



Rhode Island Executive Office of Health and Human Services
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Docket # 15-256
Hearing Date: March, 31, 2015

Date: May 18, 2015



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 regulation(s) were the matters before the hearing:

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

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

Copies of this decision have been sent to the following: You (the appellant), and Agency representatives: Julie Hopkins RN, Lori Gardiner, and Neil Weintraub.

Present at the hearing were: You (the appellant), your witness, and Jennifer Duhamel (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 of Thundermist Health Center (THC), The Providence Center (TPC), a discharge note from Kent Hospital, an out-of-work note, treatment confirmation letters from both THC and TPC, and consultative examination reports completed in 2013.
- A review of the available records revealed that he had a disc herniation in the lumbar spine at the L4-L5 level.
- A laminectomy and discectomy had been performed in December 2014.
- Records also documented marijuana dependence, dysthymic disorder (a mild, but chronic form of depression), and a history of polysubstance use.
- At the time of the original decision on January 5, 2015, they were unaware of the results of his surgical intervention, and had to base the decision on preoperative records.
- His initial visit to THC took place on March 4, 2014.

- He had last been treated at Rhode Island Hospital for pain management about three years ago.
- Cortisone injections were given, but resulted in little relief of back pain.
- Symptoms of pain and side effects of pain medications are taken into consideration.
- He also reported poor results from physical therapy (PT).
- The physical examination revealed a decreased range of motion in his back secondary to pain.
- On April 30, 2014, a behavioral health diagnostic interview was completed.
- He stated that he had smoked marijuana prior to the assessment.
- He was to be referred to a pain management center and was cautioned that marijuana use would violate their controlled substance policy.
- A September 10, 2014 office note discussed the death of his girlfriend and custody of their 5-month-old child.
- He requested a referral for parenting classes.
- The December 15, 2014 notes reported several situational stressors including scheduled back surgery, his father's recent surgery, and lack of contact with his daughter.
- Although he was sad, his concentration, orientation, and thought processes, were all appropriate.
- A single treatment note dated November 11, 2014 and written by a licensed social worker providing cognitive behavioral therapy, was received from TPC.
- No detailed psychiatric assessment had been completed at that time, and follow up was expected to take place after his back surgery was completed.
- Consultative examination reports relative to psychiatric status were outdated, and could not provide a clear picture of his current status.

- The MART established that there was evidence of severe impairment with respect to herniated disc at L4-L5, status post lumbar surgery in December 2014, and dysthymic disorder.
- His conditions did not meet or equal any of the impairments included in the Social Security listings.
- They completed a physical residual functional capacity (RFC) assessment determining that after considering his restrictions, he retained the ability to perform light work, and acknowledged that he would first need to complete his post-operative recovery.
- A mental residual functional capacity assessment was also completed, with findings that he was cognitively intact, that he was able to concentrate, be aware of normal hazards, arrange transportation, and keep scheduled appointments, despite his depressive symptoms.
- He has been able to do his own activities of daily living (ADL's), attend appointments, interact appropriately with others, and understand and remember simple instructions.
- Based on the RFC assessments, they determined that he would not be able to resume his past relevant work as a furniture mover or general laborer.
- Taking into account his age of 46, a grade nine education, past relevant work, and ability to be retrained, and considering non-exertional limitations while guided by medical vocational rules, he was found to be "not disabled."
- He was not disabled for the purpose of the Medical Assistance program.

The appellant, assisted by a witness, testified:

- He is currently unemployed.
- He finds it difficult daily "to do anything".
- His ability to walk is limited by leg cramps and back discomfort.
- Sometimes he feels as if he is about to fall down.
- At time he needs to sit, but even sitting is limited by pain.

- He needed to stand during the hearing.
- Whatever position he assumes will need to be changed after a short time.
- The pain lasts all day without significant periods of relief.
- His back surgery was completed in early December (2014).
- He is still in the process of rehabilitation with physical therapy.
- Pain medications have been prescribed, as well as a medication for inflammation of nerves.
- Medication doses were recently increased due to inadequate pain management.
- His pain scale on a good day is probably at 5-6/10.
- He does have a follow up appointment scheduled with the surgeon at West Bay Orthopedics.
- His physician at West Warwick Pain Center recently ordered a new MRI that has been completed.
- He has pain in his legs bilaterally.
- His discomfort interferes with his sleep quality, and sleeping pills do not help much.
- He generally does not get much rest.
- It is difficult for him to function because of the constant pain he experiences.
- He has degenerative disc disease and arthritis in his spine with pain radiating to the lower extremities bilaterally.
- Before the surgery his pain level was 7-8/10, so the improvement was slight.
- He has to roll out of bed rather than stand up directly.
- Most of the limitations to his movement have not significantly changed since the surgery.

- Prior to the surgery, he did not experience the sensation that he might fall as he does now.
- He could not work in a seated position for two-hour blocks of time.
- He has difficulty completing his personal care such as dressing.
- He has help with household chores, because he is not stable enough to manage on his own.
- He requires help with errands.
- He does not currently drive, and relies on family to transport him.
- Although surgery was performed on two discs, he actually has four discs that are problematic.
- Behavioral health treatment resumed at TPC, after his surgery.
- They are prescribing anti-depressant medication for him.
- His treatment counselor is expected to change at his next scheduled visit.
- He believes that his conditions adversely affect his memory and concentration.
- His witness summarized that the agency had acknowledged the existence of multiple, severe mental and physical impairments; and yet concluded that he could perform some work activity.
- Social factors including his father's surgery, separation from his daughter, and the passing of his girlfriend, along with chemical dependency, limited education, and a criminal background are not as impactful when considered separately as they are when considered in combination.
- The odds of him being able to manage employment at the current time are extremely unlikely.
- He is not using illegal drugs, and relies on prescribed remedies only.
- He requested to hold the record open for the submission of additional evidence.

FINDINGS OF FACT:

- The appellant filed an application for Medical Assistance (MA) on October 21, 2014.
- The Agency issued a written notice of denial of MA dated January 5, 2015.
- The appellant filed a timely request for hearing received by the Agency on January 15, 2015.
- Per the appellant's request, the hearing scheduled for March 12, 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 West Bay Orthopedics, and Warwick Pain Clinic 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.
- Missing records from Thundermist Health Center, and The Providence Center were not submitted.
- 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 low back pain status post lumbar laminectomy and discectomy, a history of substance dependence, dysthymic disorder and generalized anxiety disorder.
- 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 with some postural and environmental restrictions, and simple, routine mental tasks.
- The appellant was born on [REDACTED] and is 46 years old, which is defined as a younger individual.

- The appellant has a ninth-grade 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 October 28, 2014 and signed by Thundermist primary care provider (PCP), Vanessa Fowlkes, FNP.
- ✓ An Agency AP-70 date stamped October 28, 2014 and signed by the appellant.
- ✓ Records of Thundermist Health Center (THC) of West Warwick for March 4, 2014 to December 1, 2014.
- ✓ Records of West Bay Orthopedics (WBO) for May 12, 2014 with a May 30, 2014 MRI report, a November 18, 2014 X-ray report, and an April 13, 2015 verification of physical therapy appointments.
- ✓ Records of Warwick Pain for February 5, 2015, to April 9, 2015.
- ✓ Records of The Providence Center (TPC) for November 19, 2014.
- ✓ A consultative examination report dated December 12, 2013 and signed by psychologist, Jorge C Armesto, PhD, EdM.
- ✓ A consultative examination report dated April 15, 2013 and signed by rheumatologist, J Scott Toder, MD.
- ✓ A lumbosacral spine X-ray report dated March 20, 2013 from Rhode Island Medical Imaging.
- ✓ A consultative examination report dated October 1, 2013 of internist, Paul Dionisopoulos, MD
- ✓ A consultative examination report dated October 1, 2013 and signed by clinical psychologist, Aurit Lazerus, PsyD.
- ✓ Patient instructions from Kent Hospital dated December 14, 2014, and signed by William Brennan, MD.
- ✓ A work status form from Dr Brennan dated March 2, 2015.
- ✓ A note from PCP, Vanessa Fowlkes, FNP dated March 11, 2015.
- ✓ A note from clinical therapist, Grace Batista, LICSW dated March 11, 2015
- ✓ 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 for additional evidence from at least four sources that he identified during the hearing. As of the close of business on the agreed upon date, some records from West Bay Orthopedics had been received. Warwick Pain Center documented that he had completed four visits between February and April, but

did not include any treatment information or the post-surgical MRI report that the appellant believed had been provided to them. No updated records from THC or TPC were received. The appellant did not request an extension of the deadline to submit evidence, and allowed the record of hearing to close without including all of the records he identified as missing.

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 printed record includes four consultative examinations all performed in 2013, some basic office notes from primary care providers, several notes regarding work status or affirming treatment relationships, agency forms, and diagnostic imaging reports completed prior to surgical intervention. As there is no treating source clinical and diagnostic medical evidence documenting the frequency, length, and extent of treatment to justify controlling weight of opinion, the medical records are considered in combination for the purpose of this decision.

The MART is considered a non-examining source when expressing opinions regarding an individual's condition. At the time of the agency review, the MART found that the available records established the existence of severe impairments relative to a disorder of the lumbar spine, and dysthymic disorder. Upon completing a residual functional capacity assessment, they opined that he retained the ability to physically perform light work, and mentally manage to remember and carry out instructions, with no other significant characteristics impacting ability to carry out basic work activities. They determined that his reduced functioning would preclude his ability to resume his past work, but expected that he could perform other work or be retrained. As a result, he was found "not disabled".

Additional evidence was submitted after the hearing. As of the date of this decision, the MART has not withdrawn the denial notice under appeal. Their final rationale for that decision has not been communicated to this Appeals Officer.

The appellant has alleged that low back pain status post lumbar laminectomy and discectomy, a history of chemical dependency, his father's surgery, separation from his daughter, and the passing of his girlfriend, along with chemical dependency, limited education, and a criminal background impact his functioning.

The appellant has been treated at Thundermist Health Center for primary care. A nurse practitioner, Vanessa Fowlkes, completed the agency MA-63 form indicating that he had been diagnosed with lumbar degenerative disc disease (DDD), and anxiety disorder. She opined that his mental functioning was slightly to moderately impacted by his symptoms, but found no marked restrictions in any category of mental activities. Physically, his movement was reduced for walking, standing and sitting, although occasional lifting was expected to be possible up to 50 lbs. Her prognosis for the appellant's likeliness of eliminating or reducing his conditions through medication management or other treatments was "good".

Subsequently, he was scheduled for surgical intervention to correct the lumbar spine disorders, and a discectomy and a laminectomy were performed in late December 2014. At the time the agency had reviewed his application, there was no information establishing the effectiveness of the surgical repair.

Symptoms, including pain, are evaluated in accordance with the standards set forth at (20 CFR 416.929). The appellant has provided evidence that lumbar DDD had been diagnosed and could be expected to result in the lower back pain he described. Progress notes of Allison Couture, NP of Warwick Pain Center documented report of pain at 6/10 at the time of his most recent post-operative visit of record on April 9, 2015. The reported pain level is consistent with his testimony.

The assessment was conducted just three months post surgery. The objective physical medical findings were unremarkable for most body systems; with the exception of reports of ongoing back pain, and some unspecified joint pain. The practitioner noted that she had reviewed an MRI report, but did not comment on the findings. Although some moderate tenderness to palpation of the lumbar area with limited range of motion still remained, his gait was normal, and straight leg raising tests were negative bilaterally. Continuation of pain remedies was prescribed, and walking and stretching exercises were encouraged. Epidural steroid injections (ESI) were highly recommended in combination with his medication management for pain in March 2015. He declined ESI based on past experience, as he had realized no significant relief from that treatment prior to surgery.

In April, an option of a series of MBBs (Medial Branch Blocks) and RFA (Radiofrequency ablation) was offered to improve pain. He indicated that he did not wish to proceed with conventional procedures for pain treatment, and requested help to obtain a medical marijuana license.

West Bay Orthopedics confirmed that he was instructed in therapeutic exercises through April 6, 2015, and enclosed a copy of the exercise regimen. However, there were no assessments of progress following the surgical repair, and no post-surgical diagnostic imaging that would establish if improvements had been achieved through surgical correction, or if other complications were indicated.

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)). Progress note indicated that he was compliant with taking prescribed pain remedies including medications added for nerve pain. He continued to seek new treatment for pain, although he felt he had reason to reject the repetition of ESI treatments. He testified that since the surgery was completed he experiences daily pain levels of 5-6/10. It could be expected that he will continue to improve, as the last assessment available was completed at just three months post surgery.

During presentation of his testimony he indicated that he has additional disc abnormalities which were not addressed during the last surgical procedure. The records do not provide proof of any information that would support the diagnosis of additional disorders of the spine, nor does it establish the impact on function, response to treatment, or prognosis for eliminating or reducing the condition.

The most recent behavioral health records were documented in December 2014 at THC. Barriers to functioning at that time were primarily situational stressors. He was anticipating back surgery, was concerned about his father's health, and was trying to address challenges to his visitation rights with his daughter. At that time, his mental status evaluation revealed that he was alert and oriented in all spheres, speech was appropriate, and memory intact. He was attentive, and his thought process was logical. Insight and judgment were fair. He was tearful when addressing his unfortunate life events and his mood was anxious. He was diagnosed with generalized anxiety disorder (GAD) and dysthymic disorder.

The appellant indicated that he had started psychiatric assessment at The Providence Center in September 10, 2014, and began therapy in November 2014. The only record available from TPC is a progress note of a meeting with a social worker on November 19, 2014, and a summary of goals of his cognitive behavioral therapy treatment plan. There is no evaluation from a psychiatrist. No updated information was received.

Substance addiction history has been mentioned, and although the appellant has indicated that he is not currently using any substances, there is just one recent toxicology screen that is negative. Should the appellant be determined disabled based on all other evidence, the material nature of the addiction is addressed at any step that is the last step of the sequential evaluation. (20 CFR 416.935).

CONCLUSION:

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

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

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

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

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

The appellant has a significant history of mechanical back pain, with no pre-surgical evidence of neurological deficits. Post-surgical treatment has, however, included prescribed medication for nerve pain. There are no diagnostic images taken after surgical intervention to establish either the success or failure of the procedure. Evidence refers to physical therapy, but no PT progress notes have been submitted. It is not possible to evaluate the treatment compliance or effectiveness. Medical records also fail to establish that there are any additional abnormalities of the spine, other than the areas recently changed by surgical procedures. Information does establish that he complained of continuing back pain after surgery. Gait was normal, range of motion was somewhat limited by pain as could be expected post surgery, there was no evidence of radiculopathy affecting the lower extremities, and sensation was intact. Several pain management options were discussed, and weight loss was recommended to facilitate healing.

Symptoms of depressive disorder and anxiety were documented in a 2013 consultative evaluation, and appear to have been exacerbated in 2014 by a series of unfortunate life events. Situational stressors have impacted mood, sleep quality, and energy.

For the purpose of the sequential evaluation, the appellant has established by a de minimis standard of severity that he has severe physical impairment relative to disorders of the spine, and severe mental restrictions secondary to dysthymic disorder and generalized anxiety.

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 the listings, 1.04 (Disorders of the spine), 12.04 (Affective disorders) and 12.06 (Anxiety-related disorders) have been reviewed. The available medical evidence has not established that degenerative disc disease status post discectomy and laminectomy have resulted in nerve root compression characterized by neuro-anatomic distribution of pain, spinal arachnoiditis confirmed by operative note, or lumbar spinal stenosis resulting in inability to ambulate effectively as defined in 1.00B2b. There is no updated evidence establishing that disturbance of mood or persistent anxiety has resulted in marked level restrictions of activities of daily living, social functioning, maintaining concentration, persistence or pace, or repeated episodes of decompensation, each of extended duration. The medical evidence record does not support the existence of an impairment that rises to the level of the listings.

Step four: A determination is made as to the individual's residual functional capacity (RFC) and whether, given the RFC, he/she can perform his/her past relevant work. (20 CFR 416.920(e)). An individual's functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, all of the individual's impairments, including impairments that are not severe must be considered. The individual's RFC will be assessed in accordance with (20 CFR 416.945) and based on all relevant medical and other evidence including evidence regarding his/her symptoms (such as pain) as outlined in (20 CFR 416.929). Next, it must be established whether the individual has the RFC to perform the requirements of his/her past relevant work either as he/she had actually performed it or as it is generally performed in the national economy. Using the guidelines in (20 CFR 416.960 (a)-(b)(3)), the RFC assessment is considered together with the information about the individual's vocational background to make a disability decision. If the individual has the RFC to do his/her past relevant work, the individual is not disabled. If the individual is unable to do any past relevant work, the analysis proceeds to the fifth and final step in the process.

Physical RFC

Exertional: The medical evidence of the appellant's back condition under recuperation from surgical repair reveals some tenderness and limited range of motion as would be expected during the recovery period. There is no specific diagnostic evidence that would rule out the expectation of his ability to perform light work activity in the future. He could be expected to walk, stand, or sit for two hour blocks of time throughout a workday with allowances for customary breaks and routine changes in position.

Postural: He should avoid frequent climbing, balancing, stooping, kneeling, crouching, or crawling.

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

Visual: Evidence does not support any limitations to near acuity, far acuity, depth perception, accommodation, color vision, or field of vision.

Communicative: Hearing and speaking capabilities are intact.

Environmental: Due to the continuation of lower back pain, he should avoid concentrated exposure to extreme temperatures, and to hazards such as heights or certain types of machinery.

Mental RFC

Understanding and Memory: Evaluators completing mental status assessments considered memory to be intact. Evidence does not rule out his ability to remember locations and procedures, or to understand and remember short, simple instructions.

Sustained Concentration and Persistence: He was alert and organized in his thought process. His PCP noted only slight limitation to concentration, persistence, and pace. Evidence does not rule out his ability to carry out short, simple instructions, maintain attention and concentration for two hour blocks of time with allowances for customary breaks, to sustain a routine without special supervision, or to work along with others without distraction. Insight and judgment were adequate for making simple work-related decisions.

Social Interaction: There was no indication that he would be unable to interact appropriately with the public, know when to request assistance, accept instructions from supervisors, get along with coworkers, maintain socially appropriate behavior, and adhere to basic standards of grooming.

Adaptation: Although significant stressors might slow his response to change, evidence does not rule out his ability to be aware of normal hazards and take precautions, arrange transportation, or to set realistic goals.

The appellant retains residual functioning to perform light physical work activity with some postural and environmental restrictions, and simple, routine mental tasks. His reduced physical capabilities would preclude his ability to perform his past relevant work as a mover or general laborer due to the frequent medium to heavy exertional level required of those occupations. The evaluation, therefore, continues to Step five.

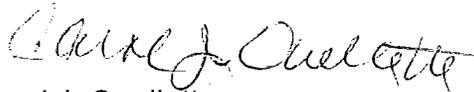
Step five: At the last step of the sequential evaluation process, consideration is given to the assessment of the individual's RFC together with his/her age, education and work experience to determine if he/she can make an adjustment to other work in the national economy (20 CFR 416.920(g)). If the individual 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 46-year old male with a 9th grade education, and a work history as a general laborer. He is recovering from surgical repair of the lumbar spine, and has entered into a mental health treatment program to help him cope with situational stressors. In addition to some unfortunate life events, he has been trying to overcome other adverse factors such as chemical dependency, limited education, and a criminal background. He currently has treatment regimens in place to improve physical strength, manage pain, reduce symptoms of depression and anxiety, reform behavioral characteristics, and prevent relapse to substance dependence.

Based on the appellant's age of 46 (younger individual) 9th-grade education (limited), work history (semi-skilled, medium to heavy exertion, not transferable), RFC (light exertion with some postural and environmental restrictions), MRFC (simple, routine tasks), and using vocational rule 202.18 as a guide; the combined factors direct a finding of "not disabled" according to the Social Security regulations. He retains capabilities to perform other types of work.

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

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



Carol J. Ouellette
Appeals Officer

APPENDIX

0352.15 ELIGIBILITY BASED ON DISABILITY

REV:07/2010

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

0352.15.05 Determination of Disability

REV:07/2010

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

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

0352.15.10 Responsibility of the MART

REV:07/2010

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

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

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

A determination is made whether the individual's impairment or combination of impairments meet or medically equal the criteria of an impairment listed in the Social Security Administration's Listings of Impairments (20 C.F.R. Pt 404, Appendix 1 to Subpart P).

 - a. If the individual's impairment or combination of impairments meets or medically equals the criteria of a listing and meets the duration requirement, the individual is disabled.
 - b. If it does not, the analysis proceeds to the next step.
5. Step 4

A determination is made as to the individual's residual functional capacity (RFC) and whether, given the RFC, he/she can perform his/her past relevant work (20 C.F.R. sec. 416.920(e)).

 - a. An individual's RFC is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments.
 - i. In making this finding, all of the individual's impairments, including impairments that are not severe will be considered (20 C.F.R. sec. 416.920(e), 416.945, and Social Security Ruling ("S.S.R.") 96-8p as applicable and effective).
 - ii. The Department will assess the individual's RFC in accordance with 20 C.F.R. sec. 416.945 based on all of the relevant medical and other evidence, including evidence regarding his/her symptoms (such as pain) as outlined in 20 C.F.R. sec. 416.929(c).
 - b. It must be established whether the individual has the RFC to perform the requirements of his/her past relevant work either as he/she has actually performed it or as it is generally performed in the national economy.

- c. The Department will use the guidelines in 20 C.F.R. sec. 416.960 through 416.969, and consider the RFC assessment together with the information about the individual's vocational background to make a disability decision. Further, in assessing the individual's RFC, the Department will determine his/her physical work capacity using the classifications sedentary, light, medium, heavy and very heavy as those terms are defined in 20 C.F.R. sec. 416.967 and elaborated on in S.S.R. 83-10, as applicable and effective.
 - d. If the individual has the RFC to do his/her past relevant work, the individual is not disabled. If the individual is unable to do any past relevant work, the analysis proceeds to the fifth and final step in the process.
6. Step 5
- The Department considers the individual's RFC, together with his/her age, education and work experience, to determine if he/she can make an adjustment to other work in the national economy (20 C.F.R. sec. 416.920(g)).
- a. At Step 5, the Department may determine if the individual is disabled by applying certain medical-vocational guidelines (also referred to as the "Grids", 20 C.F.R. Pt. 404, Appendix 2 to Subpart P).
 - i. The medical-vocational tables determine disability based on the individual's maximum level of exertion, age, education and prior work experience.
 - ii. There are times when the Department cannot use the medical-vocational tables because the individual's situation does not fit squarely into the particular categories or his/her RFC includes significant non-exertional limitations on his/her work capacity. Non-exertional limitations include mental, postural, manipulative, visual, communicative or environmental restrictions.
 - b. If the individual is able to make an adjustment to other work, he/she is not disabled.
 - c. If the individual is not able to do other work, he/she is determined disabled.

0352.15.15 Evidence

REV:07/2010

- A. Medical and other evidence of an individual's impairment is treated consistent with 20 C.F.R. sec. 416.913.
- B. The Department evaluates all medical opinion evidence in accordance with the factors set forth at 20 C.F.R. sec. 416.927.

- C. Evidence that is submitted or obtained by the Department may contain medical opinions.
1. "Medical opinions" are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of an individual's impairments, including:
 - a. Symptoms
 - b. Diagnosis and prognosis
 - c. What the individual can do despite impairments
 - d. Physical or mental restrictions
 2. Medical opinions include those from the following:
 - a. Treating sources - such as the individual's own physician, psychiatrist or psychologist
 - b. Non-treating sources - such as a physician, psychiatrist or psychologist who examines the individual to provide an opinion but does not have an ongoing treatment relationship with him/her
 - c. Non-examining sources -such as a physician, psychiatrist or psychologist who has not examined the individual but provides a medical opinion in the case
 3. A treating source's opinion on the nature and severity of an individual's impairment will be given controlling weight if the Department finds it is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in the case record.
 - a. If a treating source's opinion is not given controlling weight, it will still be considered and evaluated using the same factors applied to examining and non-examining source opinions.
 - b. The appeals officer will give good reasons in the administrative hearing decision for the weight given to a treating source's opinion.
 4. The Department evaluates examining and non-examining medical source opinions by considering all of the following factors:
 - a. Examining relationship
 - b. Nature, extent, and length of treatment relationship
 - c. Supportability of opinion and its consistency with record as a whole
 - d. Specialization of medical source
 - e. Other factors which tend to support or contradict the opinion.
 - f. If a hearing officer has found that a treating source's opinion is not due controlling weight under the rule set out in the foregoing paragraph, he/she will apply these factors in determining the weight of such opinion.
 - g. Consistent with the obligation to conduct a de novo (or new and independent) review of an application at the administrative hearing, the appeals officer will consider any statements or opinions of the Medical Assistance Review Team (MART) to be a non-examining source opinion and evaluate such statements or opinions applying the factors set forth at 20 C.F.R. sec. 416.927(f).

- D. Symptoms, signs and laboratory findings are defined as set forth in 20 C.F.R. sec. 416.928.
- E. The Department evaluates symptoms, including pain, in accordance with the standards set forth at 20 C.F.R. sec. 416.929 and elaborated on in S.S.R. 96-7p, as applicable and effective.

0352.15.20 Drug Addiction and Alcohol

REV:07/2010

- A. If the Department finds that the individual is disabled and has medical evidence of his/her drug addiction or alcoholism, the Department must determine whether the individual's drug addiction or alcoholism is a contributing factor material to the determination of disability; unless eligibility for benefits is found because of age or blindness.
1. The key factor the Department will examine in determining whether drug addiction or alcoholism is a contributing factor material to the determination of disability is whether the Department would still find the individual disabled if he/she stopped using drugs or alcohol.
 2. The Department applies the standards set forth in 20 C.F.R. sec. 416.935 when making this determination.

0352.15.25 Need to Follow Prescribed Treatment

REV:07/2010

- A. In order to get MA benefits, the individual must follow treatment prescribed by his/her physician if this treatment can restore his/her ability to work.
1. If the individual does not follow the prescribed treatment without a good reason, the Department will not find him/her disabled.
 2. The Department will consider the individual's physical, mental, educational, and linguistic limitations (including any lack of facility with the English language) and determine if he/she has an acceptable reason for failure to follow prescribed treatment in accordance with 20 C.F.R. sec.416.930.
 3. Although the question must be evaluated based on the specific facts developed in each case, examples of acceptable reasons for failing to follow prescribed treatment can be found in 20 C.F.R. sec. 416.930(c) and S.S.R. 82-59, as applicable and effective.

352.15.30 Conduct of the Hearing

REV:07/2010

- A. Any individual denied Medical Assistance based on the MA Review Team's decision that the disability criteria has not been met, retains the right to appeal the decision in accordance with Section 0110; COMPLAINTS AND HEARINGS in the DHS General Provisions.
1. A hearing will be convened in accordance with Department policy and a written decision will be rendered by the Appeals officer upon a de novo review of the full record of hearing.
 2. The hearing must be attended by a representative of the MART and by the individual and/or his/her representative.

NOTICE OF APPELLATE RIGHTS

This Final Order constitutes a final order of the Department of Human Services pursuant to RI General Laws §42-35-12. Pursuant to RI General Laws §42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.