

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2306266
<b>Decision Date:</b>	09/08/2023	<b>Hearing Date:</b>	08/30/2023
<b>Hearing Officer:</b>	Thomas J. Goode		

**Appearance for Appellant:**  
Pro se

**Appearance for MassHealth:**  
Kathryn Begin, Tewksbury MEC  
Brad Goodier, RN, Disability Reviewer  
Eileen Cynamon, RN, Disability Reviewer  
(Observing)



*The Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Office of Medicaid  
Board of Hearings  
100 Hancock Street, Quincy, Massachusetts 02171*

## APPEAL DECISION

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Disability/Eligibility
<b>Decision Date:</b>	09/08/2023	<b>Hearing Date:</b>	08/30/2023
<b>MassHealth's Rep.:</b>	Kathryn Begin Brad Goodier	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Remote	<b>Aid Pending:</b>	No

### Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

### Jurisdiction

Through a notice dated July 3, 2023, MassHealth determined that Appellant does not meet disability criteria and is not otherwise eligible for MassHealth coverage (130 CMR 505.001, 505.002 and Exhibit 1). Appellant filed this appeal in a timely manner on July 26, 2023 (130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

### Action Taken by MassHealth

MassHealth determined that Appellant does not meet disability criteria and is not otherwise MassHealth eligible.

### Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 505.001, 505.002, in determining that Appellant does not meet disability criteria and is not otherwise MassHealth eligible.

## Summary of Evidence

The MassHealth representative testified that Appellant was receiving MassHealth CommonHealth coverage as a disabled working adult. On March 13, 2023, Appellant was determined eligible for CommonHealth for a limited time and was assessed a \$312 premium based on a household size of 3 and monthly household income equating to 618.63% of the federal poverty level (Exhibit 6, pp. 11-16). On April 4, 2023, MassHealth issued notice requesting proof of income due July 3, 2023 (Exhibit 6, pp. 5-10). On April 10, 2023, MassHealth notified Appellant that she was not eligible for MassHealth due to income and coverage would end on April 24, 2023. The April 10, 2023 notice also informed Appellant that she may be eligible for MassHealth because she indicated a disability on her MassHealth application and included a disability supplement for her to complete and return (Exhibit 6, pp. 1-4). The DES representative testified that Appellant signed a disability supplement on April 24, 2023, which was received at DES on May 5, 2023. Following a Continuing Disability Review (CDR), MassHealth notified Appellant that she no longer meets disability criteria and is not MassHealth eligible. MassHealth also testified that Appellant is not eligible for a Connector plan because she has Medicare. The MassHealth representative testified that MassHealth records show household income equating to 744.38% of the federal poverty level which exceeds the \$4,144 monthly (\$49,728 annually) income limit for a household of 3 for MassHealth Standard. She added that Appellant is no longer eligible for CommonHealth because she no longer meets disability criteria.

Appellant testified that MassHealth records are inaccurate and confirmed her household income is approximately \$175,000 between her and her husband's employment. She added that she is no longer receiving Social Security income and is in the process of paying back \$20,000 that she was overpaid during the pandemic. She added that she is not certain whether she still has Medicare coverage. Appellant also stated that she was surprised her coverage ended even though she reported a pregnancy to MassHealth. Appellant conceded that her income exceeds program limits for MassHealth Standard and questioned why CommonHealth was terminated in April 2023 based on income. Appellant testified that her primary health insurance is through her husband's policy, and MassHealth CommonHealth was supplemental insurance for uncovered expenses. Appellant also confirmed that she did not appeal any notices other than the July 3, 2023 notice which she appealed to find out how the disability determination was made.

The DES representative identified himself as a Registered Nurse and appeals reviewer for Disability Evaluation Services (DES). He testified that for MassHealth purposes, DES determines whether an applicant meets the Social Security Administration (SSA) level of disability using a 5-step process to initially determine disability status and an 8-Step process to determine continuing disability status. The entire process is driven by the applicant's medical records and disability supplement. He added that SSA code of federal regulations (CFR)<sup>1</sup> 416.911 defines a

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<sup>1</sup> See Title 20 CFR Ch. III sections 416.911-416.994 and Exhibit 4, pp. 4-22.

disabling impairment as one that is so severe it meets or equals an adult SSA listing, or when considered with an applicant's age, education, and work experience, results in the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment(s) (Exhibit 4, pp. 6, 22). For adult applicants that have been previously declared disabled, DES will periodically perform a Continuous Disability Review (CDR) per SSA code of federal regulations 416.989 and 416.994 (Id., pp. 4, 19).

Per SSA CFR 416.994, if a person is entitled to disability benefits as a disabled person aged 18 or over (adult) there are several factors considered in deciding whether an applicant's disability continues. DES must determine if there has been any medical improvement in an applicant's impairment(s) and, if so, whether medical improvement is related to the ability to work. DES must also show that an applicant is currently able to engage in substantial gainful activity before determining that an applicant is no longer disabled (Id., p. 4). What a person can do despite an impairment is called the residual functional capacity (RFC). Unless an impairment is so severe it is deemed to prevent an applicant from doing substantial gainful activity, the residual functional capacity is used to determine whether the individual can do past work or, any other work in conjunction with age, education and work experience (Id., p. 6).

Appellant is a ■-year-old female who was previously found disabled on step 3 of the 5-step process after review of her supplement and medical documentation submitted 5/10/2018. Appellant equaled adult SSA listing 1.06, which at the initial application was titled *Fracture of the Femur, Tibia, Pelvis, or one or more of the Tarsal Bones* (Id., p. 40). This listing is no longer in use for SSA disability reviews, however as part of a CDR the past listing is reviewed during step 4a (Id., p. 62). Appellant's impairments in 2018 were Multi-trauma, lower extremity fractures and lung contusion related to her being struck by a fast-moving vehicle as a pedestrian (Id., p. 57).

A new disability supplement was received by DES on May 5, 2023 (Id., p. 50). Current impairments listed by Appellant are as follows: Mobility limitations, left hip pain, left knee pain, and lower back pain (Id., p. 52). DES also considered Anxiety and PTSD as impairments in the CDR process (Id., p. 57). Step 1 of the CDR asks if the claimant is engaging in SGA; this was determined yes as Appellant is employed as a physical therapist (Id., p. 60). Federal SSA regulations would stop the CDR analysis if the claimant was engaged in SGA; however, MassHealth waives this step and continues the CDR. Step 2 asks: Does any impairment meet or equal a listing in the *current* listing of impairments? This was determined no as listings were not met. Listings considered were 1.18 *Abnormality of a Major Joint in any extremity* (Id., pp. 70-71), 12.06 *Anxiety and Obsessive-Compulsive Disorders* (Id., pp. 67-69), and 12.15 *Trauma and Stressor Related Disorders* (Id., pp. 65-66). The DES representative testified that Appellant no longer meets or equals current or prior adult SSA listings due to the ability to ambulate without an assistive device (Id., p. 114). Step 3 asks: Is there Medical Improvement (MI) (Decreased severity)? This was determined yes based on the medical documentation provided (Id., pp. 78-151). Medical Improvement comparison was documented by the reviewer, comparing evidence

at CPD (Comparison Point Decision) with current evidence (Id., p. 61). Step 4 asks: Is Medical Improvement (MI) related to the ability to work? For this step, CPD determination is based on impairments meeting or equaling a listing used at Step 4a (Id., p. 62). Step 4a asks: Is the prior listing currently met or equaled? This was determined no based on a review of prior adult SSA listing 1.06 (Id., p. 40). Next, the CDR directs the reviewer to Step 6 which asks: Is there a current impairment or combination of impairments that is severe? This was determined yes (Id., p. 63). At step 7, a Residual Functional Capacity (RFC) was determined. The physical RFC indicates Appellant is capable of the full range of sedentary work (Id., pp. 58, 72-73). The mental RFC indicates Appellant has no mental limitations that would interfere with her ability to perform work activity in the competitive labor market (Id., pp. 58, 74-75). Step 7 also asks: Does the claimant retain the capacity to perform Past Relevant Work (PRW)? It was determined no, as Appellant's prior work is described in the *Heavy range* (Id., p. 58). However, the physical RFC indicates Appellant can perform the full range of sedentary work activity in the competitive labor market. Step 8 asks: Does the claimant have the ability to make an adjustment to any other work considering the claimant's RFCs, age, education and work experience? Appellant's mental RFC indicates she does not have limitations that would interfere with her ability to perform work activity, which is supported by a conversation between the reviewer and Appellant's psychotherapist (Id., pp. 43, 78). Appellant's physical RFC indicates she can perform the full range of sedentary work activity. Step 8 was determined yes, which ended the CDR review with a determination of non-disabled (Id., p. 64). DES also testified that GRID rulings directed a finding of non-disabled for a ■■■-year-old able to perform the full range of sedentary work.

Appellant testified that she has worked hard to overcome her impairments, and her experience as a physical therapist has allowed her to progress and return to work. Appellant testified that she was managing working more than one job for a while but is now working at one job 25 hours per week as a physical therapist in a commission-based setting where she can control the number of hours she works. She stated that she can do sedentary work as DES testified, but doing sedentary work also leads to increased pain. Appellant testified her left hip is necrotic and she will likely need hip replacements in the future. She expressed concern about losing MassHealth coverage because she is pregnant.

## Findings of Fact

Based on a preponderance of the evidence, I find the following:

1. On March 13, 2023, Appellant was determined eligible for MassHealth CommonHealth for a limited time with a \$312 premium, which was based on a household size of 3, and monthly household income equating to 618.63% of the federal poverty level. Appellant did not appeal this notice.
2. On April 4, 2023, MassHealth issued notice requesting proof of income which was due July

3, 2023. Appellant did not appeal this notice.

3. On April 10, 2023, MassHealth notified Appellant that she was not eligible for MassHealth due to income and that coverage would end on April 24, 2023.
4. The notice dated April 10, 2023 informed Appellant she may be eligible for MassHealth because she indicated a disability on her application. MassHealth sent Appellant a disability supplement to complete and return. Appellant did not appeal the April 10, 2023 notice.
5. Appellant signed a disability supplement on April 25, 2023, which was received at DES on May 5, 2023.
6. Through a notice dated July 3, 2023, MassHealth determined that Appellant does not meet disability criteria and is not MassHealth eligible. An appeal of this notice was requested on July 26, 2023.
7. Appellant is [REDACTED] and lives in a household of 3.
8. 133% of the federal poverty level for a household of 3 is \$2,756 monthly (\$33,072 annually).
9. 200% of the federal poverty level for a household of 3 is \$4,144 monthly (\$49,728 annually).
10. Appellant is employed working 25 hours per week as a physical therapist.
11. Appellant's household income is approximately \$175,000 annually.
12. Appellant is no longer receiving Social Security income and is in the process of paying back \$20,000 that she was overpaid during the pandemic.
13. Appellant is a [REDACTED]-year-old female previously determined disabled at step 3 of the 5-step process based on an application dated 5/10/2018.
14. Appellant's impairments during the 2018 5-Step review were Multi-trauma, lower extremity fractures and lung contusion related to her being struck by a fast-moving vehicle as a pedestrian.
15. Appellant equaled adult SSA listing 1.06, which at the time of application was titled *Fracture of the Femur, Tibia, Pelvis, or one or more of the Tarsal Bones*, which is no

longer in use for SSA disability reviews. The listing was reviewed by DES at Step 4a and was not met.

16. A new disability supplement was received by DES on May 5, 2023 indicating: Mobility limitations, left hip pain, left knee pain, and lower back pain. DES also considered Anxiety and PTSD as impairments as part of the continuing disability review.
17. Step 1 of the CDR asks if the claimant is engaging in SGA; this was determined yes. MassHealth waives this step.
18. Appellant ambulates without an assistive device and has the use of both upper extremities.
19. At Step 2, SSA listings considered were 1.18 *Abnormality of a Major Joint in any extremity*; 12.06 *Anxiety and Obsessive-Compulsive Disorders*; and 12.15 *Trauma and Stressor Related Disorders*. A listing was not met.
20. The previous SSA listing 1.06, titled *Fracture of the Femur, Tibia, Pelvis, or one or more of the Tarsal Bones* was not met.
21. Medical Improvement was found at Step 3 and documented by the reviewer, comparing evidence at CPD (Comparison Point Decision) with current evidence.
22. Appellant has a current impairment or combination of impairments that is severe.
23. Appellant's physical RFC indicates she is capable of the full range of sedentary work.
24. Appellant's mental RFC indicates she has no mental limitations that would interfere with her ability to perform work activity in the competitive labor market.
25. Appellant does not have the capacity to perform Past Relevant Work as her prior work is described in the *Heavy range*.

## **Analysis and Conclusions of Law**

To be found disabled for MassHealth Standard or CommonHealth, an individual must be *permanently and totally disabled* (130 CMR 501.001). The guidelines used in establishing disability under this program are the same as those used by the Social Security Administration (130 CMR 501.001). Individuals who meet the Social Security Administration's definition of disability may establish eligibility for MassHealth Standard according to 130 CMR 505.002(F) or CommonHealth

according to 130 CMR 505.004.<sup>2</sup> Pursuant to Title 20 CFR Ch. III section 416.994 the 8-step Continuing Disability Review process is directed when an individual has previously been determined disabled under a 5-step evaluation. Appellant was determined disabled under the 5-Step process in 2018; therefore, DES correctly completed an 8-step evaluation.

Appellant is a [REDACTED]-year-old female who was determined disabled in 2018 at Step 3 of the 5-step process. Appellant equaled adult SSA listing 1.06, which at the time of application was titled *Fracture of the Femur, Tibia, Pelvis, or one or more of the Tarsal Bones* (Exhibit 4, p. 40). A new disability supplement was received by DES on May 5, 2023 (Id., p. 50). Current impairments listed by Appellant are: mobility limitations, left hip pain, left knee pain, and lower back pain (Id., p. 52). DES also considered Anxiety and PTSD as impairments during the review (Id., p. 57).

Step 1 of the CDR asks if the claimant is engaging in Substantial Gainful Activity (SGA). This was determined yes as Appellant is employed as a physical therapist (Id., p. 60). While federal SSA regulations would stop the analysis if Appellant were engaging in SGA, MassHealth waives this step and continues with the review.

Step 2 asks: Does any impairment meet or equal a listing in the *current* listing of impairments? This was determined no. Listings considered were 1.18 *Abnormality of a Major Joint in any extremity* (Id., pp. 70-71), 12.06 *Anxiety and Obsessive-Compulsive Disorders* (Id., pp. 67-69), and 12.15 *Trauma and Stressor Related Disorders* (Id., pp. 65-66). DES correctly determined that the required elements of the listings are not met as Appellant is able to ambulate without an assistive device and has the use of both upper extremities (Id., p. 114).<sup>3</sup> DES also correctly determined that listing 12.06 and 12.15 are not met based on documentation provided by Appellant's psychotherapist (Id., pp. 43, 78).

Step 3 asks: Is there Medical Improvement (MI) (Decreased severity)? This was correctly determined yes based on medical documentation provided. MI comparison was documented by the reviewer, comparing evidence at CPD (Comparison Point Decision) with current evidence (Id., p. 61).

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<sup>2</sup> Social Security Administration regulations at Title 20 CFR Ch. III, section 416.905 define disability as: "... the inability 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 12 months. To meet this definition, you must have a severe impairment(s) that makes you unable to do your past relevant work (see § 416.960(b)) or any other substantial gainful work that exists in the national economy. If your severe impairment(s) does not meet or medically equal a listing in appendix 1 to subpart P of part 404 of this chapter, we will assess your residual functional capacity as provided in §§ 416.920(e) and 416.945 ( See § 416.920(g)(2) and 416.962 for an exception to this rule.) We will use this residual functional capacity assessment to determine if you can do your past relevant work. If we find that you cannot do your past relevant work, we will use the same residual functional capacity assessment and your vocational factors of age, education, and work experience to determine if you can do other work."

<sup>3</sup> A physician visit on April 24, 2023 shows no assistive devices, and Appellant working full time as a physical therapist, wearing a knee brace for support, rowing for 45-60 minutes per session and biking.



Step 4 asks: Is Medical Improvement (MI) related to ability to work? If CPD determination was based on impairments meeting or equaling a listing proceed to Step 4a (Id., p. 62). Step 4a asks: Is the prior listing currently met or equaled? This was correctly determined no, when prior adult SSA listing 1.06 was reviewed (Id., p. 40), and the CDR continued to Step 6.<sup>4</sup>

Step 6 asks: Is there a current impairment(s) or combination of impairments that is severe? This was correctly determined yes, and the CDR was continued to Step 7 (Id., p. 63).

At step 7, a Residual Functional Capacity (RFC) was determined. The physical RFC indicates Appellant is capable of the full range of sedentary work (Id., pp. 58, 72-73). The mental RFC indicates Appellant has no mental limitations that would interfere with her ability to perform work activity in the competitive labor market (Id., pp. 58, 74-75). DES also considered whether Appellant retained the capacity to perform Past Relevant Work (PRW). It was determined no, as Appellant's prior work is described in the *Heavy range* (Id., p. 58), while the physical RFC indicates she can perform the full range of sedentary work. The DES determinations at Step 7 are consistent with the medical documentation (Id., pp. 78-151).

Step 8 requires a Residual Functional Capacity assessment and asks: Does Appellant have the ability to make an adjustment to any other work, considering the claimant's RFCs, age, education and work experience? Appellant's mental RFC indicates she does not have limitations that would interfere with her ability to perform work activity, and her physical RFC indicates she can work the full range of sedentary work activity. DES correctly determined at Step 8 that Appellant no longer meets disability criteria.<sup>5</sup>

The MassHealth coverage types are set forth at 130 CMR 505.001(A) as follows:

- (1) Standard – for pregnant women, children, parents and caretaker relatives, young adults, disabled individuals, certain persons who are HIV positive, individuals with breast or cervical cancer, independent foster care adolescents, Department of Mental Health members, and medically frail as such term is defined in 130 CMR 505.008(F);

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<sup>4</sup> No exceptions to medical improvement were identified at Step 5 (Exhibit 4, p. 63).

<sup>5</sup> DES also cited GRID ruling 201.28 (Id., p. 64) Grid rules are found at 20 CFR Pt. 404, Subpt. P, App. 2, and reflect the major functional and vocational patterns which are encountered in cases which cannot be evaluated on medical considerations alone, where an individual with a severe medically determinable physical or mental impairment(s) is not engaging in substantial gainful activity and the individual's impairment(s) prevents the performance of his or her vocationally relevant past work. They also reflect the analysis of the various vocational factors (i.e., age, education, and work experience) in combination with the individual's residual functional capacity (used to determine his or her maximum sustained work capability for sedentary, light, medium, heavy, or very heavy work) in evaluating the individual's ability to engage in substantial gainful activity in other than his or her vocationally relevant past work. Grid rulings generally do not apply to individuals under 45 years of age who are able to perform a full range of sedentary work (See 20 CFR Pt. 404, Subpt. P, App. 2, 201.00(h)).

- (2) CommonHealth – for disabled adults, disabled young adults, and disabled children who are not eligible for MassHealth Standard;
- (3) CarePlus – for adults 21 through 64 years of age who are not eligible for MassHealth Standard;
- (4) Family Assistance – for children, young adults, certain noncitizens, and persons who are HIV positive who are not eligible for MassHealth Standard, CommonHealth, or CarePlus;
- (5) Small Business Employee Premium Assistance – for adults or young adults who
  - (a) work for small employers;
  - (b) are not eligible for MassHealth Standard, CommonHealth, Family Assistance, or CarePlus;
  - (c) do not have anyone in their premium billing family group who is otherwise receiving a premium assistance benefit; and
  - (d) have been determined ineligible for a Qualified Health Plan with a Premium Tax Credit due to access to affordable employer-sponsored insurance coverage;
- (6) Limited – for certain lawfully present immigrants as described in 130 CMR 504.003(A), nonqualified PRUCOLs, and other noncitizens as described in 130 CMR 504.003: *Immigrants*; and
- (7) Senior Buy-In and Buy-In – for certain Medicare beneficiaries.

The financial standards referred to in 130 CMR 505.000 et. seq. use MassHealth modified adjusted gross income (MAGI) household or MassHealth Disabled Adult household, as defined in 130 CMR 506.002: *Household Composition* (130 CMR 505.001(B)). Appellant's household is a household of 3. Countable household income includes earned, unearned, and rental income,<sup>6</sup> less deductions described in 130 CMR 506.003(D).<sup>7</sup> Appellant is not disabled for MassHealth purposes. Appellant is pregnant. Appellant is employed with gross annual household income totaling approximately \$175,000.<sup>8</sup> Appellant is not eligible for MassHealth Standard because she is not disabled as determined by DES. Although Appellant is pregnant, her income exceeds 200% of the federal poverty level for a household of 3, \$4,144 monthly (\$49,728 annually) (130 CMR 505.002(D)). Appellant is not eligible for CommonHealth coverage because she no longer meets

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<sup>6</sup> See 130 CMR 506.003 (A)-(C).

<sup>7</sup> The following are allowable deductions from countable income when determining MAGI: (1) educator expenses; (2) reservist/performance artist/fee-based government official expenses; (3) health savings account; (4) moving expenses; (5) self-employment tax; (6) self-employment retirement account; (7) penalty on early withdrawal of savings; (8) alimony paid to a former spouse; (9) individual retirement account (IRA); (10) student loan interest; and (11) higher education tuition and fees.

<sup>8</sup> See 130 CMR 506.003(B)(1) Earned income is the total amount of taxable compensation received for work or services performed less pretax deductions. Earned income may include wages, salaries, tips, commissions, and bonuses. In determining monthly income, the MassHealth agency multiplies average weekly income by 4.333 (130 CMR 506.007(A)(2)(c)).

disability criteria.<sup>9</sup> Appellant is not eligible for CarePlus because she is employed with gross income that exceeds 133% of the federal poverty level (130 CMR 505.008). Appellant is not categorically eligible for MassHealth Family Assistance which applies to children (130 CMR 505.005) or MassHealth Limited, which for individuals between 21 and 64 years of age applies to certain non-citizens with MassHealth MAGI household income less than 133% of the FPL (130 CMR 505.006(B)(1)(a)(4)).

Appellant can direct any questions about Health Connector plans to 1-877-MA-ENROLL (1-877-623-6765).

The appeal is DENIED.

## **Order for MassHealth**

None.

## **Notification of Your Right to Appeal to Court**

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

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Thomas J. Goode  
Hearing Officer  
Board of Hearings

cc:

Appeals Coordinator: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876

Disability Evaluation Services Representative: Brad Goodier

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<sup>9</sup> It appears MassHealth determinations in April 2023 ended CommonHealth coverage on April 24, 2023 because a disability supplement was not submitted until May 5, 2023, and eligibility was determined under non-disabled categories. However, Appellant did not appeal any notices prior to the July 3, 2023 notice, and the appeal at hand is limited to the July 3, 2023 notice of disability determination and the subsequent eligibility determination.