

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2406031
Decision Date:	8/12/2024	Hearing Date:	06/18/2024
Hearing Officer:	Kimberly Scanlon		

Appearance for Appellant:



Appearance for MassHealth:

Via telephone

Eileen Cynamon, R.N.-DES

Nicole Kallio-DES (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

Appeal Decision:	Denied	Issue:	Disability
Decision Date:	8/12/2024	Hearing Date:	06/18/2024
MassHealth's Rep.:	Eileen Cynamon, R.N.	Appellant's Rep.:	Mother
Hearing Location:	Taunton MassHealth Enrollment Center Room 2 (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 March 4, 2024, MassHealth notified appellant that he does not meet the MassHealth disability requirements (Exhibit 1). The appellant filed this appeal in a timely manner on April 9, 2024 (130 CMR 610.015(B); Exhibit 2). Denial of assistance is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth notified appellant that he does not meet the MassHealth disability requirements.

Issue

The appeal issue is whether MassHealth was correct in determining that the appellant is not totally and permanently disabled.

Summary of Evidence

The appellant's mother appeared at the hearing telephonically. MassHealth was represented telephonically by a registered nurse and appeals reviewer from Disability Evaluation Services (DES) who testified as follows: DES's role is to determine for MassHealth if an applicant meets the Social Security Administration (SSA) level of disability from a clinical standpoint. To determine such, a 5-step sequential evaluation process is used, as described within the SSA regulations at Title XX of the Code of Federal Regulations, or CFR, Chapter III, § 416 (See, Exhibit 5, pp. 9-11). This 5-step process is driven by the applicant's medical records and disability supplement submissions. Per SSA CFR § 416.905, the law defines 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 process of not less than 12 months. To meet this definition, you must have a severe impairment(s) that renders you unable to do your past relevant work or any other substantial gainful work that exists in the national economy (See, Exhibit 5, p. 8). 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 you from doing substantial gainful activity, it is this RFC that is used to determine whether a person can still perform his or her past work, or, in conjunction with the person's age, education, and work experience, any other work (See, Exhibit 5, pp. 19-20).

The appellant is a male in his early [REDACTED] who was previously determined disabled for MassHealth Child Disability in [REDACTED] on listing 112.06, which is the child listing for anxiety, and other concerns, such as obsessive-compulsive disorder (OCD). Further, the appellant was approved in [REDACTED] on listing 112.11, for attention deficit hyperactivity disorder (ADHD) and other developmental disorders. More recently, the appellant was approved for MassHealth Adult Disability in [REDACTED] in response to the Public Health Emergency (PHE) and consistent with the federal continuous coverage requirements and MassHealth coverage protections in effect at that time. At that time, no member could be denied or disenrolled during the PHE. On April 1, 2023, when the PHE protections were lifted, MassHealth returned to standard annual eligibility processes and all current MassHealth members were required to renew their health coverage to ensure they still qualify for their current benefits. The appellant submitted a MassHealth Disability Supplement to DES on [REDACTED] listing the following health problems: ADHD, depression, OCD, and anxiety (Exhibit 5, p. 39). Additionally, the appellant listed a history of dyslexia (Exhibit 5, p. 40).

DES requested and obtained medical documentation using the medical releases that the appellant provided (Exhibit 5, pp. 28-31). The DES representative explained that records were not requested from Child and Family Psychology because the appellant indicated that he has not seen this provider in the past year (Exhibit 5, p. 39). Once DES receives the medical documentation, the 5-step review process begins, as follows:

Step 1: Is the applicant engaged in substantial gainful activity (SGA)?

For the appellant's review, Step 1 was marked "No" (Exhibit 5, p. 46). The DES representative explained that Step 1 is waived by MassHealth regardless of whether the applicant is engaging in SGA. However, on the federal level, if an applicant is engaging in SGA, it stops the disability review in its entirety. Here, Step 1 is waived for MassHealth purposes and the review proceeds to Step 2.

Step 2: Does the claimant have a medically determinable impairment (MDI) or a combination of MDIs that is both severe and meets the duration requirement?

The DES representative testified that the duration requirement means the impairment is expected to result in death, or which has lasted or is expected to last for a continuous process of not less than 12 months at that severity (See, Exhibit 5, pp. 18, 46). Here, DES requested records from [REDACTED] a pediatric specialist who performed a neuropsychological exam on the appellant and [REDACTED] who was listed as the appellant's counselor (Exhibit 5, pp. 65-73). DES received duplicate records from [REDACTED] resulting in the DES reviewer contacting their office. [REDACTED] office verified [REDACTED] submitted the appellant's duplicate records to DES, however, is no longer employed there. Additionally, DES confirmed that [REDACTED] office does not have any records for the appellant and [REDACTED] within the past year (Exhibit 5, p. 35). Thus, [REDACTED] provided the only clinical information available for review. [REDACTED] documentation indicated the following information:

On December 18, 2023, the appellant was seen by [REDACTED] at an office visit for an assessment of ADHD-combined type and anxiety (Exhibit 5, pp. 67-68). The appellant reported that he is doing well in college and feels that his Adderall dose is adequate, however he has been out of that medication for some time due to the current shortage on the generic brand (Exhibit 5, p. 67). His adult Vanderbilt scores are 0 and 0. The appellant's GAD-7 score was 4 and he is on 50 mg of Zoloft. *Id.* Upon examination, the appellant presents with a normal appearance and normal weight. *Id.* The appellant was alert and oriented. *Id.* The appellant's diagnoses include decreased concentration, nervousness, anxious, and hyperactivity (Exhibit 5, p. 68). His Adderall prescription addresses the decreased concentration and hyperactivity diagnoses (Exhibit 5, p. 71). His Zoloft prescription addresses the nervousness and anxiousness (Exhibit 5, p. 74). [REDACTED] noted "Congrats on the RA position" as the appellant reported that he is a Resident's Assistant (RA) at college as an undergraduate (Exhibit 5, pp. 67, 68). The appellant's prescriptions of Adderall and Zoloft were renewed. His diagnoses include ADHD-combined type and anxiety. *Id.*

On June 15, 2023, the appellant was seen by [REDACTED] at an office visit (Exhibit 5, pp. 69-71). The appellant reported that he was doing well in college and made the dean's list. He reported that his Adderall dosage was adequate, but he has been out of medication for a while because of the shortage of generics (Exhibit 5, p. 70). He reported that he was fickle about taking his Zoloft because he has seen fellow students on higher doses who are "all messed up." *Id.* He prefers to keep at the low end of dosing. *Id.* His ADD self-scores were 0/6 and 0/12. His GAD-7 and PHQ-9

scores are 1 each. All other systems are negative. *Id.* The appellant's mood and affect were normal, behavior was normal and thought content was normal. *Id.*

On January 5, 2023, the appellant was seen by [REDACTED] for an office visit (Exhibit 5, pp. 72-76). The appellant reported that he was a sophomore in college, majoring in communications (Exhibit 5, p. 74). The appellant reported that he has a steady girlfriend and while he does not exercise, the appellant watches what he eats. *Id.* [REDACTED] noted that the appellant "just made the dean's list-congrats." *Id.* Additionally, [REDACTED] assessed that the appellant is a normal young adult with ADHD and anxiety (Exhibit 5, p. 75).

DES received [REDACTED] information, as described above, and determined that the documentation submitted was sufficient to evaluate the appellant's complaints and met the severity and duration requirements. Therefore, DES determined that the appellant meets Step 2, and the review process proceeded to Step 3 (Exhibit 5, p. 46).

Step 3: Does the claimant have an impairment(s) that meet an adult SSA listing or is medically equal to a listing and meets the listing level duration requirement?

At Step 3, the DES reviewer marked "no" citing the applicable adult SSA listings that were considered. *Id.* They are, 12.04 - depressive, bipolar-related disorders, 12.06 - anxiety and OCD disorders, and 12.11 - neurodevelopmental disorders. *Id.* The DES reviewer used listing 12.11 to evaluate the appellant's ADHD and dyslexia. All listings were submitted for review (Exhibit 5, pp. 48-55). For the rest of the reviews, Steps 4 and 5, both the residual functional capacity, RFC assessment, along with the vocational assessment are determined. The RFC is the most an applicant can still do, despite their limitations. The applicant's RFC is based on all relevant evidence in the case record and there are several federal regulations that address how DES determines RFC (Exhibit 5, p. 19). A physical RFC was not required, as the appellant did not list any mental or physical complaints. (Exhibit 5, pp. 19-22). A mental RFC was completed by [REDACTED] on March 3, 2024 (Exhibit 5, p. 56-57). [REDACTED] determined that the appellant does not meet the adult SSA listings for: depressive, bipolar-related disorders (12.04), anxiety and OCD disorders (12.06), nor neurodevelopmental disorders for the reasoning set forth as follows:

The appellant submitted a MassHealth Disability Supplement on February 1, 2024. He reported mental health concerns of: ADHD-with trouble organizing and paying attention, depression-with never feeling happy, OCD, and anxiety-with problems of blowing up over small issues and cries daily and shuts down. The documentation submitted from the appellant's supplement and the documentation submitted by his physician, [REDACTED] were reviewed and considered by DES.

With respect to the appellant's supplement, he reported that his mental health concerns were ADHD- trouble remembering work and being scatter-brained, anxiousness/nervousness- severely anxious which is enhanced when he worries. The appellant's reported limitations for dyslexia were that he does not like to read, and it hurts him when he has to do his homework. Additionally, the

appellant reported that on occasion, he does not attend class due to depression and anxiety. He has trouble playing sports because he cannot concentrate. He does not get to class on time because of his anxiety. The appellant reported that he graduated from high school in [REDACTED] and he received special education services. Currently, he is attending college and studying marketing. The appellant reported that he is not currently employed, and his last date of work was in [REDACTED]. He reported that his mental health conditions have caused problems at work and was noted by this comment "not hearing or paying attention to job duties caused getting yelled at work." The appellant reported that he had a summer job as a pizza maker from [REDACTED] through [REDACTED]. He was a delivery driver delivering pizzas which he reported was not good for him and his anxiety. The appellant worked at [REDACTED] as a greeter and seating people and worked 20 hours weekly, but his anxiety and his boss determined that his ADHD was too high. The appellant provided the comment "I can work but I have terrible anxiety and need help paying for medications. I have ADHD and OCD issues" (Exhibit 5, p. 57).

[REDACTED] documentation was also reviewed. [REDACTED] noted that the documentation provided by [REDACTED] indicates that the appellant was seen for an office visit on [REDACTED]. He reports being a resident assistant (RA) at college, as an undergraduate. He also reported that his Adderall dosage is fine. His adult Vanderbilt scores are 0 and 0. His GAD-7 score was 4 and he is on 50 mg of Zoloft. An objective examination showed that the appellant has a normal appearance and normal weight. He is alert and oriented. Psychiatrically, his mood and affect were normal, and his behavior was normal and thought content was normal. The appellant was assessed for ADHD, combined type, and anxiety. He is doing well. [REDACTED] noted "Congrats on the RA position!" *Id.* The appellant's prescriptions of Adderall and Zoloft were renewed. His diagnoses include ADHD-combined type and anxiety. *Id.*

Additionally, [REDACTED] documentation indicates the appellant was seen for an office visit on [REDACTED]. The appellant reported that he was doing well in college and made the dean's list. He reported that his Adderall dosage was adequate, but he has been out of medication for a while because of the shortage of generics. He reported that he was fickle about taking his Zoloft because he has seen fellow students on higher doses who are "all messed up." *Id.* He prefers to keep at the low end of dosing. His ADD self-scores were 0/6 and 0/12. His GAD-7 and PHQ-9 scores are 1 each. All other systems are negative. The appellant's mood and affect were normal, behavior was normal and thought content was normal.

[REDACTED] documentation further indicates that on [REDACTED] the appellant was seen for an office visit. At that time, the appellant reported that he is a college sophomore, majoring in communications. He reported that he has a steady girlfriend and while he does not currently exercise, the appellant does watch what he eats. [REDACTED] wrote "just made the dean's list-congrats!" *Id.*

Upon reviewing the documentation described above, [REDACTED] determined that based on her review of [REDACTED] documentation, as the only Acceptable Medical Source (AMS) of the review,

there is no clinical support or evidence for impaired functioning. The appellant's screening tests for anxiety, depression, and ADHD were all within normal limits, [REDACTED] observations and examination were normal and his documented history of being on the Dean's List and having the responsibility of being a Resident Assistant (RA) at college would not support significantly impaired function. However, [REDACTED] did consider and give some moderate limitations within the function domain of sustained concentration and persistence, based on the appellant's well-established history of to the ADHD and anxiety. *Id.* The DES reviewer determined that the appellant does not have an impairment that meets a listing or is medically equal to a listing and meets the listing level duration requirement and he continued to Step 4.

Step 4: Does the claimant retain the capacity to perform any Past Relevant Work (PRW)?

The DES representative explained that the DES reviewer listed "no" for this question (Exhibit 5, p. 47). The appellant did not report any past SGA. He listed past work of summer and/or part-time employment in his supplement (Exhibit 5, pp. 41-42, 45). The DES reviewer determined that the appellant meets Step 4, and the review process proceeded to Step 5.

Step 5: Does the claimant have the ability to make an adjustment to any other work, considering the claimant's RFC, age, education, and work experience?

The DES reviewer listed "yes" citing 3 unskilled jobs available in both the national and regional economy (See, CFR 416.966; 416.968. See also, Exhibit 5, pp. 23-26). Also included were referencing the occupational employment quarterly (OEQ) descriptions of those 3 quoted jobs (Exhibit 5, pp. 58-60). The DES reviewer determined that the appellant is not disabled, using decision code 231 (Exhibit 5, pp. 47, 61). The 5-step evaluation process concluded with a final review endorsement of the disability decision by physician advisor, [REDACTED] on [REDACTED] [REDACTED] (Exhibit 5, pp. 44, 61).

The DES testified that, in summary, the appellant does not meet the high threshold of adult SSA disability listings. Additionally, the appellant's RFC shows he can perform basic unskilled work activity in the competitive labor market. Finally, there are within the national and regional economy, a significant number of jobs in one or more occupations, having requirements which the appellant can meet, based on his physical or mental abilities and his vocational qualifications. DES found the appellant is not disabled and a denial notice was mailed to him on March 4, 2024 (Testimony; Exhibit 1).

The appellant's mother testified that the DES doctor, [REDACTED], never examined nor met with her son and inquired how she came up with all this information. The DES representative explained that the DES doctor reviewed the appellant's paperwork received from his provider and used her clinical judgment, knowledge and expertise to interpret that data, per the regulations as an independent review by the professional. The appellant's mother stated that her son has a twin brother who is on the autistic scale. She explained that she does not know if the appellant shows

signs of that because he has not been tested in the last year. However, the appellant has severe nervousness, OCD, anxiety and depression. His mother explained that she is not looking to have him unemployed. The appellant is in college and hopes to have regular employment. However, the appellant's medical issues are going to last longer than 12 months, given his family history. His mother stated that what the appellant would like to have, if he is not deemed disabled, assistance with co-pays for his medication. She stated that the appellant has health insurance through his father while he is in school, however, he needs assistance with his medication co-pays and has not been refilling them because he does not have any income. The appellant's mother asked if it was possible for her son to retain the coverage he previously had where the appellant's prescription costs were partially covered.

The DES representative explained that, while the appellant may be eligible for other MassHealth programs, her role in DES can only address disability determinations because they review the medical portions only whereas MassHealth programs factor in financials, etc. She stated that the appellant's mother could opt to contact a MassHealth Enrollment Center. The appellant's mother stated that her son received MassHealth supplemental insurance that paid for his prescription costs and co-payments when he was younger. She explained that her son is a [REDACTED] so he was receiving therapy and counseling as well.

The DES representative testified that, if the appellant's mother is referring to the Child MassHealth Disability which the appellant was approved for as a child, there is a much lower threshold to meet. As an adult, there is a higher threshold to be met to be deemed disabled.

Findings of Fact

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

1. The appellant is a male in his early [REDACTED] with diagnoses including ADHD, depression, OCD, and anxiety. Additionally, the appellant listed a history of dyslexia.
2. The appellant had been found disabled in the past when he was a child [REDACTED]
3. In June 2022, the appellant was approved for MassHealth Adult Disability in response to the Public Health Emergency (PHE) and consistent with the federal continuous coverage requirements and MassHealth coverage protections in effect at that time.
4. On April 1, 2023, when the PHE protections were lifted, MassHealth returned to standard annual eligibility processes and all current MassHealth members were required to renew their health coverage to ensure they still qualify for their current benefits.

5. On February 7, 2024, the appellant submitted MassHealth Disability Supplement to DES listing the following health problems: ADHD, depression, OCD, and anxiety and a history of dyslexia.
6. DES requested and received the appellant's medical records, from [REDACTED]
[REDACTED]
7. The appellant is a college student and has previously engaged in part time and seasonal employment.
8. DES evaluated whether the appellant has a disability using a 5-step sequential evaluation process as described within the SSA regulations at Title XX of the Code of Federal Regulations, or CFR, Chapter III, § 416.
9. At Step 1, which explores whether the applicant engaged in SGA, DES explained that this step is waived for MassHealth purposes.
10. At Step 2, DES determined that the appellant has a severe impairment.
11. At Step 3, DES determined that the appellant does not meet listings 12.04 - depressive, bipolar-related disorders, 12.06 - anxiety and OCD disorders, and 12.11 - developmental disorders because it found that there is no clinical evidence submitted to support a finding that the appellant has a severe impairment.
12. The appellant's physician noted that the appellant is doing well in college, he is a resident's assistant, made the Dean's List and has a steady girlfriend. Additionally, his physician noted that the appellant is alert and oriented, he is of normal weight and appearance, and his behavior and thought content is normal.
13. At Step 4, DES determined that the appellant has no past relevant work.
14. At Step 5, DES determined that, based on his RFC, the appellant can perform basic unskilled work activity in the competitive labor market.

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 that are used by the Social Security Administration. *Id.*

Individuals who meet the Social Security Administration's definition of disability may establish eligibility for MassHealth Standard, in accordance with 130 CMR 505.002(E). Pursuant to Title XX, § 416.905, the Social Security Administration defines 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 process of not less than 12 months.

Title XX of the Social Security Act establishes standards and the five-step sequential evaluation process. If a determination of disability can be made at any step, the evaluation process stops at that point. Step 1 considers whether an applicant is engaged in substantial gainful activity. This step is waived in MassHealth cases. Thus, the review proceeds to Step 2.

Step 2 determines whether a claimant has a medically determinable impairment (MDI) or a combination of MDIs that is both severe and meets the duration requirement. To be determined severe, a medically determinable impairment means that said impairment is expected to result in death, or which has lasted or is expected to last for a continuous process of not less than 12 months at that severity.

In the present case, the appellant was reviewed for disability due to a history of dyslexia, ADHD, depression, OCD, and anxiety. DES determined that the appellant's impairments have lasted or expected to last 12 months. I find this determination is accurate. 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 claimant has an impairment(s) that meets an adult SSA listing or is medically equal to a listing and meets the listing level duration requirement. The pertinent adult listings are set forth in the federal *Listing of Impairments* that can be found at 20 CFR Ch. III, Pt. 404, Subpart P, App. 1. DES reviewed the appellant's case, in light of his diagnoses of ADHD and dyslexia, and determined that his impairments do not meet an adult SSA listing and the listing level duration requirement. I find this determination is accurate. Accordingly, the review process proceeds to Step 4.

Step 4 requires the reviewer to determine whether the claimant retains the capacity to perform any past relevant work. Here, DES determined that the appellant did not report any past SGA. He listed past work of summer employment and part-time employment in his supplement. DES determined that the appellant meets Step 4. I find this determination is accurate. Accordingly, the

appellant does not retain the capacity to perform any past relevant work, and the review process proceeds to Step 5.

Step 5 determines whether the claimant has the ability to make an adjustment to any other work, considering his or her RFC, age, education, and work experience. DES determined that the appellant's RFC shows he can perform basic unskilled work activity in the competitive labor market within the national and regional economy. There are a significant number of jobs in one or more occupations that have requirements which the appellant can meet, based on his physical or mental abilities and his vocational qualifications. I agree with this determination. The record indicates that the appellant has previously engaged in part-time and seasonal employment. The appellant's mother testified that the appellant attends college and hopes to find employment opportunities upon graduation. I note his mother's testimony that the appellant suffers from impairments that are expected to last longer than 12 months. However, his impairments which met the listings as a child, are not deemed severe enough to meet as an adult. The appellant reported that he was doing well in college, which is supported by the fact that he was an RA and had made the Dean's List. Based on this information, I find that DES was correct in its determination here.

Additionally, DES determined that the appellant has the ability to perform basic unskilled activity in the competitive labor market, which is evidenced by the fact that he has done so previously. While I find the appellant's mother testified credibly, her testimony is insufficient to meet the appellant's burden here. Therefore, I find that DES was correct in determining that the appellant is not disabled. This appeal is denied.¹

Order for MassHealth

None.

¹ This denial does not preclude the appellant from contacting the MassHealth Enrollment Center, Customer Service at 1-800-841-2900 to ascertain whether he qualifies for any other assistance.

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.

Kimberly Scanlon
Hearing Officer
Board of Hearings

cc:

[REDACTED]

MassHealth Representative: UMASS/DES, UMMS/ Disability Evaluation Services, 333 South Street, Shrewsbury, MA 01545, 774-455-8200