

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2312133
Decision Date:	1/29/2024	Hearing Date:	12/20/2023
Hearing Officer:	Thomas J. Goode		

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Kathryn Begin, Tewksbury MEC
Eileen Cynamon, RN, Disability Reviewer



*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
Decision Date:	1/29/2024	Hearing Date:	12/20/2023
MassHealth's Rep.:	Kathryn Begin Eileen Cynamon	Appellant's Rep.:	Pro se
Hearing Location:	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 November 6, 2023, MassHealth determined that Appellant does not meet disability criteria (130 CMR 501.001, 505.002 and Exhibit 1). Appellant filed this appeal in a timely manner on November 28, 2023 (130 CMR 610.015(B) and Exhibit 2). Denial of a request for assistance is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth determined that Appellant does not meet disability criteria.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 501.001, 505.002 in determining that Appellant does not meet disability criteria.

Summary of Evidence

The MassHealth representative testified that on November 6, 2023, MassHealth issued notice informing Appellant that she does not meet disability criteria (Exhibit 1). Prior to the November 6, 2023 notice, a system-generated renewal on October 9, 2023 determined that Appellant is not MassHealth eligible, and informed her of eligibility for a Health Connector plan.¹ Appellant is a household size of 1 person who is an employed tax-filer and U.S. citizen. Appellant's gross earned income is \$2,290.52 per month which equates to 183.52% of the federal poverty level. MassHealth records show Appellant's income equates to \$27,486 annually. The MassHealth representative stated that because Appellant was determined not disabled, she is not eligible for Standard or CommonHealth coverage. The MassHealth representative added that Appellant did not submit verification showing her income is seasonal income, and because her income exceeds 133% of the federal poverty level, \$1,616 a month for a family of one, Appellant is not eligible for CarePlus coverage. Appellant is currently enrolled in a Tufts Connector Plan Type 2B.

The DES representative identified herself as a Registered Nurse and appeals reviewer for Disability Evaluation Services (DES). The DES representative testified to a 5-step disability determination process under SSA code of federal regulations (CFR) 416.920² to determine disability status, which is driven by an applicant's medical records and disability supplement.³ SSA code of federal regulations (CFR) 416.905 states the definition of disability is 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, an applicant must have a severe impairment(s) that makes the applicant unable to do past relevant work or any other substantial gainful work that exists in the regional economy. Per SSA CFR 416.945 what a person can still do despite an impairment is called his or her residual functional capacity (RFC). Unless an impairment is so severe that it is deemed to prevent the applicant from doing substantial gainful activity, it is this residual functional capacity that is used to determine whether the applicant can still do past work or, in conjunction with age, education and work experience, any other work.

Appellant is a [REDACTED] female who submitted a MassHealth adult disability supplement to DES on August 18, 2023. Appellant listed the following as her health problems: SLE (systemic lupus erythematosus), disorder of rotator cuff, chondromalacia patella/ knee pain, chronic back pain, multiple joint (back, knee, feet) pain (Exhibit 4, pp. 64, 69, and pp. 86-89). DES requested and obtained medical documentation using the medical releases Appellant provided (Exhibit 4, pp. 52-57). Once medical documentation was received at DES, the 5-step review process began.

¹ Appellant did not appeal the October 9, 2023 notice.

² See Title 20 CFR Ch. III sections 416.905-416.968 at Exhibit 4, pp. 11-50.

³ See Exhibit 5.

Step 1 asks “Is the claimant engaging in substantial gainful activity (SGA)? For Appellant’s review, Step 1 was marked, “Yes” (Exhibit 4, p. 71). This step is waived by MassHealth regardless of the claimant engaging in SGA, while on the federal level engaging in SGA will stop the disability review in its entirety. Step 2 asks “Does the claimant have a medically determinable impairment (MDI) or combination of MDIs 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). DES requested and received records from [REDACTED] (Exhibit 4, pp. 90-100), [REDACTED] (Exhibit 4, pp. 101-120) and [REDACTED] et al (Exhibit 4, pp. 121-164). The reviewer determined the documentation was both sufficient to evaluate Appellant’s complaints and met the severity/ duration requirements. The reviewer marked, “Yes” and proceeded to Step 3 (Exhibit 4, p. 71). Step 3 asks “Does the claimant have an impairment(s) that meets an adult SSA listing, or is medically equal to a listing, and meets the listing level duration requirement? Step 3 was marked, “No” by the reviewer citing the applicable adult SSA listings considered: 1.15 – Disorders of the Skeletal Spine resulting in compromise of a nerve root(s), 1.18 – Abnormality of a Major Joint(s) in any extremity, 14.02 Systemic Lupus Erythematosus (Exhibit 4, pp. 73-78).

For the remainder of the review, Steps 4 & 5, both a Residual Functional Capacity (RFC) assessment along with a vocational assessment were determined. The RFC is the most an applicant can still do despite limitations. DES assesses an applicant’s RFC based on all relevant evidence in the case record (Exhibit 4, p. 24). A Physical RFC was completed by [REDACTED] on [REDACTED] 2023 (Exhibit 4, pp. 79-80). The RFC indicates that Appellant is capable of performing the full range of sedentary work (consideration to exertional limitations of BLE push/pull, postural limitations of never climbing (ladders, scaffolding, etc.) and crawling, occasionally climbing (ramps, stairs, etc.), stooping, crouching, kneeling and limiting environmental hazards (machinery, heights, etc.). The disability reviewer completed a vocational assessment (Exhibit 4, p. 70), using the educational and work history reported on the client supplement (Exhibit 4, pp. 66-67) and the RFC(s); see CFR 416.90 (Exhibit 4, pp. 25, 27), CFR 416.967 (Exhibit 4, pp. 30-31) and CFR 416.968 (Exhibit 4, pp. 32-33).

The 5-step review process continued to Step 4 which asks, does the claimant retain the capacity to perform any past relevant work (PRW)? The reviewer selected “No.” Appellant’s PRW was considered in the ‘light to medium’ range and ‘semi-skilled’ levels of work activity. Based upon the vocational assessment and the Physical RFC, Appellant’s current and past work exceed her current capabilities (Exhibit 4, pp. 67, 70, 79-80). Step 5 asks whether the claimant has the ability to make an adjustment to any other work, considering the claimant’s RFC, age, education, and work experience? The reviewer selected ‘Yes,’ citing Sedentary GRID ruling

201.19 (Exhibit 4, p. 72, POMS (Program Operations Manual System) DI 25025.035 on p. 38). Pursuant to CFR 416.966 Appellant was appropriately determined not disabled with assigned decision Code 231 (Exhibit 4, pp. 28-29, 57, 63). A final review was completed by a Physician Advisor(s) to conclude the disability determination process. The DES representative summarized that Appellant does not meet or equal the high threshold of adult SSA disability listings. Appellant's Physical RFC shows that she is capable of performing sedentary work in the competitive labor market. While Appellant's current and past work exceeds her current capabilities, there is work in the regional market (GRID ruling 201.19) thus, finding her 'Not Disabled.' A denial notice was mailed to Appellant on October 12, 2023 (Exhibit 4, p. 83).

Appellant verified that she is enrolled in a Tufts Connector Plan but cannot afford the co-payments, which is why she appealed the disability determination. Appellant testified that she works in a [REDACTED] for 9 months per year, and her total income is \$19,710 because she is employed seasonally. Appellant added that she will send to MassHealth documentation that her income is seasonal. Appellant testified that she had surgery on her right foot in 2013 and has developed arthritis in her foot which has been treated with cortisone. She added that she experiences knee pain which does not yet require surgery, but she has had physical therapy and multiple cortisone treatments. Appellant testified that she is in pain all the time. Appellant stated that she works in a [REDACTED] from 6:00 a.m. to 2:00 p.m. daily, only when [REDACTED]

Findings of Fact

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

1. On November 6, 2023, MassHealth issued a notice informing Appellant that she does not meet disability criteria.
2. On October 9, 2023 a system-generated renewal determined that Appellant is not MassHealth eligible, and informed her of eligibility for a Health Connector plan.
3. Appellant is a household size of 1 person who is an employed tax-filer and U.S. citizen.
4. Appellant's earned income is \$2,290.52 gross income per month which equates to 183.52% of the federal poverty level.
5. MassHealth records show Appellant's income equates to \$27,486 annually.
6. Appellant is currently enrolled in a Tufts Connector Plan Type 2B.

7. Appellant has not verified to MassHealth that her income is seasonal.
8. 133% of the federal poverty level for a household of 1 is \$1,616 per month and \$19,392 annually.
9. Appellant works in a [REDACTED] from 6:00 a.m. to 2:00 p.m. daily only when [REDACTED]
10. Appellant is a [REDACTED] female who submitted a MassHealth adult disability supplement to DES on August 18, 2023.
11. Appellant listed the following as her health problems: SLE (systemic lupus erythematosus), disorder of rotator cuff, chondromalacia patella/ knee pain, chronic back pain, multiple joint (back, knee, feet) pain.
12. DES requested and obtained medical documentation using the medical releases Appellant provided.
13. Step 1 of the 5-step review asks "Is the claimant engaging in substantial gainful activity (SGA)? Step 1 was determined, "Yes." This step is waived by MassHealth regardless of the claimant engaging in SGA.
14. Appellant has a medically determinable impairment (MDI) or combination of MDIs 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).
15. DES received records from [REDACTED] and [REDACTED] et al.
16. Appellant's medical conditions do not meet or equal applicable adult SSA listings: 1.15 – Disorders of the Skeletal Spine resulting in compromise of a nerve root(s), 1.18 – Abnormality of a Major Joint(s) in any extremity, 14.02 Systemic Lupus Erythematosus.
17. Appellant is capable of performing the full range of sedentary work (with consideration to exertional limitations of BLE push/pull, postural limitations of never climbing (ladders, scaffolding, etc.) and crawling, occasionally climbing (ramps, stairs, etc.), stooping, crouching, kneeling and limiting environmental hazards (machinery, heights, etc.).
18. DES completed a vocational assessment using the educational and work history

reported on the client supplement and the RFC(s).

19. Appellant's past relevant work was considered in the 'light to medium' range and 'semi-skilled' levels of work activity. Based upon the vocational assessment and the Physical RFC, Appellant's current and past work exceed her current capabilities.

20. Appellant has the ability to perform the full range of sedentary work and is not disabled under GRID ruling 201.19.

21. A disability denial notice issued by DES was mailed to Appellant on October 12, 2023.

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). Disability is established by (a) certification of legal blindness by the Massachusetts Commission for the Blind (MCB); (b) a determination of disability by the SSA; or (c) a determination of disability by the Disability Evaluation Services (DES) (130 CMR 505.002(E)(2)). 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 505.004.⁴

Appellant is a [REDACTED] female who submitted a MassHealth adult disability supplement to DES on August 18, 2023. Appellant listed the following as her health problems: SLE (systemic lupus erythematosus), disorder of rotator cuff, chondromalacia patella/ knee pain, chronic back pain, multiple joint (back, knee, feet) pain. DES requested and obtained medical documentation using the medical releases Appellant provided. Once medical documentation was received at DES, the 5-step review process was undertaken.

Step 1 asks "Is the claimant engaging in substantial gainful activity (SGA)? For Appellant's

⁴ 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."

review, Step 1 was marked, “Yes.” This step was correctly waived.

Step 2 asks “Does the claimant have a medically determinable impairment (MDI) or combination of MDIs 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). DES correctly determined severity and duration requirements based on records from Appellant’s medical providers.

Step 3 asks “Does the claimant have an impairment(s) that meets an adult SSA listing, or is medically equal to a listing, and meets the listing level duration requirement? Step 3 was correctly marked, “No” by the DES reviewer citing the applicable adult SSA listings considered: 1.15 – Disorders of the Skeletal Spine resulting in compromise of a nerve root(s), 1.18 – Abnormality of a Major Joint(s) in any extremity, 14.02 Systemic Lupus Erythematosus. The DES determination that a Listing is not met or equaled is consistent with the medical documentation in the hearing record (Exhibit 4, pp. 90-100⁵, 101-120⁶, 121-164⁷). At Steps 4 & 5, both a Residual Functional Capacity (RFC) assessment along with a vocational assessment determined that Appellant’s current and past work exceed her current capabilities; however, Appellant is capable of performing the full range of sedentary work (consideration to exertional limitations of BLE push/pull, postural limitations of never climbing (ladders, scaffolding, etc.) and crawling, occasionally climbing (ramps, stairs, etc.), stooping, crouching, kneeling and limiting environmental hazards (machinery, heights, etc.).⁸ The DES determination is consistent with the

⁵ Medical records show plantar fasciitis, a nonantalgic gait, fitting and refitting for shoe orthoses, walking comfortably. There is no medical evidence of any required elements of Listing 1.15, or evidence of the need for a walker, cane, bilateral crutches, a wheeled or seated mobility device involving the use of both hands, or inability to use one or both upper extremities required to meet Listing 1.18 (Exhibit 4, pp. 74-76).

⁶ Medical records show physical examination and treatment for sinusitis; knee pain treated with Euflexxa and corticosteroid injections, grade 3 degenerative changes in knees with improvement with steroid injections, significant patellofemoral crepitation with full extension to 140 degrees of flexion. Chronic joint pain or stiffness is evident as found by DES; however, there is no medical evidence of any required elements of Listing 1.15, or evidence of the need for a walker, cane, bilateral crutches, a wheeled or seated mobility device involving the use of both hands, or inability to use one or both upper extremities required to meet Listing 1.18 (Exhibit 4, pp. 74-76).

⁷ Medical records show that no medications for SLE are prescribed and there is no major organ involvement (Exhibit 4, p. 145). Listing 14.02 for SLE requires involvement of two or more organs/body systems (Exhibit 4, p. 78).

⁸ DES also cited GRID ruling 201.19 which for an individual age [REDACTED] capable of the full range of sedentary work with limited or less education (Appellant indicated she did not finish high school Exhibit 4, p. 66) and previous work experience as skilled or semiskilled that are not transferable directs a finding of non-disabled (Exhibit 4., p. 38). 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

medical evidence in the hearing record, and Appellant's testimony that she works from 6:00 a.m. to 2:00 p.m. in a [REDACTED] Therefore, DES/MassHealth correctly determined that Appellant does not meet disability criteria. The appeal is DENIED.⁹

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

Order for MassHealth

None.

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.

⁹ This hearing decision is limited to the disability determination notice issued on November 6, 2023. While Appellant is not eligible for Standard or CommonHealth as a disabled person, eligibility criteria for MassHealth CarePlus for adults 21 through 64 years of age who are not eligible for MassHealth Standard, allows income up to 133% of the federal poverty level, which for a household size of 1 is currently \$19,392 annually (130 CMR 505.008 (A)). Appellant testified to seasonal income totaling \$19,710 annually which exceeds this mark; however, Appellant should verify her income to MassHealth to allow an accurate determination to be made.

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.

Thomas J. Goode
Hearing Officer
Board of Hearings

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

Appeal Assistant: Brad Goodier, Disability Evaluation Services