

**THE FOLLOWING RULE WILL BE REPEALED IN ITS ENTIRETY:
October 2016**

0352 CHARACTERISTIC REQUIREMENTS

0352.05 ELIGIBILITY BASED ON AGE

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. The age, as stated on the application, is to be verified.~~

~~1. Appropriate sources of verification are:~~

~~a. Birth certificate~~

~~b. Birth record of a child over 50 as evidence that the parent is over 65~~

~~c. Birth record of a child where age of parent is recorded~~

~~d. Marriage certificate~~

~~e. Insurance policies~~

~~f. Passport or naturalization papers~~

~~g. Employment, school, military, alien registration records~~

~~h. Electronic information obtained from the Social Security Administration via SVES.~~

~~2. In the absence of any of the above, the eligibility supervisor will evaluate the age requirement.~~

0352.10 ELIGIBILITY BASED ON BLINDNESS

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. To be eligible on the basis of blindness, the individual's vision must meet the policy definition:~~

~~1. In terms of ophthalmic measurement, central vision acuity of 20/200 or less in the better eye with corrective lenses;~~

~~2. Or a field defect in which the peripheral field is contracted to such an extent that the widest diameter of visual field subtends an angular distance no greater than 20 degrees.~~

0352.10.05 Sources of Verification of Blindness

REV: 07/2010

~~A. Services for the Blind and Visually Impaired, within the Department of Human Services Office of Rehabilitation Services, maintain current eye examinations on blind persons known to them.~~

~~1. When eligibility is being determined on the basis of blindness, the medical examination report on file in the Services for the Blind and Visually Impaired can be used.~~

~~2. An Authorization to Obtain and Release Confidential Information (DHS-25) must be signed by the applicant.~~

~~B. A current finding of eligibility for RSDI or SSI based on blindness is acceptable verification of blindness. An Authorization to Obtain and Release Confidential Information (DHS-25) must be signed by the applicant.~~

~~C. If verification is not available through ORS, RSDI or SSI eligibility, an examination is required with a report by the examiner (Form AP-104 or Form AP-105).~~

~~0352.10.10 Process of Verifying Blindness~~

~~REV: 07/2010~~

~~A. If a blind applicant under age 65 comes into the office, the method of verifying the eligibility factor is explored with the applicant and the proper form processed.~~

~~B. If the application is received by mail, a letter (AP-705A) explaining what is needed is mailed, with the following enclosed:~~

~~1. A statement of how the verification will be Obtained (AP-706A)~~

~~2. Authorization to Obtain or Release Confidential Information (2 copies, DHS-25)~~

~~3. Optometrist's Report of Eye Examination (2 copies, AP-104)~~

~~4. Ophthalmologist's Report of Eye Examination (2 copies, AP-105)~~

~~C. Eye examination's received in the district office, (both copies of the completed AP-104 or AP-105) are sent to the MA Review Team (MART).~~

~~D. Following a decision by the MA Review Team, the forms are returned to the district office where appropriate action is taken with respect to eligibility.~~

~~1. A copy of the form is filed in the case folder.~~

~~2. A copy of the form is forwarded to Services for the Blind and Visually Impaired at the Office of Rehabilitation Services (ORS).~~

~~3. If the AP-706A requested a referral, and a DHS-25 is completed, a copy of the form is sent to the agency indicated to enable that agency to offer appropriate services.~~

~~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. §§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. §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. §416.960(b)) or any other substantial gainful employment that exists in the national economy (20 C.F.R. §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. §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 3 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 Medical Assistance Review Team (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. §416.920).~~

2. ~~Step 1 A determination is made if the individual is engaging in substantial gainful activity (20 C.F.R. §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. §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. §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. §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. §416.921). Examples of basic work activities are listed at 20 CFR §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. §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 5 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. § 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. §§ 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. §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. §416.929(e).~~

~~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. §§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. §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. §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. §416.913.~~

~~B. The Department evaluates all medical opinion evidence in accordance with the factors set forth at 20 C.F.R. §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. §416.927(f).~~

~~D. Symptoms, signs and laboratory findings are defined as set forth in 20 C.F.R. §416.928.~~

~~E. The Department evaluates symptoms, including pain, in accordance with the standards set forth at 20 C.F.R. §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. §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. §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. §416.930(c) and S.S.R. 82-59, as applicable and effective.~~

~~0352.15.30 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.~~