



Rhode Island Executive Office of Health and Human Services
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Docket # 15-124
Hearing Date: March 31, 2015

Date: May 6, 2015



ADMINISTRATIVE HEARING DECISION

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

EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES (EOHHS) MEDICAID CODE OF ADMINISTRATIVE RULES (MCAR) SECTION: 0352.15 ELIGIBILITY BASED ON DISABILITY

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

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

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

EOHHS RULES AND REGULATIONS:

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

APPEAL RIGHTS:

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

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

TESTIMONY AT HEARING:

The Agency representative testified:

- In order to be eligible for Medical Assistance (MA) an applicant must be either aged (age 65 years or older), blind, or disabled.
- The Medical Assistance Review Team (MART) determines disability for the MA Program.
- The MART is comprised of public health nurses, a social worker and doctors specializing in internal medicine, surgery, psychology and vocational rehabilitation.
- To be considered disabled for the purposes of the Medical Assistance Program, the appellant must have a medically determinable impairment that is severe enough to render him incapable of any type of work, not necessarily his past work. In addition, the impairment must last, or be expected to last for a continuous period of not less than twelve (12) months.
- The MART follows the same five-step evaluation as SSI for determining whether someone is disabled.
- The MART reviewed an Agency MA-63 form (Physician's Examination Report), an Agency AP-70 form (Information for the Determination of Disability), and records including one exam note from Primacare, and a physical medical consultative examination report dated November 3, 2014.
- He was denied eligibility for Social Security in December 2014.
- A review of the available records revealed diagnoses of lumbago (low back pain), and a depressive disorder.
- Primacare records included a single exam note from October 22, 2014.
- He reported taking Cymbalta, some pain medications, and Klonopin, although it was unclear who was prescribing the medications.
- It was apparent that there had been another treatment provider that had not been named on the AP-70 form at the time of application.
- A referral was given for a psychiatrist, but no other mental health records were received.

- He reported that he had a very stressful living situation.
- He offered complaints of joint pain throughout the body.
- His ESR (erythrocyte sedimentation rate) lab work ordered to measure the degree of inflammation throughout the body was slightly elevated at 24 (with normal being between 0-22).
- Limitations noted on the MA-63 form were not supported by the objective physical examination notes.
- The consultative examination was completed on November 3, 2014.
- No physical limitations to abilities to complete activities of daily living (ADLs) were indicated.
- He reported walking daily for an hour at a time.
- He had full range of motion of knees, ankles, wrists, and hands.
- There was some limitation to range of motion of both the cervical spine and the lumbar spine.
- The limitations were attributed to degenerative changes in both regions of the spine.
- Pain and any side effects that pain medication may have, are taken into consideration.
- Degenerative changes in the spine were considered severe for the purpose of the sequential evaluation.
- His impairments did not meet or equal any of the Social Security listings.
- Medical records did provide evidence of functional restrictions, and a residual functional capacity (RFC) assessment was completed.
- Residual functioning was expected to limit exertional activity to a level required to perform light work or less.
- He would be unable to resume his past relevant work as an auto body frame technician which requires medium to heavy exertion.

- Based on his age of 55, education as a high school graduate, past relevant work, ability to be retrained, and guided by vocational rule 202.07, he was not disabled.
- He was not disabled for the purpose of the Medical Assistance program.

The appellant testified:

- He is currently unemployed.
- Much of the information about his conditions was not included within the available records.
- He suffers from both mental and physical conditions.
- His mental conditions started when he was just 5 years old.
- Currently he is being treated for mental health conditions by his primary care provider (PCP).
- She had referred him to a psychiatrist, but he could not get in touch with the recommended doctor because she moved.
- He is determined to get another referral to a really good psychiatrist, which is important to him.
- He needs to attend therapeutic rehab for ailments throughout his body.
- He has problems with his back, neck, arms, and legs.
- He has a lot of cumulative damage resulting from his work activity.
- He sees a pain specialist at the Biltmore Pain Center.
- He has been treated at the pain clinic for about 9 months to a year.
- Previously, he was treated at Thundermist Health Center and NRI Community Services, and believes they have records from last year that are important.
- He left those providers to seek what he considered better treatment.
- He is not a criminal, but has had 27 arrests which he believes were a result of being targeted by a police department.

- He has not worked for about 5 years.
- He had a nervous breakdown, and had to go to the hospital.
- He can't use his arms well, especially the left.
- His lower back pain radiates into his legs bilaterally.
- He can no longer lift anything heavy.
- His pain doctor had ordered several diagnostic tests that were completed in December.
- He was admitted to Landmark Hospital for both mental and physical conditions.
- He has difficulty remembering what tests he has had or where they were completed, because he has been through so much in recent years, including spending time in prison.
- He was abused as a child, and as an adult has spent time in prison even though he maintains that he was innocent.
- Records including primary care updates, complete pain clinic notes, and information from previous providers were all missing from the evidence file.
- He suffers from chronic pain throughout his body, and sees the pain specialist for management of all of his issues.
- In the past, he has experienced poorly healed fractures of his ribs, and his left arm.
- He has difficulty raising his left arm due to pain.
- He is right side dominant.
- He has a torn ligament in his right elbow, and has a history of concussions.
- His PCP has referred him to a psychiatrist, and he knows he needs help.
- NRI had been his mental health treatment source in the past.

- He survived a severe injury involving a cut across the left side of his face which required over 200 stitches.
- Although the physical wound healed, he still experiences unpleasant flashbacks of the incident.
- He had one examination completed for his Social Security case, but does not recall any others being scheduled.
- In December 2013 he left Landmark Hospital after a 7-day admission, without any medication.
- The following day, he called the state police to report that he had no medication.
- He later told his story to a fireman who took him to Rhode Island Hospital, where he was admitted for a 10-day stay.
- He can't see well and believes he needs glasses.
- He requires help completing paperwork due to his decreased vision.
- While he was incarcerated, he was given his prescribed medication.
- He did not want to talk about some of the events in his life until he started treatment in 2014.
- 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 October 6, 2014.
- The Agency issued a written notice of denial of MA dated December 10, 2014.
- The appellant filed a timely request for hearing received by the Agency on December 30, 2014.
- Per the appellant's request, the hearing scheduled for March 3, 2015 was rescheduled to March 31, 2015.
- Per the appellant's request, the record of hearing was held open through the close of business on April 28, 2015 for the submission of additional evidence.
- Additional evidence from Primacare Inc physician's assistant, Kayla Shelley PA-C, that was received by the MART during the held open period was forwarded to the Appeals Office on April 29, 2015 and was added to the record of hearing.
- Records from Community Care Alliance (aka NRI Community Services), Thundermist Health Center, Biltmore Pain Clinic, Landmark Medical Center, and Rhode Island Hospital for which release forms were given to the appellant, were not received.
- As of the date of this decision, the MART had not withdrawn the notice under appeal based on the new medical information submitted.
- The appellant is not engaging in substantial gainful activity.
- The appellant had severe, medically determinable impairments including disorders of both the lumbar and cervical regions of the spine.
- All other alleged impairments, while credible, remain unsupported by acceptable evidence.
- 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 light physical work activity.

- The appellant was born on [REDACTED] and is 55 years old, which is defined as advanced age.
- The appellant has a high school education and communicates in English.
- Transferability of job skills is not an issue in this case.
- The appellant is disabled as defined in the Social Security Act.
- The appellant is disabled for the purposes of the Medical Assistance Program.

DISCUSSION OF THE MEDICAL EVIDENCE RECORD:

The record of hearing consists of:

- ✓ An Agency MA-63 dated October 23, 2014 and signed by primary care provider (PCP) Kayla Shelley, PA-C.
- ✓ An Agency AP-70 dated October 17, 2014 and signed by the appellant.
- ✓ Records of Primacare Inc for October 8, 2014 to April 10, 2015.
- ✓ A consultative examination report dated November 3, 2014 and signed by Jay Burstein, MD.
- ✓ Three x-ray reports (cervical, thoracic, and lumbar spine) from St Joseph Health Services dated November 3, 2014.
- ✓ Hearing testimony.

Medical and other evidence of an individual's impairment is treated consistent with (20 CFR 416.913). Per the appellant's request, the record of hearing was held open through the close of business on April 28, 2015. Release forms were prepared for the treating sources that he identified as missing. Additional records from Primacare Inc were received and added to the evidence record. No records from Community Care Alliance (aka NRICS), Thundermist Health Center, Biltmore Pain Clinic, Landmark Medical Center or Rhode Island Hospital were received. The appellant did not request extension of the deadline to submit additional evidence, and allowed the record to close without including the full range of information identified as missing at the time of hearing.

According to 20 CFR 416.916 (If you fail to submit medical and other evidence): You must co-operate in furnishing us with, or in helping us to obtain or identify, available medical or other evidence about your impairment(s). When you fail to cooperate with us in obtaining evidence, we will have to make a decision based on the information available in your case. We will not excuse you from giving us evidence because you have religious or personal reasons against medical examinations, tests, or treatment.

All medical opinion evidence is evaluated in accordance with the factors set forth at (20 CFR 416.927). The medical evidence record includes six months of progress reports from the appellant's PCP, as well as a consultative disability evaluation supported by diagnostic imaging of all levels of the spine. As there are no treating sources providing evidence of a frequency, length, nature or extent of treatment that would justify controlling weight, all available medical facts and testimony are considered in combination for the purpose of this evaluation.

The MART is considered a non-examining source when expressing opinions regarding an individual's condition. At the time of their review, the available records revealed that impairments existed secondary to degenerative changes at multiple levels of the spine. They opined that those changes would limit his physical exertional capabilities to light work activity. No mental restrictions were supported within the records they had reviewed at that time. As the physical limitations ruled out his ability to return to his past relevant work, they based their "not disabled" decision on age, education, work experience, ability to be retrained, and current residual functional capacity. They determined that he was not disabled when guided by the Social Security vocational rule 202.07. As 202.07 requires that an individual of advanced age be capable of transferring to new work activity with very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or the industry chosen, the agency would have had to support the decision to use transferability as a relevant factor by identifying at least three occupations that the appellant could immediately transition to using skills acquired from his past work. Furthermore, an expectation of retraining for an individual in this age category is inappropriate. Consequently, it appears that application of an incorrect vocational rule occurred in this matter.

Additional evidence was received during the held open period. As of the date of this decision, the MART had not withdrawn the notice of denial under appeal. The rationale for their final decision has not been communicated to this Appeals Officer. A *de novo* review of the case facts follows.

The appellant had alleged that symptoms of musculoskeletal pain from arthritis and tendonitis affecting his back, right hip, wrist, elbow, neck and shoulders, history of arm and rib fractures and concussion; as well as major depressive disorder and anxiety impair him. He indicated that his conditions impact some activities of daily living (ADLs), his sleep quality, and his ability to sustain work activity. The available records, however, do not include any verification of abnormalities of the hips, wrists, or elbows, nor do the records address any abnormal healing of fractures or residual effects of concussions.

In November 2014, X-rays of the spine were completed for lumbar, thoracic, and cervical levels. Previous images taken in 2008 revealed some degenerative changes at L2-L3. The most recent views endorsed normal stature and alignment of the lumbar vertebrae, and normal interspaces, transverse

processes, pedicles, and sacral foraminal margins. Thoracic views also established normal stature, alignment, interspaces, pedicles and paraspinals margins. The cervical spine imaging revealed degenerative narrowing and spurring at C5-C6 and C6-C7 interspace levels, which was consistent with his complaints of pain radiation to both shoulders.

The orthopedic evaluation noted full range of motion of both wrists and hands, with somewhat reduced grip strength at 4/5 bilaterally. He was able to walk with a normal gait, tested negative for straight leg raise testing, and no significant loss of strength, sensation, or reflexes of the lower extremities was indicated. There was no deformity of the neck, back, or trunk. He had full motion of both knees and ankle joints, despite his complaints of pain. Neurological motor and sensory exams of the bilateral lower extremities were normal. The examining physician opined that he would be limited to lifting and carrying no greater than 30 lbs, and that he was capable of bending, twisting, standing, walking, and climbing stairs.

Although the appellant's PCP thought that exertional capabilities were somewhat less than the consulting physician had determined, her progress notes did not clearly support the reasons for her statements noted on the MA-63 form. At the time of the most recent physical evaluation in April 2015, office notes indicated that extremities were normal with respect to range of motion, sensation, and reflexes, and that no clubbing, edema, cyanosis or ulcerations were found. He did test slightly above normal when tested for inflammation. During a review of symptoms, she had not entered any notes specific to back pain, foot symptoms, hip pain, joint pain or swelling, neck pain, gait abnormality or muscle weakness. The general physical examination was unremarkable.

On that same date, all of his maintenance medications were reviewed, and reordered or replaced as appropriate. His primary complaint was that prescribed remedies were not sufficiently controlling his anxiety symptoms, and he discussed his request to see a psychiatrist. Mental status notes of the PCP were included. Progress notes indicated that his affect was normal, eye contact good, he was oriented in all spheres, and speech was normal. There were no comments indicating whether the review revealed any anxiety or depression, hallucinations, hyperactivity, mania, harmful ideations or sleep disturbances. There were no psychological or psychiatric evaluations completed by a specialist that would support marked level restrictions to mental activity functioning.

Symptoms, including pain, are evaluated in accordance with the standards set forth at (20 CFR 416.929). The appellant has testified that in the past he has sustained injuries from motor vehicle accidents, and performed strenuous auto body work throughout his adult life. He has proven with diagnostic test records that his history has resulted in some degenerative musculoskeletal changes, and that he experiences discomfort from inflammation. Medical records do indicate that generally there has been some effort to medically manage pain symptoms with prescribed remedies, but there is no information about compliance and

effectiveness, and no records of attempts to control pain with use of injections, heat or cold treatments, acupuncture, physical therapy, aquatic therapy, chiropractic manipulation, or surgical intervention. Treating and examining sources have not established that following prescribed treatment for pain complaints could be expected to reduce or eliminate adverse effects and restore his ability to work.

In order to get benefits, an individual must follow treatment prescribed by his physician if this treatment can restore his ability to work. If the individual does not follow the prescribed treatment without good reason, he will not be found disabled. The individual's physical, mental, educational, and linguistic limitations (including any lack of facility with the English language) will be considered to determine if he has an acceptable reason for failure to follow prescribed treatment in accordance with 20 CFR 416.930. Although the presence of an acceptable reason must be evaluated based on the specific facts developed in each case, examples of acceptable reasons for failing to follow prescribed treatment can be found in (20 CFR 416.930 (c)). In this matter, the appellant testified that he had been attending a pain management clinic to address pain throughout his body. There is no information from the pain clinic documenting what treatment was prescribed, if it was expected to restore functional ability, or whether he had been compliant with treatment recommendations. He does appear to have been cooperative with routine primary care remedies.

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. He has not worked for the past five years, but had a significant work history as an auto body frame technician. 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 not established that severe impairments resulting from musculoskeletal pain secondary to arthritis and tendonitis affects his hips, wrists, or elbows. Likewise, he has not supported claims of non-union of fractures or residual effects of concussions. Diagnostic images do, however, establish that degenerative conditions are present in the cervical spine causing neck pain radiating to the shoulders bilaterally. X-rays also revealed degenerative changes and some disc space narrowing in the lumbar spine. Although his PCP has prescribed medication for symptoms of major depressive disorder, there is no clinical or diagnostic information which establishes severity, duration, or prognosis for reducing or eliminating symptoms with treatment. There is a lack of clinical data or evidence to support any mental health diagnosis or define its' impact on functioning. For the purpose of this evaluation, only the disorders of the spine have been demonstrated to be severe. The sequential evaluation proceeds to Step three for consideration of the impact of severe disorders of the spine, which are the only impairments supported by acceptable evidence.

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, listing 1.04 (Disorders of the spine) has been reviewed according to the guidelines for body system 1.00 associated with the Musculoskeletal System. The appellant has presented evidence of osteoarthritis and degenerative disc disease in the lumbar and cervical regions of the spine. There is no evidence of nerve root compression accompanied by sensory or reflex loss, and straight-leg raising tests were negative. Spinal arachnoiditis does not exist. Lumbar spinal stenosis resulting in pseudoclaudication has not been established by medically acceptable imaging, and there is a lack of information relative to nonradicular pain and weakness. Inability to ambulate effectively as defined in 1.00B2b has not been demonstrated. As a result, the medical evidence record does not support the existence of an impairment that rises to the level of the listing.

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: Per the available medical facts, he could be expected to lift 10 lbs frequently and 20 lbs occasionally. Evidence does not rule out his ability to walk, stand, or sit for two- hour blocks of time with allowances for customary breaks throughout a workday.

Postural: He should avoid frequent or sudden postural changes needed for climbing, stooping, kneeling, crouching or crawling secondary to back, neck and shoulder pain.

Manipulative: Evaluation revealed reduced grip strength bilaterally, although no specific limitations to reaching, handling, fingering, or feeling have been demonstrated by the existing evidence.

Visual: Although the appellant did testify that his vision was worsening, there is no information which establishes the existence of a serious condition that could not be corrected with prescription eyeglasses. Records do not establish or quantify any loss of near acuity, far acuity, depth perception, accommodation, color vision, or field of vision.

Communicative: Abilities to hear and speak are intact.

Environmental: Due to musculoskeletal pain and degenerative conditions, he should avoid concentrated exposure to extreme cold, heat wetness and humidity. He would also be limited for jobs exposing him to hazards such as heights and certain types of machinery.

The appellant has established with acceptable medical evidence that limitations to physical functioning would reduce his activity to light exertional level tasks with some postural and environmental restrictions. The available evidence has not established any specific diagnoses or residual deficits secondary to mental conditions. Clearly, his current physical limitations would rule out the possibility of his return to his past relevant work activity as an auto body technician. As a result, the evaluation continues to Step five.

Step five: At the last step of the sequential evaluation process, consideration is given to the assessment of the individual's RFC together with his/her age, education and work experience to determine if he/she can make an adjustment to other work in the national economy (20 CFR 416.920(g)). If the individual is able to make an adjustment to other work, he/she is not disabled. If the individual is not able to do other work and meets the duration requirement, he/she is disabled. At step five, it may be determined if the individual is disabled by applying certain medical-vocational guidelines (20 CFR Part 404, Subpart P, Appendix 2). The medical-vocational tables determine disability based on the individual's maximum level of exertion, age, education, and prior work experience. In some cases, the vocational tables cannot be used, because the individual's situation does not fit squarely into the particular categories or because his/her RFC includes significant nonexertional limitations, such as postural, manipulative, visual, or communicative; or environmental restrictions on his/her work capacity. If the individual can perform all or substantially all of the exertional demands at a given level, the medical-vocational rules direct a conclusion that the individual is either disabled or not disabled depending upon the individual's specific vocational profile (SVP). When the individual cannot perform substantially all of the exertional demands or work at a given level of exertion and/or has non-exertional limitations, the medical-vocational rules are used as a framework for decision-making unless that directs a conclusion that the individual is disabled without considering the additional exertional and/or non-exertional limitations. If the individual has solely non-exertional limitations, section 204.00 in the medical-vocational guidelines provides a framework for decision-making (SSR 85-15).

In summary, the appellant is a 55-year old male with a high school education and a positive work history. Medical evidence has established that he suffers from disorders of the lumbar and cervical regions of the spine and that his residual functioning has been limited by his impairments and associated pain.

Based on the appellant's age of 55 (advanced age) education (high school or more), work history as an auto body frame technician (skilled, medium to heavy exertion, not transferable, no direct entry), RFC (light work with some postural and environmental restrictions), and using vocational rule 202.06 as a framework; the combined factors direct a finding of "disabled" according to the Social Security regulations.

After careful and considerate review of the Agency's policies as well as the evidence and testimony submitted, this Appeals Officer concludes that the appellant is disabled as defined in the Social Security Act, and for the purpose of the Medical Assistance Program.

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



Carol J. Ouellette
Appeals Officer

APPENDIX

0352.15 ELIGIBILITY BASED ON DISABILITY

REV:07/2010

- A. To qualify for Medical Assistance, an individual or member of a couple must be age 65 years or older, blind or disabled.
- B. The Department evaluates disability for Medical Assistance in accordance with applicable law including the Social Security Act and regulations (20 C.F.R. sec. 416.901-416.998).
 - 1. For any adult to be eligible for Medical Assistance because of a disability, he/she must be unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death, or which has lasted, or can be expected to last for a continuous period of not less than twelve (12) months (20 C.F.R. sec. 416.905).
 - 2. The medical impairment must make the individual unable to do his/her past relevant work (which is defined as "work that you have done within the past 15 years, that was substantial gainful activity, and that lasted long enough for you to learn to do it" (20 C.F.R. sec. 416.960(b)) or any other substantial gainful employment that exists in the national economy (20 C.F.R. sec. 416.905).
 - 3. The physical or mental impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. The individual's statements alone are not enough to show the existence of impairments (20 C.F.R. sec. 416.908).

0352.15.05 Determination of Disability

REV:07/2010

- A. Individuals who receive RSDI or SSI based on disability meet the criteria for disability.
 - 1. A copy of the award letter or similar documentation from the Social Security Administration is acceptable verification of the disability characteristic.
 - 2. For individuals who were receiving SSI based on disability and were closed upon entrance into a group care facility because their income exceeds the SSI standard for individuals in group care, a copy of the SSI award letter serves as verification of the disability characteristic.

- B. For all others, a disability review must be completed and a positive finding of disability must be made before eligibility for MA based on disability can be established.
1. In such cases, it is the responsibility of the agency representative to provide the applicant with the following:
 - a. Form letter AP-125, explaining the disability review process
 - b. Form MA-63, the Physician Examination Report with instructions
 - c. Form AP-70, the applicant's report of Information for Determination of Disability
 - d. Three copies of form DHS-25M, Release of Medical Information
 - e. A pre-addressed return envelope
 2. When returned to DHS, the completed forms and/or other medical or social data are date stamped and promptly transmitted under cover of form AP-65 to the MA Review Team (MART).
 - a. If the completed forms are not received within thirty (30) days of application, a reminder notice is sent to the applicant stating medical evidence of their disability has not been provided and needs to be submitted as soon as possible.
 - b. If all completed forms are not received within forty-five (45) days from the date of application, the referral to MART is made with the documentation received as of that date.
 3. It is the responsibility of the applicant to provide medical and other information and evidence required for a determination of disability.
 - a. The applicant's physician may submit copies of diagnostic tests which support the finding of disability.
 - b. The physician may also choose to submit a copy of the applicant's medical records or a letter which includes all relevant information (in lieu of or in addition to the MA-63).

0352.15.10 Responsibility of the MART

REV:07/2010

- A. The Medical Assistance Review Team (MART) is responsible to:
1. Make every reasonable effort to assist the applicant in obtaining any additional medical reports needed to make a disability decision.
 - a. Every reasonable effort is defined as one initial and, if necessary, one follow-up request for information.
 - b. The applicant must sign a release of information giving the MART permission to request the information from each potential source in order to receive this assistance.
 2. Analyze the complete medical data, social findings, and other evidence of disability submitted by or on behalf of the applicant.

3. Provide written notification to the applicant when a decision on MA eligibility cannot be issued within the ninety (90) day time frame because a medical provider delays or fails to provide information needed to determine disability.
 4. Issue a decision on whether the applicant meets the criteria for disability based on the evidence submitted following the five-step evaluation process detailed below.
 - a. The decision regarding disability is recorded on the AP-65 and transmitted along with the MART case log to the appropriate DHS field office where the agency representative issues a decision on MA eligibility.
 - b. All medical and social data is retained by the MART.
- B. To assure that disability reviews are conducted with uniformity, objectivity, and expeditiously, a five-step evaluation process is followed when determining whether or not an adult individual is disabled.
1. The individual claimant bears the burden of meeting Steps 1 through 4, but the burden shifts to DHS at Step 5.
 - a. The steps must be followed in sequence.
 - b. If the Department can find that the individual is disabled or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step.
 - c. If the Department cannot determine that the individual is disabled or not disabled at a step, the evaluation will go on to the next step (20 C.F.R. sec. 416.920).
 2. Step 1
A determination is made if the individual is engaging in substantial gainful activity (20 C.F.R. sec. 416.920(b)). If an individual is actually engaging in substantial gainful activity, the Department will find that he/she is not disabled. "Substantial gainful activity" is defined at 20 C.F.R. sec. 416.972.
 3. Step 2
A determination is made whether the individual has a medically determinable impairment that is severe, or a combination of impairments that is severe (20 C.F.R. sec. 416.920(c)) and whether the impairment has lasted or is expected to last for a continuous period of at least 12 months (20 C.F.R. sec. 416.909). If the durational standard is not met, the Department will find that he/she is not disabled.
 - a. An impairment or combination of impairments is not severe within the meaning of the regulations if it does not significantly limit an individual's physical or mental ability to perform basic work activities (20 C.F.R. sec. 416.921). Examples of basic work activities are listed at 20 CFR sec. 416.921(b)).
 - b. In determining severity, the Department considers the combined effect of all of an individual's impairments without regard to whether any such impairment, if considered separately, would be sufficient severity (20 C.F.R. sec. 416.923).

- i. If the Department finds a medically severe combination of impairments, then the combined impact of the impairments will be considered throughout the disability determination process.
 - ii. If the individual does not have a severe medically determinable impairment or combination of impairments, the Department will find that he/she is not disabled.
 - c. The Department will not consider the individual's age, education, or work experience at Step 2.
 - d. Step 2 is a de minimis standard. In any case where an impairment (or multiple impairments considered in combination) has more than a minimal effect on the individual's ability to perform one or more basic work activities, adjudication must continue beyond Step 2 in the sequential evaluation process.
- 4. Step 3
 - A determination is made whether the individual's impairment or combination of impairments meet or medically equal the criteria of an impairment listed in the Social Security Administration's Listings of Impairments (20C.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.