Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Denied	**Appeal Number:**	2403994
Decision Date:	6/26/2024	**Hearing Date:**	June 4, 2024
Hearing Officer:	Amy B. Kullar, Esq.		

Appearance for Appellant:
Pro se

Appearances for MassHealth:
Sherrianne Paiva, Taunton MassHealth Enrollment Center
Eileen Cynamon, Disability Evaluation Services

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:	6/26/2024	**Hearing Date:**	June 4, 2024
MassHealth's Reps.:	Sherrianne Paiva, Taunton MassHealth Enrollment Center; Eileen Cynamon – DES	**Appellant's Rep.:**	Pro se
Hearing Location:	Virtual	**Aid Pending:**	Yes

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 March 4, 2024, 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). Through a notice dated March 5, 2024, MassHealth notified the appellant that the Appellant's MassHealth benefits were changing from MassHealth Standard to MassHealth CarePlus because the Appellant no longer meets the disability requirement to receive MassHealth Standard (Exhibit 2). The Appellant filed this appeal in a timely manner on March 14, 2024 (see 130 CMR 610.015(B) and Exhibit 3). 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, and that she no longer meets the requirement for MassHealth Standard.

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. and therefore ineligible for MassHealth Standard?

Summary of Evidence

The MassHealth representative appeared virtually and testified as follows: on February 26, 2024, 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 denial notice to the Appellant on March 4, 2024. The MassHealth representative testified that due to the Appellant being not disabled, MassHealth also issued a notice downgrading the Appellant from MassHealth Standard to MassHealth CarePlus. The MassHealth representative testified that the Appellant reported an income of $0.00, and that CarePlus is the correct MassHealth benefit for the Appellant to receive with an income of zero as a non-disabled adult between the ages of 18-64. The MassHealth representative testified that the Appellant was currently receiving MassHealth Standard because Aid Pending is applied to her appeal, and if she is not disabled, she will only have to choose a new plan through MassHealth at no cost to the Appellant to continue receiving her medical care and treatments.

A representative from MassHealth's Disability Evaluation Services ("DES")[1] at the University of Massachusetts Medical School appeared virtually and testified as follows: 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. 8-11. 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

[1] The Disability Evaluation Services are identified in the regulations as the Disability Determination Unit ("DDU").

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. 25-26.

The DES representative testified that, the Appellant, a [redacted]year-old woman, submitted a MassHealth adult disability supplement to DES on November 13, 2023. The Appellant listed the following as her health problems: "heart stent, anxiety, low back pain with sciatica, short of breath with walking long, memory problems, vision complaints, hand cramps, depression." Exhibit 5 at p. 50-55. 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 work, and drive a car. Exhibit 5 at 52.

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. Accordingly, the Appellant's review at Step 1 was marked "Yes." Exhibit 5 at p. 62. 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 the reviewer to continue to Step 3. Exhibit

5 at 62.

The DES representative testified that the Appellant's review at Step 3 was marked "No." Exhibit 5 at 62. 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 the Skeletal Spine Resulting in Compromise of a Nerve Root(s), 1.18 – Abnormality of a Major Joint(s) in any extremity, 2.02 - Loss of Central Visual Acuity, 4.04 – Ischemic Heart Disease, 12.04 - Depressive, Bipolar and Related Disorders, 12.06 - Anxiety and Obsessive-Compulsive Disorders (pages 62-78). The reviewer stated that the Appellant did not meet any of the listings. 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 February 15, 2024, [redacted] performed a mental residual functional capacity assessment and found that the Appellant does not have any moderate or marked mental limitations that interfere with the claimant's ability to perform work in the competitive labor market. Limitations of slight or none across the functional domains do not significantly impact an individual's ability to perform work in the competitive labor market. Exhibit 5 at p. 84-86. On February 26, 2024, [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. [redacted] found that the Appellant is capable of performing sedentary work with consideration to exertional limitations in push/ pull, postural limitations to never climb ladders/scaffolding and environmental limitations for noise and hazards. Exhibit 5 at p. 79-80. This assessment found that the Appellant had residual functional capacity.

The DES representative testified that the reviewer selected, "Yes," at Step 4, and indicated that because the Appellant's past relevant work falls within the 'light' range and 'semi-skilled to skilled' levels of work activities and is consistent with similar jobs referenced in the Dictionary of Occupational Titles (DOT), it was determined the appellant could perform her current/past work as an Office Worker as per the Physical and Mental RFC guidance (pages 87-89) and is 'Not Disabled' using decision Code 230. 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 virtually and verified her identity. The Appellant testified that she has been disabled for a couple of years and that MassHealth "reached to me to become disabled." Testimony. The Appellant further testified that the depression and anxiety that she suffers from is ongoing and "doesn't go away." Testimony. The Appellant testified that she has been suffering from arthritis in her hands and wrists for "a while" but that she was still waiting for an appointment with a doctor to be treated for the arthritis, and that she was only recently made aware of the severity of her arthritis when she recently went to an Urgent Care doctor for treatment for a shoulder ailment, the doctor diagnosed her with the arthritis in her hands and wrists has caused her to make numerous trips to urgent care for treatment. Testimony. The Appellant testified that since her heart attack in 2015, she is followed by her cardiologist through regular appointments, stress tests, and EKG tests. Testimony. The Appellant testified that she is currently not working full-time doing office work because her medical issues make it difficult for her to continue working, and that she does not currently have any income coming in. Testimony.

Findings of Fact

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

1. Through a notice dated March 4, 2024, MassHealth found the appellant did not satisfy the necessary requirements to qualify as disabled (Exh. 1)

2. Through a notice dated March 5, 2024, MassHealth informed the Appellant that her MassHealth Standard was being downgraded to MassHealth CarePlus (Exh. 2)

3. The appellant filed this appeal of both notices in a timely manner on March 14, 2024 (Exh. 3).

4. The appellant suffered a heart attack in 2015 and suffers from anxiety and depression, back pain, and pain in her wrists and arms.

5. The Appellant is an adult between the ages of 18-64 living in a household of one and reporting an income of $0.00.

6. DES found that the appellant's medical conditions qualified as a medically determinable impairment that was severe and had lasted or was expected to last for a continuous period of not less than 12 months.

7. DES determined that the appellant's condition did not meet any of the categories set forth in the Social Security Administration's listings for 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, 2.02 - Loss of Central Visual Acuity, 4.04 – Ischemic Heart Disease, 12.04 - Depressive, Bipolar and Related Disorders, 12.06 - Anxiety and Obsessive-Compulsive Disorders.

8. A RFC examination revealed that the appellant should avoid activities involving heights (e.g. ladders, scaffolding) and operating machinery but does not have any limitations with respect to RFC categories involving exertion, manipulation, vision, or communication.

9. The appellant is capable of being consistently employed despite her medical impairment, and the appellant is capable of performing a variety of sedentary jobs.

Analysis and Conclusions of Law

In order to be found disabled for MassHealth Standard benefits, an individual adult must be "*permanently and totally disabled*." See 130 CMR 501.001. The guidelines used in establishing disability under the MassHealth program are very similar to those used by the Social Security Administration. See id. Individuals who meet the SSA's definition of disability may establish eligibility for MassHealth Standard according to 130 CMR 505.002(E) or CommonHealth according to 130 CMR 505.004. 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 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."

The federal Social Security Act establishes the eligibility standards and the 5-step sequential evaluation process used by MassHealth in determining initial eligibility, as well as the related 8-step evaluation tool used to conduct the Continuing Disability Review reevaluations, periodically required by federal law, for those who have already previously been found disabled at some point under the 5-step test. See 20 CFR 416.994. If a determination of disability can be made at any step of either process, the specific evaluation process stops at that point.

The 5-Step Method for Initial Disability Evaluation

The 5-step method is the sequential evaluation process established by the Social Security Act and described in 20 CFR 494.1520 for the purpose of determining initial eligibility for Medicaid benefits such as MassHealth:

At Step 1, it is determined as to whether the disability applicant is currently engaged in substantial gainful activity? If an applicant is engaged in such work with such income, the applicant may be found to be not disabled. Otherwise, the process continues on to Step 2. This step is waived in an applicant's favor during a MassHealth disability review and MassHealth thus essentially begins its review at Step 2.

At Step 2, a decision is made as to whether applicant's impairment is severe and expected to last for at least 12 months. If so, the applicant's disability application continues and proceeds to Step 3. If not, the review ends and the applicant is found "not disabled."

At Step 3, it is asked whether the impairment(s) meet or equal a criteria listing utilized by the SSA. If the impairment(s) meet a listing, the review ends and the applicant is found disabled. If no listings are met, the review proceeds to Step 4.

At Step 4, a determination is made as to the applicant's residual functional capacity ("RFC"), and whether the applicant can perform some prior work based on his or her capacity. If the applicant can perform his or her prior work, the review ends and Appellant is found to be "not disabled." Otherwise, the review proceeds to the final step at Step 5.

At the final step at Step 5, it is asked whether the applicant is able to perform any other work that is available in sufficient quantities in the national economy. If so, the applicant is found to be "not disabled." If the applicant is not found able to do other work, the applicant will be determined to be a "disabled" adult.

In the present case, DES correctly determined that the appellant did not qualify as disabled. There is no dispute as to whether the appellant's condition is severe and expected to last 12 months or more to meet Step 2. DES determined, however, that the extent of her condition, as indicated in the appellant's medical record and supporting documentation, did not qualify to meet the listing for Disorders of the Skeletal Spine Resulting in Compromise of a Nerve Root; Abnormality of a Major Joint(s) in any extremity; Loss of Central Visual Acuity; Ischemic Heart Disease; Depressive, Bipolar and Related Disorders, 12.06 - Anxiety and Obsessive-Compulsive Disorders pursuant to Step 3. The medical records that the Appellant's own treating physicians noted ongoing treatment for several of the medical challenges that the appellant has experienced, but there is nothing in the medical record to support that the appellant's condition meets or equals a listing utilized by the SSA.

Because no listings were met, DES proceeded to Step 4. At Step 4, DES correctly found that the appellant could perform past work. At the time of the application, the appellant reported being recently engaged in full-time work in a clerical office position. Additionally, an RFC examination indicated that the appellant's only limitations in the postural and environmental categories were to avoid activities involving heights and operating machinery. She was observed to have no limitations with respect to exertion, manipulation, vision, or communication. In light of the RFC results, as well as her employment in office work, DES correctly found that she was able to

perform prior work. Accordingly, the review stopped at Step 4 and DES found that the appellant was "not disabled."

The Appellant also appealed MassHealth's notice dated March 5, 2024, downgrading her MassHealth benefits from MassHealth Standard to CarePlus. MassHealth regulations at 130 CMR 505.000 *et seq*. explain the categorical requirements and financial standards that must be met to qualify for a particular MassHealth coverage type. The rules of financial responsibility and calculation of financial eligibility are detailed in 130 CMR 506.000: *Health Care Reform: MassHealth: Financial Requirements*. The MassHealth coverage types are:

> (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);
> (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;
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> (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.

130 CMR 505.001(A).

To establish eligibility for MassHealth benefits, applicants must meet both the categorical and financial requirements. Here, the Appellant reported an income of zero; therefore she is financially eligible for MassHealth benefits. She is not eligible for MassHealth Standard because she is not disabled or medically frail. She is an adult between the age of 21-64 years old, she is a US Citizen, her MassHealth MAGI household is less than or equal to 133% of the federal poverty level and she is not eligible for MassHealth Standard because she is not the caretaker of a minor child, is not

permanently and totally disabled, and has none of the listed health conditions. Thus, as she does not belong to a category to qualify for MassHealth Standard, she meets the categorical requirements for MassHealth CarePlus. MassHealth did not err in issuing the notice dated March 5, 2024, informing the Appellant that her MassHealth Standard benefit was being downgraded to MassHealth CarePlus.

Although the Appellant raised legitimate concerns about her conditions, including her ability to perform certain tasks or jobs, her testimony, alone, is insufficient to warrant reversal of DES's decision. Furthermore, the testimony supported the fact that the appellant could safely engage in some forms of employment. In consideration of the record as a whole, including the testimony, medical records, and supporting documentation, I find that the appellant has not established that she is permanently disabled from performing all employment. Therefore, this appeal is DENIED.

Order for MassHealth

Remove Aid Pending.

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.

Amy B. Kullar, Esq.
Hearing Officer
Board of Hearings

MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780, 508-828-4616