinions regarding an individual's condition. At the time of application, the MART found that treating source records supported mental health diagnoses of adjustment disorder and major depressive disorder, as well as a history of alcohol abuse. Testimony noted that there were no physical limitations established by the available information, that mental activities required for understanding, memory and concentration were intact, and that she was independent in her activities of daily living. It was unclear why the MART opined that she was limited to simple, routine tasks, or why that expressed limitation did not result in a finding of severity by the required de minimis standard. Additional information from TPC was submitted during the held open period after the hearing. As of the date of this decision, the Agency has not withdrawn the notice of denial under appeal. The rationale for that decision has not been communicated to this Appeals Officer.

The appellant has alleged that symptoms of depression and anxiety impair her. The records have also established that she has a history of alcohol abuse, and has been diagnosed with hypercholesterolemia.

An MA-63 completed by physician Tariq Malik, MD affirmed that she had been diagnosed with hypercholesterolemia, and that her prognosis for reducing or eliminating the condition with medication was good. He also indicated that the condition did not result in any limitations to physical functioning, but deferred to a psychiatrist for opinions regarding mental activity functioning.

James Norman, LICSW has been her clinical therapist for several months. Progress notes document sessions including discussion of her personal situations which have exacerbated her mental health symptoms, and her need to practice coping skills. Mr. Norman was the second treating source to find that she has a "very good" prognosis for reducing or eliminating symptoms of her condition with compliance to prescribed treatment. Additionally, he wrote a statement affirming that her commitment to treatment would likely be the key to her success. He noted that she was excited about plans to return to school and they discussed vocational goals. She needed two courses to complete her Bachelor's degree, and had an interest in continuing to study for a Master's degree in social work.

Psychiatrist, Omer Cermik, MD met with her in June 2014 for Psychiatric evaluation. At that time he opined that alcohol dependence was likely to have caused most of her legal, financial, and mental health problems, and that she has a tendency to minimize the impact of alcohol abuse as documented throughout her records. Although she had been attending AA and claimed that she had been sober for a year, several urine toxicology screens showed positive results for alcohol in the urine as recently as June 2014. She was offered medication to reduce alcohol cravings, but declined.

The most recent mental status examination revealed that she was alert and oriented in all spheres, cooperative, coherent, showed no signs of delusions or hallucinations, and no suicidal or homicidal ideations. Her memory was intact, judgment adequate, and insight fair. All treating sources agreed that her prognosis was good with compliance to prescribed treatment.

Credibility of the appellant was questionable. Her unfortunate situations relative to divorce, custody, and legal issues could be expected to result in situational depression or anxiety. Circumstances were further complicated by the fact that her husband's business was also her place of employment, and by her careless behavior leading to legal problems. Her treating psychiatrist has noted that she was poor historian, and that she denied alcohol use repeatedly while testing positive for increased blood alcohol levels. She blamed a prescribed medication for the test results, but never produced a sample of the medication to verify that claim as requested by her therapist. At her last office visit of record, she declined the psychiatrist's recommendation to complete a blood alcohol level screening.

She alleged that she had mental deficits affecting her employability despite having acquired skills as a paralegal, office manager, and translator with a 24-year work history. At the time of application for disability benefits in March 2014, the agency found that she had been collecting unemployment compensation, indicating that she would need to be able, available, and actively looking for work. Although she testified that benefits had since ended, she had discussed plans with her therapist to pursue a Master's degree which did not appear indicative of an individual with the impairment she described.

**CONCLUSION:**

In order to be eligible for Medical Assistance (MA) benefits, an individual must be either aged (65 years or older), blind, or disabled. When the individual is clearly not aged or blind and the claim of disability has been made, the Agency reviews the evidence in order to determine the presence of a characteristic of eligibility for the Medical Assistance Program based upon disability. Disability is defined as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment or combination of impairments that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve (12) months.

Under the authority of the Social Security Act, the Social Security Administration has established a **five-step** sequential evaluation process for determining whether or not an individual is disabled (20 CFR 416.920). DHS policy directs that disability determination for the purposes of the MA program shall be determined according to the Social Security sequential evaluation process. The individual claimant bears the burden of meeting steps one through four, while the burden shifts to DHS to meet step five. The steps must be followed in sequence. If it is determined that the individual is disabled or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step. If it cannot be determined that the individual is disabled or not disabled at a step, the evaluation continues to the next step.

**Step one:** A determination is made if the individual is engaging in substantial gainful activity (20 CFR 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. Substantial work activity is work that involves doing significant physical or mental activities (20 CFR 416.972(a)). Gainful work activity is work that is usually done for pay or profit, whether or not a profit is realized (20 CFR 416.972(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that he/she has demonstrated the ability to engage in SGA (20 CFR 416.974 and 416.975). If an individual is actually engaging in SGA, he/she will not be found disabled, regardless of how severe his/her physical or mental impairments are, and regardless of his/her age, education and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

The appellant has testified that she is not currently working. As there is no evidence that the appellant is engaging in SGA, the evaluation continues to step two.

**Step two:** A determination is made whether the individual has a medically determinable impairment that is severe, or a combination of impairments that is severe (20 CFR 416.920(c)) and whether the impairment has lasted or is expected to last for a continuous period of at least twelve months (20 CFR 416.909). If the durational standard is not met, he/she is not disabled. An impairment or combination of impairments is not severe within the meaning of the regulations if it does not significantly limit an individual's physical or mental ability to perform basic work activities. Examples of basic work activities are listed at (20 CFR 416.921(b)). A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only by the individual's statement of symptoms. Symptoms, signs and laboratory findings are defined as set forth in (20 CFR 416.928). In determining severity, consideration is given to the combined effect of all of the individual's impairments without regard to whether any single impairment, if considered separately, would be of sufficient severity (20 CFR 416.923). If a medically severe combination of impairments is found, the combined impact of the impairments will be considered throughout the disability determination process. If the individual does not have a severe medically determinable impairment or combination of impairments, he/she will not be found disabled. Factors including age, education and work experience are not considered at step two. Step two is a *de minimis* standard. Thus, in any case where an impairment (or multiple impairments considered in combination) has more than a minimal effect on an individual's ability to perform one or more basic work activities, adjudication must continue beyond step two in the sequential evaluation process.

The appellant has been counseled for several months for mental health symptoms secondary to situational depression and anxiety-related disorder, as well as for alcohol addiction. Despite the fact that the sobriety she claims to have achieved cannot be affirmed by available evidence, her mental status evaluations have been relatively strong, with the exception of poor insight into her problems. While it was believable that distractibility could be a challenge during periods of extreme personal stress, evidence did not establish ongoing challenges with understanding, memory, social interaction, or daily activities. At her most recent visit with the psychiatrist of record, her mood was notably sad and dysphoric although all other characteristics were unremarkable. A physician, a psychiatrist and a clinical therapist have all expressed optimistic prognoses for reducing or eliminating her adverse symptoms with compliance to prescribed treatment.

She testified that in addition to attending counseling sessions regularly, she had been compliant with a prescribed medication regimen intended to reduce symptoms. Records indicate that anti-depressant and sleep medications were started in June 2014. There was an indication in July that a medication adjustment to increase dosage was being made. At this time, there is no further treating source information regarding treatment compliance and effectiveness. Available evaluations do not support any physical restrictions.

As alcohol dependence is a medically determinable impairment identified by the treating psychiatrist as a probable cause of legal, financial, and mental health problems; 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 all other evidence. (20 CFR 416.935). The sequential evaluation continues for severe impairments including Major Depressive Disorder (MDD), Post Traumatic Stress Disorder (PTSD), and substance dependence.

**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 12.04 (Affective disorders), 12.06 (Anxiety-related disorders), and 12.09 (Substance addiction disorder) have been considered. Treating sources have documented slight to moderate limitations during exacerbations of her conditions, with an expectation of reducing or eliminating symptoms during treatment. Evidence has not established the existence of marked level restrictions to activities of daily living, maintaining social functioning, concentration persistence or pace, or repeated episodes of decompensation, each of extended duration. The appellant's conditions do not rise to meet or equal the level of the any of the Social Security listings of impairments. The evaluation continues 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.

## Mental RFC

**Understanding and Memory:** Evidence does not rule out her ability to remember locations and procedures, to understand and remember short, simple instructions, or to remember detailed instructions as demonstrated by her explanation of acquired skills, vocational and educational goals. Although she has expressed anger in regard to failures which she found discouraging, she testified that she believes she is bright, and capable, and deserves credit for the successful operation of her ex-husband's law firm. She has expressed aspirations to pursue a Master's degree.

**Sustained Concentration and Persistence:** Although she may be understandably distracted when faced with stressful personal situations, evidence does not establish any general cognitive deficits. She could be expected to maintain attention and concentration adequate to carry out simple, routine tasks for two-hour blocks of time throughout a workday with allowances for customary breaks; to be punctual, to sustain a routine without special supervision, and to make simple work-related decisions. Productivity may be slowed at times by distractibility or low mood. She is best suited for tasks that are not highly time-pressured. She may experience occasional interruptions to her work schedule as treatment is adjusted to achieve greater effectiveness. Her therapist opined that she would be able to sustain work activity with adherence to the prescribed medication and counseling regimen.

**Social Interaction:** Evidence does not rule out her ability to interact appropriately with the public, to know when to request assistance, to accept instructions from supervisors, to get along with coworkers, maintain socially appropriate behavior, and to adhere to basic standards of grooming.

**Adaptation:** She could be expected to manage basic, work-related change, be aware of normal hazards and take precautions, arrange transportation, and set realistic goals.

The appellant has not presented evidence establishing the existence of any severe physical impairments meeting the durational requirements. Therefore, no physical restrictions resulting in more than a minimal impact on functioning are indicated. She is independently sustaining activities of daily living. Mental capabilities primarily related to sustained concentration and persistence secondary to distractibility and response limited by low moods, are slightly to moderately reduced by periodic interference from symptoms of MDD, PTSD, and substance dependence. Compliance with prescribed medication management recently initiated, and with counseling noted to have a positive impact on depressive symptoms, is expected to continue to improve functioning according to her treating sources.

She has reported a past relevant work history of 24 years performing duties as a paralegal, office manager, and translator for a law firm. Current interference from symptoms reducing her ability to sustain concentration, persistence, and pace required to carry out complex assignments would preclude her from performing her past relevant work skills. As a result, 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).

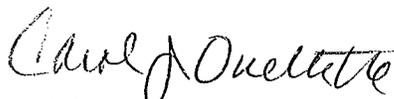
The appellant is a 56-year old female with a college education nearly completed, and a 24-year work history in a law office. She is currently impaired by symptoms of MDD, PTSD, and alcohol dependence. No physical restrictions have been proven. Her reduced mental functioning, financial, and legal issues have been attributed to alcohol abuse according to a treating psychiatrist. Although she has alleged that she has been sober for more than one year, the evidence clearly does not support that claim. Nevertheless, her residual functioning has been assessed based on her documented symptoms as they exist. Her impairment has had moderate impact on concentration, persistence, and pace; but has not ruled out her ability to adequately carry out simple, routine tasks at the present time. Prognosis for further improvement is good, according to three treating professionals.

Based on the appellant's age of 56, college education near completion of a Bachelor's degree, positive longitudinal skilled work history, unlimited physical functioning, and mental functioning adequate to accommodate simple, routine tasks that are not highly time pressured; the combined factors direct a finding of "not disabled" according to the Social Security regulations. The appellant retains residual capabilities adequate to perform other work. Consequently, no further consideration of the material nature of alcohol dependence on the disability determination is required.

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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.