

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2409058
Decision Date:	8/28/2024	Hearing Date:	07/16/2024
Hearing Officer:	Kimberly Scanlon		

Appearance for Appellant:
Via telephone
Pro se

Appearance for MassHealth:
Via telephone
Kimberly Daughtry – Springfield MEC;
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:	8/28/2024	Hearing Date:	07/16/2024
MassHealth's Reps.:	Kimberly Daughtry; Eileen Cynamon, R.N, Nicole Kallio (observing)	Appellant's Rep.:	Pro se
Hearing Location:	Springfield MassHealth Enrollment Center Room 1 (Remote)	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 May 28, 2024, MassHealth notified the appellant that he does not meet the MassHealth disability requirements. (Exhibit 1, p. 6). Through a separate notice dated June 6, 2024, MassHealth notified the appellant that he was approved for MassHealth CarePlus benefits (Exhibit 1, pp. 1-5). The appellant filed this appeal in a timely manner on June 6, 2024 (130 CMR 610.015(B); Exhibit 2). Denial of assistance is valid grounds for appeal (130 CMR 610.032). The notices were consolidated, and a fair hearing was scheduled on July 16, 2024 (Exhibit 4).

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

MassHealth was represented at the initial hearing by an eligibility representative and a registered nurse and appeals reviewer from Disability Evaluation Services (DES); both parties participated by telephone. The MassHealth eligibility representative testified as follows: On February 3, 2023, MassHealth received an approval notice from DES, stating that the appellant was deemed disabled until August 1, 2023. The appellant was eligible for MassHealth Standard benefits during that time period. On May 28, 2024, MassHealth received a denial notice from DES, stating that the appellant was not deemed disabled (Exhibit 1, p. 6). MassHealth subsequently notified the appellant that he was approved for CarePlus benefits (Exhibit 1, pp. 1-5).

The appellant appeared at the hearing telephonically. He stated that he understands that his benefits changed from MassHealth Standard to CarePlus, based on the DES determination. The appellant stated that while he does not understand the difference in benefits, his appeal surrounds the DES denial determination, which he disputes. The appellant testified that he does not have any income because he is unable to work due to illness because of a [REDACTED]. He stated that he has been unable to work for the past few years and is currently waiting to see if he was approved for social security disability, which he applied for in June 2022. Recently, the appellant received notification that SSI scheduled him for a physical examination next month.

The DES representative 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, § 416.920 (See, Exhibit 5, pp. 9-11). DES applies this 5-step process using the applicant's medical records and disability supplement submissions. Per SSA CFR § 416.905, 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 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 regional 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. 13-14).

The appellant is an adult male who was administratively approved for MassHealth Adult Disability in February of 2023, under listing 2.07 in response to the Public Health Emergency (PHE) and consistent with the federal continuous coverage requirements and MassHealth coverage protections which were 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 renewal processes and all current MassHealth members were required to renew their health coverage to ensure they still qualify for their current benefits (See, Exhibit 5, p. 19). The appellant submitted a MassHealth Disability Supplement to DES on March 12, 2024, listing the following health problems: a [REDACTED] (diagnosed in [REDACTED] 2022), with associated complaints of vertigo, tinnitus, migraines, and tiredness (Exhibit 5, p. 27). DES requested and obtained medical documentation using the medical releases that the appellant provided from his reported treating provider (Exhibit 5, pp. 21-22). 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, pp. 29, 34). 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 that 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). Here, DES received records from [REDACTED] of [REDACTED] dated [REDACTED] 2023 (Exhibit 5, pp. 51-56). Said records indicate the following information: On [REDACTED] 2024, the appellant returned for a follow-up for his problems with left intracranial vestibular schwannoma, intermittent tinnitus, and intermittent problems with imbalance and dizziness. He returned for a tumor monitoring with an MRI scan. The appellant reports a mild improvement in his tinnitus and his problems with imbalance. He has a history of migraine and his description of dizziness strongly suggests vestibular migraine. He had vestibular testing on [REDACTED] 2022 that demonstrates normal vestibular function (Exhibit 5, p. 51). The appellant reported that he is following trigger management for migraine. He also began using CBD and feels this helps with his migraine symptoms, tinnitus, and imbalance. He has noticed no dramatic decline in hearing. He is taking aspirin and other holistic anti-inflammatory medications to hopefully shrink his tumor. *Id.*

The appellant's relevant past otologic history, as reported by [REDACTED] states that the appellant's left vestibular schwannoma was first identified on an MRI scan in June 2022 as part of his workup for imbalance and dizziness for which he was undergoing vestibular PT. The scan was obtained by [REDACTED] who recommended initial management with tumor monitoring. The appellant was also seen by [REDACTED] regarding tumor management. He was offered tumor removal through middle fossa craniotomy approach with an attempt preservation of hearing. He decided against surgery. *Id.* A physical examination performed on the appellant on April 12, 2023 revealed that he is well-appearing and in no acute distress. Both canals and drums appear normal under the otologic microscope. *Id.*

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. 34).

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.* Here, the pertinent listing is: 13.13 – nervous system (Exhibit 5, pp. 34, 39-40). During the appeal review, additional reference listings related to the appellant's reported symptoms were also considered. They are: 2.07-disturbance of labyrinthine-vestibular function, and [REDACTED] (Exhibit 5, pp. 36-38). 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 continued to Step 4.

For the rest of the review, 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 his or her limitations. The applicant's RFC is based on all relevant evidence in the case record and there are federal regulations that address how DES determines RFC (Exhibit 5, pp. 13-14). The appellant's physical RFC was completed by [REDACTED] on [REDACTED] 2024, indicating that the appellant can perform sedentary work activity with consideration to postural limitations (i.e. never climbing ladders, scaffolding, or crawling) and environmental limitations (i.e. limiting hazards-machinery, heights) (Exhibit 5, pp. 41-43). A mental RFC was not needed because the appellant did not list mental health/psychiatric complaints. DES completed a vocational assessment, using the educational and work history reported on the client's supplement and the RFCs (See, Exhibit 5, pp. 15-16, 29-30, 33, 44-45).

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

The DES representative explained that the DES reviewer listed "yes" for this question (Exhibit 5, p. 35). The appellant described his past employment as a Senior Support Engineer on his supplement

(Exhibit 5, p. 30). Said past employment is sedentary work and is consistent with similar work, per Dictionary of Occupational Titles (DOT) that falls within the RFC capabilities determined by [REDACTED] (Exhibit 5, pp. 44-45). The appellant was determined to be capable of performing his past work and therefor he was deemed by DES to be not disabled, using decision code 230. A final review and endorsement of the disability decision was completed by physician advisors (PAs): [REDACTED] and Psychological [REDACTED] on [REDACTED] 2024 (Exhibit 5, pp. 32, 46).

Although this review concluded at Step 4 with determination of past work, DES noted that at Step 5, the appellant would have also been found to be not disabled, in accordance with GRID Ruling 201.22 (SSA Medical-Vocational Guidelines).¹ The DES representative explained that even if DES determined that the appellant was unable to perform his past work at Step 4, it would have determined that the appellant is able to perform work in the national economy at Step 5.

The DES representative 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 sedentary work activity in the competitive labor market. Additionally, the client can perform his past work as a Senior Support Engineer. DES found the appellant is not disabled under SSA Title XVI and a denial notice was mailed to him on May 28, 2024 (Testimony; Exhibit 1, p. 6).

The appellant testified that he vehemently disagrees with the DES assessment. He stated that he was never physically examined by MassHealth, nor has he ever met with the DES reviewer. The appellant took exception to DES determining that he should feel well and that he should be able to work, as it is not factual. The appellant stated that the DES determination focuses on paperwork received and it did not receive any information, nor did they ask the appellant, how sick he is feeling and what he is going through. Specifically, the appellant stated that he began experiencing motion sickness in approximately December of 2021. The appellant contacted his PCP but due to COVID, he was not able to be seen until February 2022. At his PCP's office, an Epley maneuver was performed on the appellant, which is a repositioning procedure. The Epley maneuver involves tilting a patient's head to the side, lying down, and then slowly moving your head to the opposite side. The appellant began to experience severe dizziness during this procedure, and it was determined that he had vertigo. The appellant was sent to a hospital for additional vertigo treatment, though all medical tests performed on him were inconclusive. He was subsequently sent for an MRI in April-May of 2022, which revealed that the appellant has an [REDACTED]. An [REDACTED] is a [REDACTED] that develops on the main nerve leading from the inner ear to the [REDACTED]. The appellant explained that it was not clear if the [REDACTED] was present on his vestibular nerve or his facial nerve. The appellant was referred to a specialist at [REDACTED] as he began experiencing tinnitus in his left ear. A subsequent MRI revealed that the tumor developed on his vestibular nerve. At that point, the appellant began experiencing rapid

¹ Step 5 asks: Does the claimant have the ability to make an adjustment to any other work, considering the claimant's RFC, age, education, and work experience?

eye movement, in addition to the other symptoms described above.

The appellant stated that at that point, he considered surgery but was told that it is a dangerous surgery, due to the location of the tumor. Specifically, the appellant was told that if he were to elect to have the tumor removed surgically, it would result in permanent loss of hearing in his left ear. Additionally, there was a 50% chance that the tumor could not be removed and could result in death, the appellant explained. The appellant researched other options such as radiation, however, there were similar risks associated therewith. As such, his specialist determined that because his [REDACTED] is stable, and therefore he could watch and wait to see if it grows. The appellant testified that he requires yearly MRIs because if the [REDACTED] does grow, it will crush his [REDACTED] and kill him. Presently, the appellant's [REDACTED] has not grown, however, it has not shrunk either. The appellant testified that he was given other options to consider, which he elected not to proceed with as there were associated risks. He does take CBD oil, which helps some but still experiences dizziness, partial loss of eyesight, and visual distortions that are followed by severe migraines because of the tumor location. Further, the appellant is unable to watch action movies nor is he able to drive for long periods of time.

The appellant stated that because it was taking so long to hear back from Social Security regarding his disability application, he applied for disability benefits through MassHealth in 2023-present. Additionally, he applied for fuel assistance and food stamps. While the appellant understands there are differences between MassHealth disability and social security disability processes, he stated that he feels the former process is one-sided. Moreover, the appellant testified that he cannot sit in a chair, let alone an office chair, for more than a few hours without needing to lay down in bed thereafter.

The MassHealth representative stated that the appellant can opt to apply for a frail elder waiver and if he is deemed frail, his benefits can be upgraded from CarePlus to Standard coverage. She explained that MassHealth coverage is income-based though so if the appellant were to return to employment or he is subsequently approved for SSDI benefits, that could change the appellant's MassHealth benefits.

The DES representative clarified that DES solely determines clinical eligibility, not financial eligibility, which is determined by the MassHealth. Additionally, the DES process is set up to determine disability based on the documentation received by an applicant's physician, including medical records, and the supplement by the applicant. Here, DES only received the medical records that were included in its submission, a copy of which was sent to the appellant by mail. If the appellant were to re-apply for disability through DES, the representative recommended that he provide additional information regarding all his current providers on the supplement. The appellant stated that he was not sure if his other providers from 2021-2022 were included in the DES submission. DES clarified that the only information received is contained in the submission packet that was mailed to the appellant. She further clarified that generally, DES does not consider medical information older than 12 months, unless it is permanent (i.e. permanent hearing loss).

Additionally, the current symptoms that the appellant described at the hearing was not made known to DES, such as a change in vision. Rather, the medical records submitted to DES dated April 12, 2023, indicate that the appellant's tinnitus slightly improved, his hearing test was good for speech discrimination, his migraines were being managed with a treatment regimen (CBD oil) which seemed to help (See, Exhibit 5, pp. 51).

The appellant stated that he understood and inquired about whether the results of his upcoming physical exam scheduled with SSI will be sent to DES. The DES representative explained that both entities are separate and apart from each other and his medical information is protected. However, if the appellant feels that the report is helpful to show DES his current symptoms, he can ask for a copy of the report once completed and submit it to DES, or he can authorize DES to receive a copy by submitting a release.

Findings of Fact

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

1. The appellant is an adult male with diagnoses including: a [REDACTED] with associated complaints of vertigo, tinnitus, migraines, and tiredness.
2. In February 2023, 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.
3. 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.
4. On March 12, 2024, the appellant submitted MassHealth Disability Supplement to DES listing the following health problems: [REDACTED] with associated complaints of vertigo, tinnitus, migraines and tiredness.
5. DES requested and received the appellant's medical records, from April of 2023.
6. The appellant previously engaged in past relevant work as a Senior Support Engineer.
7. 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.

8. At Step 1, which explores whether the applicant engaged in SGA, DES explained that this step is waived for MassHealth purposes.
9. At Step 2, DES determined that the appellant has a severe impairment.
10. At Step 3, DES determined that the appellant does not meet listings 13.13 -nervous system; 2.07 – disturbance of labyrinth-vestibular function; and [REDACTED] because it found that there is no clinical evidence submitted to support a finding that the appellant has a severe impairment.
11. The appellant’s physician noted that the appellant reported a mild improvement in his tinnitus and problems with imbalance. Additionally, the appellant’s physician noted that the appellant reported use of CBD and feels that it helps with his migraine symptoms, noticing no dramatic decline in hearing.
12. At Step 4, DES determined that the appellant is able to perform his past relevant work.

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 a [REDACTED] with associated complaints of vertigo, tinnitus, migraines, and tiredness. 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 diagnoses, and determined that his impairments do not meet the high threshold of adult SSA listings and the listing level duration requirement. I find this determination is accurate. The record reflects that the criteria set forth in listing 13.13-Nervous System is to evaluate cancers that originate within the central nervous system (CNS). The CNS cancers listed are highly malignant and respond poorly to treatment. (Exhibit 5, p. 39). Here, the appellant indicated that the tumor is nonmalignant. With respect to listing [REDACTED] a [REDACTED] is characterized by either: A) Disorganization of motor function in two extremities resulting in extreme limitation in the ability to stand up from a seated position, balance while standing or walking, or use the upper extremities, or B) Marked limitation in physical functioning and in one of the following: 1. Understanding, remembering, or applying information, 2. Interacting with others; or 3. Concentrating, persisting or maintaining pace, or adapting or managing oneself (Exhibit 5, p. 38). Based on the information submitted to DES, the appellant's diagnoses do not meet this listing. Finally, listing 2.07-Disturbance of Labyrinthine-Vestibular Function, is characterized by a history of **frequent attacks** of balance disturbance, tinnitus, and progressive loss of hearing with both, disturbed function of vestibular labyrinth demonstrated by caloric or other vestibular tests **and** hearing loss established by audiometry (Exhibit 5, p. 36) (Emphasis added). Here, the medical documentation submitted to DES from the appellant's provider states that the appellant has intermittent tinnitus, and intermittent problems with imbalance and dizziness (Exhibit 5, p. 51). Further, said documentation indicates that the appellant's pain regimen (CBD use) has made a mild improvement with his tinnitus and imbalance. *Id.* Finally, the appellant's medical documentation states that he noticed there was no dramatic decline in hearing. *Id.*

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, the appellant described his past employment as a Senior Support Engineer on his supplement which is considered as sedentary work and is consistent with similar work that falls within the RFC capabilities as determined by the appellant's physician. Thus, DES determined that the appellant can perform his past work and deemed him not disabled. The record indicates that a physical RFC was completed by [REDACTED] indicates that the appellant is capable of performing sedentary work activity with consideration to postural and environmental

limitations (See, Exhibit 5, p. 33). The appellant listed his previous work experience in his supplement, including his position as a Senior Support Engineer. I note his testimony regarding his current symptoms but find that these complaints were not included in any medical documentation submitted by the appellant's physician to DES. Rather, the records submitted indicate that the appellant reported a mild improvement in his tinnitus and problems with imbalance in April of 2023 (See, Exhibit 5, p. 51). Additionally, said records indicate that the appellant began using CBD and feels this helps with his migraine symptoms, tinnitus and imbalance. He also noticed there not a dramatic decline in hearing and is taking aspirin and other holistic anti-inflammatory medications in hopes to shrink the tumor. *Id.*

Additionally, DES noted that even if the appellant was unable to perform his past work, he would have been deemed disabled under Step 5 because of his ability to perform work in the national economy. While I find the appellant testified credibly, his testimony is insufficient to meet his burden here. Therefore, I find that DES was correct in determining that the appellant is not disabled. This appeal is denied.²

Order for MassHealth

None, except to remove aid pending.

² This denial does not preclude the appellant from applying for the Frail Elder Waiver through MassHealth to ascertain whether his benefits can be upgraded from CarePlus to Standard. Additionally, this denial does not preclude the appellant from re-applying for disability through DES; both options were discussed at the hearing.

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.

MassHealth Representatives:

Dori Mathieu, Springfield MassHealth Enrollment Center, 88 Industry Avenue, Springfield, MA 01104, 413-785-4186;

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