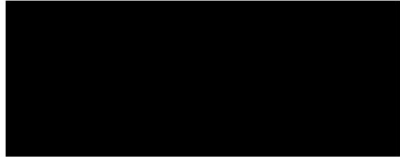



**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2308186
Decision Date:	10/26/2023	Hearing Date:	10/16/2023
Hearing Officer:	Emily Sabo		

Appearance for Appellant:
Pro se & 

Appearance for MassHealth:
Glory DeJesus, Springfield MEC

UMASS, DES: Eileen Cynamon, RN; Brad Goodier, RN



*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

Appeal Decision:	Denied	Issue:	Disability determination; Under 65
Decision Date:	10/26/2023	Hearing Date:	10/16/2023
MassHealth's Rep.:	Glory DeJesus (MEC); Eileen Cynamon & Brad Goodier (DES)	Appellant's Rep.:	Care Coordinator
Hearing Location:	Springfield MassHealth Enrollment Center (Remote)	Aid Pending:	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 August 30, 2023, MassHealth denied the Appellant's application for MassHealth benefits because MassHealth determined that the Appellant did not meet MassHealth's disability requirements (see 130 CMR 505.002(E) and Exhibit 1). The appellant filed this appeal in a timely manner on September 12, 2023 (see 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 notified the Appellant that she does not meet MassHealth's disability requirements.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 505.002(E), in determining that the Appellant is not permanently and totally disabled?

Summary of Evidence

The MassHealth representative appeared telephonically and testified as follows: on August 28, 2023, MassHealth received a determination from Disability Evaluations Services (DES) that the Appellant is not disabled. The MassHealth representative testified that MassHealth reviewed DES's determination, agreed with it, and issued MassHealth's notice to the Appellant on August 30, 2023. The MassHealth representative testified that despite the August 30, 2023, denial notice, the Appellant continues to have MassHealth Standard because the Appellant attested that she is medically frail.

Eileen Cynamon, a registered nurse and appeals reviewer, appeared telephonically and testified for DES. She explained that DES's role is to determine for MassHealth if an applicant meets the Social Security Administration (SSA) level of disability from a clinical standpoint. She testified that DES uses a five-step process, which comes from the SSA code of federal regulations to determine an applicant's disability status. See 20 CFR 416.920; 20 CFR 416.905; Exhibit 5 at p. 5-8. The DES representative testified that under these regulations, disability is defined 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 twelve months. The definition of disability also requires that the applicant have a severe impairment(s) that makes her unable to do her past relevant work or any other substantial gainful work that exists in the regional economy.

The DES representative testified that, under 20 CFR 416.945, what a person can still do despite an impairment is called his or her residual functional capacity. Unless an impairment is so severe that it is deemed to prevent an individual from doing substantial gainful activity it is this residual functional capacity that is used to determine whether the individual can still do her past work or, in conjunction with her age, education and work experience, any other work. Exhibit 5 at p. 9-10.

The DES representative testified that, the Appellant, a [REDACTED] old woman, submitted a MassHealth adult disability supplement to DES on April 25, 2023. The Appellant listed the

following as her health problems: Chronic nausea, depression, anxiety, PTSD (post-traumatic stress disorder), sleep problems, ADHD (attention-deficit/hyperactivity disorder), constipation, migraines, nerve pain, back pain, left hip pain, right knee pain, right hip pain, and left knee pain. Exhibit 5 at p. 78-89. On the supplement, the Appellant indicated that she was unable to sit, stand, or walk for long periods; that she had difficulty or was unable to bend, reach, or lift weight; and that she was limited in her ability to remember, read, dress and bathe, do regular housework, go for a walk, go shopping, go to the doctor, go to school, drive a car, and play sports. Exhibit 5 at 95.

DES acquired medical documentation using the medical releases the Appellant provided. The DES representative explained that a review of the medical records was undertaken using a five-step sequential evaluation process, which addresses the following:

- Step 1: Is the claimant engaging in substantial gainful activity?
- Step 2: Does the claimant have a medically determinable impairment or combination of medically determinable impairments that is both severe and meets the duration requirement (impairment(s) is expected to result in death or has lasted or is expected to last for a continuous period of not less than 12 months)?
- Step 3: Does the claimant have an impairment(s) that meets an adult SSA listing, or is medically equal to a listing, and meets the duration requirement?
- Step 4: Does the claimant retain the capacity to perform any past relevant work?
- Step 5: Does the claimant have the ability to make an adjustment to any other work, considering the claimant's residual functional capacity, age, education, and work experience?

The DES representative testified that Step 1 is waived by MassHealth regardless of whether the claimant is engaging in substantial gainful activity, while on the federal level, engaging in substantial gainful activity will stop the disability review in its entirety. Accordingly, the Appellant's review at Step 1 was marked "No." Exhibit 5 at p. 11. The DES representative testified that the Appellant's review at Step 2 was marked "Yes," indicating that the Appellant's impairment is severe and expected to last at least twelve months. This directs that the reviewer continue to Step 3. Exhibit 5 at 111.

The DES representative testified that the Appellant's review at Step 3 was marked "No." The reviewer compared the Appellant's medical records to SSA listings found in the federal *Listing*

of Impairments at 20 CFR Ch. III, Pt. 404, Subpt. P, App. 1. to see if the appellant met such criteria, specifically the adult listings for: 1.15 – Disorders of skeletal spine resulting in compromise of nerve root, 1.18 – Abnormality of a major joint(s) in any extremity, 5.06 – Inflammatory bowel syndrome, 11.02 – Epilepsy, 11.14 – Peripheral neuropathy, 12.04 – Depressive, bipolar and related disorders, and 12.06 – Anxiety and obsessive compulsive disorders. Exhibit 5 at p. 113-22. The DES representative explained that 11.02 – Epilepsy was considered as the best point of comparison because there is no listing for migraine. The review proceeded to Step 4.

The DES representative testified that for Steps 4 and 5, DES must evaluate the claimant's residual functional capacity. The DES representative explained that the residual functional capacity is the most the claimant can still do despite her limitations. The residual functional capacity evaluation was based on the Appellant's case record. On July 28, 2023, Dr. [REDACTED] performed a mental residual functional capacity assessment and found that the Appellant had a moderate impairment with maintaining attention and concentration and a moderate impairment with working at a consistent pace. Exhibit 5 at p. 128-29. On August 8, 2023, Dr. [REDACTED] performed a physical residual functional capacity assessment on the Appellant's current state, and a projected assessment based on twelve months in the future. Dr. [REDACTED] found that the Appellant is capable of performing sedentary work with postural limitations to never climb ladders/scaffolding and environmental limitations for noise and hazards. Dr. [REDACTED] found that the Appellant's physical limitations will not continue at this level of severity for twelve months, but projected that, twelve months in the future, the Appellant would be limited to the same scope of work activity—sedentary work with postural limitations to never climbing ladders/scaffolding and environmental limitations to hazards and noise. Exhibit 5 at p. 123-27. This assessment found that the Appellant had residual functional capacity. See also Exhibit 5 at 110.

The DES representative testified that the reviewer selected, "No," at Step 4, and indicated that because the Appellant's past relevant work was considered in the 'very heavy' range and 'semi-skilled' to 'skilled' levels of work activity it exceeded her current abilities. Based on the residual functional capacity assessment, DES found that the Appellant is limited to sedentary, basic unskilled work. Id. The DES representative testified that the reviewer selected, "Yes," at Step 5, because considering the Appellant's age, education, work experience and residual functional capacity, it found that she was qualified to perform three categories of sedentary, basic, unskilled jobs in the Appellant's region: couriers/messengers; receptionist & information clerks; and general office clerk. The DES representative testified that this stopped the disability review and the Appellant was found "Not Disabled," because she is capable of performing sedentary,

basic, unskilled work in the competitive labor market in her region.

The DES representative explained that DES's conclusion that the Appellant is not disabled does not mean that it found the Appellant has no limitations or functional impairments. The DES representative explained that DES's conclusion is based on the objective data in the Appellant's medical records. The DES representative testified that DES's evaluation cannot rely on a treating physician's blanket declaration that an individual is unable work. The DES representative further explained that this is because determining the SSA level of disability is different from other assessments of an ability to work, including for worker's compensation claims.

The Appellant appeared telephonically and verified her identity. The Appellant also was represented by her Care Coordinator at the hearing. The Care Coordinator testified that she has been working with the Appellant for six to eight months and that at times, when they meet at the Appellant's home, the Appellant has been bedridden due to pain. The Care Coordinator testified that after they meet, the Appellant may call her shortly afterward to ask the Care Coordinator what they discussed, because she was unable to remember it. The Appellant and Care Coordinator both testified that the Appellant's pain has had a negative impact on her mental health and concentration.

The Appellant and Care Coordinator both testified that the Appellant requires help with personal chores and that the Appellant has trouble balancing due to foot drop. The Appellant testified that she has had a number of surgeries since her accident in 2020 and that she will likely continue to need more surgeries. The Appellant testified that she sometimes needs to cancel her doctor's appointments because she is in so much pain and unable to leave her home. The Appellant testified that she requires PT 1 transportation to her medical appointments.

The Appellant testified that she has not sought employment since her 2020 accident. The Appellant and Care Coordinator both testified they were concerned that due to the Appellant's health problems that she could not reliably work. The Appellant and Care Coordinator both testified that they did not understand how the evaluations of Drs. [REDACTED], who have not treated or directly examined the Appellant could be used to find that the Appellant can work, when Dr. [REDACTED], who has treated her, found in March 2023 that "she remains unable to work." Exhibit 5 at 335. The Appellant testified that it hurts her to think that because of her appeal, someone would think that she does not want to work. The Appellant testified that she had worked three jobs and was in nursing school at the time of her accident.

Findings of Fact

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

1. On April 25, 2023, the appellant submitted a MassHealth Adult Disability Supplement alleging disability due to chronic nausea, depression, anxiety, PTSD, sleep problems, ADHD, constipation, nerve pain, migraines, back pain, hip pain, and knee pain (Exhibit 5, p. 78-82).
2. At Step 2 of the assessment, DES determined that the Appellant has medical impairments which are severe and are expected to last at least twelve months. (Testimony and Exhibit 5, p. 111).
3. At Step 3 of the assessment, the Appellant's complaints were reviewed under the SSA's Listing of Impairments. The Listings reviewed were for: 1.15 – Disorders of skeletal spine resulting in compromise of nerve root, 1.18 – Abnormality of a major joint(s) in any extremity, 5.06 – Inflammatory bowel syndrome, 11.02 – Epilepsy, 11.14 – Peripheral neuropathy, 12.04 – Depressive, bipolar, and related disorders, and 12.06 – Anxiety and obsessive compulsive disorders. (Testimony and Exhibit 5, p. 111-22).
4. To meet listing 1.15, the Appellant must satisfy the requirements of A, B, C, and D as follows:

A. Neuro-anatomic (radicular) distribution of one or more of the following symptoms consistent with compromise of the affected nerve root(s):

1. Pain; or
2. Paresthesia; or
3. Muscle fatigue.

AND

B. Radicular distribution of neurological signs present during physical examination (see 1.00C2) or on a diagnostic test (see 1.00C3) and evidenced by 1, 2, and either 3 or 4:

1. Muscle weakness; and
2. Sign(s) of nerve root irritation, tension, or compression, consistent with compromise of the affected nerve root (see 1.00F2)
3. Sensory changes evidenced by:
 - a. Decreased sensation; or

b. Sensory nerve deficit (abnormal sensory nerve latency) on electrodiagnostic testing; or

4. Decreased deep tendon reflexes.

AND

C. Findings on imaging (see 1.00C3) consistent with compromise of a nerve root(s) in the cervical or lumbosacral spine.

AND

D. Impairment-related physical limitation of musculoskeletal functioning that has lasted, or is expected to last, for a continuous period of at least 12 months, and medical documentation of at least one of the following:

1. A documented medical need (see 1.00C6) for a walker, bilateral canes, or bilateral crutches (see 1.00C6d) or a wheeled and seated mobility device involving the use of both hands (see 1.00C6e(i)); or

2. An inability to use one upper extremity to independently initiate, sustain, and complete work-related activities involving fine and gross movements (see 1.00E4), and a documented medical need (see 1.00C6a) for a one-handed, hand-held assistive device (see 1.00C6d) that requires the use of the other upper extremity or a wheeled and seated mobility device involving the use of one hand (see 1.00C6e(ii)); or

3. An inability to use both upper extremities to the extent that neither can be used to independently initiate, sustain, and complete work-related activities involving fine and gross movements (see 1.00E4).

On June 9, 2023, Appellant's physician stated that Appellant's MRI was normal (Exhibit 5 at p. 137). On May 26, 2023, Appellant's board-certified family nurse practitioner stated that Appellant was ambulating normally (Exhibit 5 at p. 213). On June 26, 2023, Appellant's board-certified family nurse practitioner stated that Appellant was ambulating normally and that Appellant was walking around, feeling much better than she had been and that her leg pain had significantly improved (Exhibit 5 at p. 172).

5. To meet listing 1.18, the Appellant must satisfy the requirements of A, B, C, and D as follows:

A. Chronic joint pain or stiffness.

AND

B. Abnormal motion, instability, or immobility of the affected joint(s).

AND

C. Anatomical abnormality of the affected joint(s) noted on:

1. Physical examination (for example, subluxation, contracture, or bony or fibrous ankylosis); or
2. Imaging (for example, joint space narrowing, bony destruction, or ankylosis or arthrodesis of the affected joint).

AND

D. Impairment-related physical limitation of musculoskeletal functioning that has lasted, or is expected to last, for a continuous period of at least 12 months, and medical documentation of at least one of the following:

1. A documented medical need (see 1.00C6a) for a walker, bilateral canes, or bilateral crutches (see 1.00C6d) or a wheeled and seated mobility device involving the use of both hands (see 1.00C6e(i)); or
2. An inability to use one upper extremity to independently initiate, sustain, and complete work-related activities involving fine and gross movements (see 1.00E4), and a documented medical need (see 1.00C6a) for a one-handed, hand-held assistive device (see 1.00C6d) that requires the use of the other upper extremity or a wheeled and seated mobility device involving the use of one hand (see 1.00C6e(ii)); or
3. An inability to use both upper extremities to the extent that neither can be used to independently initiate, sustain, and complete work-related activities involving fine and gross movements (see 1.00E4).

On May 26, 2023, and June 26, 2023, Appellant's board-certified family nurse practitioner stated that Appellant was ambulating normally (Exhibit 5 at p. 172, 213). On February 22, 2023, the Appellant's treating physician who was evaluating her hip pain, stated that he reviewed Appellant's radiologic imaging which showed no evidence of FAI or other bony abnormality (Exhibit 5 at p. 319).

6. To meet listing 5.06, the Appellant must satisfy the requirements of A, B, or C as follows:

A. Obstruction of stenotic areas (not adhesions) in the small intestine or colon with proximal dilatation, confirmed by imaging or in surgery, requiring two hospitalizations for intestinal decompression or for surgery, within a consecutive 12-month period and at least 60 days apart.

OR

B. Two of the following occurring within a consecutive 12-month period and at least 60 days apart:

1. Anemia with hemoglobin of less than 10.0 g/dL, present on at least two evaluations at least 60 days apart; or
2. Serum albumin of 3.0 g/dL or less, present on at least two evaluations at least 60 days apart; or
3. Clinically documented tender abdominal mass palpable on physical examination with abdominal pain or cramping; or
4. Perianal disease with a draining abscess or fistula; or
5. Need for supplemental daily enteral nutrition via a gastrostomy, duodenostomy, or jejunostomy, or daily parenteral nutrition via a central venous catheter.

OR

C. Repeated complications of IBD (see 5.00D5a), occurring an average of 3 times a year, or once every 4 months, each lasting 2 weeks or more, within a consecutive 12-month period, and marked limitation (see 5.00D5c) in one of the following:

1. Activities of daily living (see 5.00D5d); or
2. Maintaining social functioning (see 5.00D5e); or
3. Completing tasks in a timely manner due to deficiencies in concentration, persistence, or pace (see 5.00D5f).

No evidence was presented that Appellant experiences either category A or B (Exhibit 5). Regarding category C, no evidence was presented that Appellant experiences repeated complications of IBD lasting 2 weeks or more and that it causes marked limitation in activities of daily living, maintaining social functioning, or completing tasks in a timely

manner (Exhibit 5).

7. To meet listing 11.02, the Appellant must satisfy the requirements of A, B, C, or D as follows:

A. Generalized tonic-clonic seizures (see 11.00H1a), occurring at least once a month for at least 3 consecutive months (see 11.00H4) despite adherence to prescribed treatment (see 11.00C).

OR

B. Dyscognitive seizures (see 11.00H1b), occurring at least once a week for at least 3 consecutive months (see 11.00H4) despite adherence to prescribed treatment (see 11.00C).

OR

C. Generalized tonic-clonic seizures (see 11.00H1a), occurring at least once every 2 months for at least 4 consecutive months (see 11.00H4) despite adherence to prescribed treatment (see 11.00C); and a marked limitation in one of the following:

1. Physical functioning (see 11.00G3a); or
2. Understanding, remembering, or applying information (see 11.00G3b(i)); or
3. Interacting with others (see 11.00G3b(ii)); or
4. Concentrating, persisting, or maintaining pace (see 11.00G3b(iii)); or
5. Adapting or managing oneself (see 11.00G3b(iv)).

OR

D. Dyscognitive seizures (see 11.00H1b), occurring at least once every 2 weeks for at least 3 consecutive months (see 11.00H4) despite adherence to prescribed treatment (see 11.00C); and a marked limitation in one of the following:

1. Physical functioning (see 11.00G3a); or
2. Understanding, remembering, or applying information (see 11.00G3b(i)); or
3. Interacting with others (see 11.00G3b(ii)); or
4. Concentrating, persisting, or maintaining pace (see 11.00G3b(iii)); or
5. Adapting or managing oneself (see 11.00G3b(iv)).

No evidence was presented that the Appellant experiences seizures (Exhibit 5). On June 1, 2023, Appellant's treating physician stated that Appellant's headaches were much improved (Exhibit 5 at p. 323).

8. To meet listing 11.14, the Appellant must satisfy the requirements of A or B as follows:

A. Disorganization of motor function in two extremities (see 11.00D1), resulting in an extreme limitation (see 11.00D2) in the ability to stand up from a seated position, balance while standing or walking, or use the upper extremities.

OR

B. Marked limitation (see 11.00G2) in physical functioning (see 11.00G3a), and in one of the following:

1. Understanding, remembering, or applying information (see 11.00G3b(i)); or
2. Interacting with others (see 11.00G3b(ii)); or
3. Concentrating, persisting, or maintaining pace (see 11.00G3b(iii)); or
4. Adapting or managing oneself (see 11.00G3b(iv)).

On June 26, 2023, Appellant's board-certified family nurse practitioner stated that Appellant was ambulating normally and that she could bend at the waist (Exhibit 5 at p. 172). During that same visit, she reported that the Appellant was oriented to time, place, and person, that Appellant's insight displayed good judgment, and that Appellant had normal mood and affect, she was active and alert, made good eye contact, and had no psychomotor slowing or agitation (Id.). On June 1, 2023, Appellant's treating physician stated that the Appellant did not have any memory issues currently (Exhibit 5 at p. 323).

9. To meet listing 12.04, the Appellant must satisfy the conditions of A and B, or A and C as follows:

- A. Medical documentation of the requirements of paragraph 1 or 2:
1. Depressive disorder, characterized by five or more of the following:
 - a. Depressed mood;
 - b. Diminished interest in almost all activities;
 - c. Appetite disturbance with change in weight;
 - d. Sleep disturbance;
 - e. Observable psychomotor agitation or retardation;
 - f. Decreased energy;
 - g. Feelings of guilt or worthlessness;
 - h. Difficulty concentrating or thinking; or
 - i. Thoughts of death or suicide.
 2. Bipolar disorder, characterized by three or more of the following:
 - a. Pressured speech;
 - b. Flight of ideas;
 - c. Inflated self-esteem;
 - d. Decreased need for sleep;

- e. Distractibility;
- f. Involvement in activities that have a high probability of painful consequences that are not recognized; or
- g. Increase in goal-directed activity or psychomotor agitation.

AND

- B. Extreme limitation of one, or marked limitation of two, of the following areas of mental functioning (see 12.00F):
 - 1. Understand, remember, or apply information (see 12.00E1).
 - 2. Interact with others (see 12.00E2).
 - 3. Concentrate, persist, or maintain pace (see 12.00E3).
 - 4. Adapt or manage oneself (see 12.00E4).

OR

- C. Your mental disorder in this listing category is “serious and persistent;” that is, you have a medically documented history of the existence of the disorder over a period of at least 2 years, and there is evidence of both:
 - 1. Medical treatment, mental health therapy, psychosocial support(s), or a highly structured setting(s) that is ongoing and that diminishes the symptoms and signs of your mental disorder (see 12.00G2b); and
 - 2. Marginal adjustment, that is, you have minimal capacity to adapt to changes in your environment or to demands that are not already part of your daily life (see 12.00G2c).

On December 6, 2022, Appellant’s treating psychologist stated that she had no clear major depressive disorder and no suicidal ideation (Exhibit 5 at p. 356). On June 15, 2023, Appellant’s treating psychiatrist stated that the Appellant’s mood and affect were full and appropriate; her speech was normal; her thought process was normal and goal directed; no detected psychomotor abnormalities; no suicidal or homicidal ideation; no hallucinations or delusions; her memory and concentration were intact; her insight and judgment appropriate; and that she understands the risks of withholding information (Exhibit 5 at p. 427). On June 26, 2023, Appellant’s board-certified family nurse practitioner reported that the Appellant was oriented to time, place, and person, that Appellant’s insight displayed good judgment, and that Appellant had normal mood and affect, she was active and alert, made good eye contact, and had no psychomotor slowing or agitation (Exhibit 5 at p. 172).

10. To meet listing 12.06, the Appellant must satisfy the conditions of A and B, or A and C as follows:

- A. Medical documentation of the requirements of paragraph 1, 2, or 3:
 - 1. Anxiety disorder, characterized by three or more of the following;

- a. Restlessness;
 - b. Easily fatigued;
 - c. Difficulty concentrating;
 - d. Irritability;
 - e. Muscle tension; or
 - f. Sleep disturbance.
2. Panic disorder or agoraphobia, characterized by one or both:
 - a. Panic attacks followed by a persistent concern or worry about additional panic attacks or their consequences; or
 - b. Disproportionate fear or anxiety about at least two different situations (for example, using public transportation, being in a crowd, being in a line, being outside of your home, being in open spaces).
 3. Obsessive-compulsive disorder, characterized by one or both:
 - a. Involuntary, time-consuming preoccupation with intrusive, unwanted thoughts; or
 - b. Repetitive behaviors aimed at reducing anxiety.

AND

- B. Extreme limitation of one, or marked limitation of two, of the following areas of mental functioning (see 12.00F):
1. Understand, remember, or apply information (see 12.00E1).
 2. Interact with others (see 12.00E2).
 3. Concentrate, persist, or maintain pace (see 12.00E3).
 4. Adapt or manage oneself (see 12.00E4).

OR

- C. Your mental disorder in this listing category is “serious and persistent;” that is, you have a medically documented history of the existence of the disorder over a period of at least 2 years, and there is evidence of both:
1. Medical treatment, mental health therapy, psychosocial support(s), or a highly structured setting(s) that is ongoing and that diminishes the symptoms and signs of your mental disorder (see 12.00G2b); and
 2. Marginal adjustment, that is, you have minimal capacity to adapt to changes in your environment or to demands that are not already part of your daily life (see 12.00G2c).

No evidence of the Appellant having a panic disorder or obsessive compulsive disorder was presented (Exhibit 5). On June 15, 2023, Appellant’s treating psychiatrist stated that the Appellant’s mood and affect were full and appropriate; her speech was normal; her thought process was normal and goal directed; no detected psychomotor abnormalities; no suicidal or homicidal ideation; no hallucinations or delusions; her memory and concentration were intact; her insight and judgment appropriate; and understands the risks of withholding information (Exhibit 5

at p. 427). On June 26, 2023, Appellant's board-certified family nurse practitioner reported that the Appellant was oriented to time, place, and person, that Appellant's insight displayed good judgment, and that Appellant had normal mood and affect, she was active and alert, made good eye contact, and had no psychomotor slowing or agitation (Exhibit 5 at p. 172).

11. The Appellant is not able to do her past work (Testimony, Exhibit 5).
12. The Appellant has not sought employment since her accident in 2020 (Testimony).
13. The Appellant has moderate limitations in her ability to maintain attention and concentration to sustain employment and her ability to work at a consistent pace (Exhibit 5 at p. 128).

Analysis and Conclusions of Law

In order to be found disabled for MassHealth Standard, 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 SSA (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(E). In Title XVI, Section 416.405, the Social Security Administration defines disability as:

the inability to engage in any substantial gainful activity by reason of any medical 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.

Title XVI of the Social Security Act establishes standards and the five-step sequential evaluation process for the Medical Assistance Program. See 20 CFR 416.920; 20 CFR 416.905; Exhibit 5 at p. 5-8.

If a determination of disability can be made at any step, the evaluation process stops at that point. Step 1 considers whether the Appellant is substantially gainfully employed. This step is waived in MassHealth cases. Thus, the review proceeds to Step 2.

Step 2 determines whether the Appellant has a severe impairment. To be determined severe, a medically determinable physical or mental impairment must:

1. be expected to result in death or have lasted or be expected to last for a continuous period of not less than 12 months; and

2. render an individual aged 18 or over unable to engage in any substantial gainful activity or render a child under the age of 18 unable to engage in an age-appropriate activities.

In this case, DES determined that the Appellant's impairments have lasted, or are expected to last, twelve months. I agree with this determination. Accordingly, the Appellant's impairments meet Step 2 and the review process proceeds to Step 3.

Step 3 requires the reviewer to determine whether the impairments meet certain criteria found in the federal *Listing of Impairments* at 20 CFR Ch. III, Pt. 404, Subpt. P, App. 1. DES reviewed the Appellant's case in light of the various impairments and determined that the Appellant did not meet the listings for 1.15 – Disorders of skeletal spine resulting in compromise of nerve root, 1.18 – Abnormality of a major joint(s) in any extremity, 5.06 – Inflammatory bowel syndrome, 11.02 – Epilepsy, 11.14 – Peripheral neuropathy, 12.04 – Depressive, bipolar and related disorders, and 12.06 – Anxiety and obsessive compulsive disorders. I agree with DES' determination and find that there was insufficient evidence to support a finding that Appellant met the criteria, as more fully described above.

The five-step process requires the review to proceed to Step 4 to examine the Appellant's residual functional capacity. As relevant here, 20 CFR 416.966(c) provides:

Inability to obtain work. We will determine that you are not disabled if your residual functional capacity and vocational abilities make it possible for you to do work which exists in the national economy, but you remain unemployed because of—

- (1) Your inability to get work;
 - (2) Lack of work in your local area;
 - (3) The hiring practices of employers;
 - (4) Technological changes in the industry in which you have worked;
 - (5) Cyclical economic conditions;
 - (6) No job openings for you;
 - (7) You would not actually be hired to do work you could otherwise do,
- or;
- (8) You do not wish to do a particular type of work.

DES determined that the Appellant's past work exceeds her current abilities. I agree with this determination, and the review proceeds to Step 5.

At Step 5, DES determined that the Appellant is able to perform sedentary, basic unskilled work such as: courier/messenger; receptionist & information clerk; and general office clerk (Exhibit 5 at p. 112). I agree with this determination. There is no evidence that, since her 2020 accident, the Appellant has tried to obtain employment and failed. I note the Appellant's testimony regarding her pain and its negative impact on her life, including on her mental health and

concentration. I also note the Appellant's testimony regarding her hard work ethic and past employment and educational history. While I find the Appellant credible, her testimony is insufficient to meet the high burden that she is permanently and totally disabled. I find that the record supports the conclusion that the Appellant can perform sedentary, basic unskilled work, and that this type of work exists and is available. Therefore, I find that DES was correct in determining that appellant is not disabled (130 CMR 505.002(E)).

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.

Emily T. Sabo
Hearing Officer
Board of Hearings

cc:

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