

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2409936
Decision Date:	10/25/2024	Hearing Dates:	07/29/2024 08/29/2024
Hearing Officer:	Thomas Doyle	Record Open to:	

Appearance for Appellant:



Appearance for MassHealth:

Harry Giang, Charlestown MEC (Day 1 of hearing)


Karyn Ngalmibaya, Charlestown MEC (Day 2 of hearing)

Eileen Cynamon, BSN, RN, Appeal Reviewer D.E.S.



*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:	10/25/2024	Hearing Dates:	07/29/2024 08/29/2024
MassHealth's Rep.:	Harry Giang Karyn Ngalimbaya Eileen Cynamon	Appellant's Rep.:	
Hearing Location:	Remote (phone-both hearing days)	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 May 17, 2024, MassHealth notified appellant they were changing her benefits from MassHealth Standard to MassHealth CarePlus because she does not meet the MassHealth disability requirements. (Ex. 1). Appellant filed this appeal in a timely manner on June 3, 2024. (Ex. 2). Denial of assistance is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth notified appellant that she does not meet the MassHealth disability requirements and changed her coverage type from MassHealth Standard to MassHealth CarePlus.

Issue

The appeal issue is whether MassHealth was correct in changing the appellant's coverage type based on its determination that she is not permanently and totally disabled.

Summary of Evidence

The first day of the hearing was convened on July 29, 2024. Appellant appeared by telephone, along with her father. The MassHealth worker (worker) also appeared by phone. During the hearing it became clear that a representative of the Disability Evaluation Service (DES) needed to appear. The hearing was recessed, and a second day of hearing was scheduled for August 29, 2024. At the second hearing date, a different worker for MassHealth appeared along with appellant, her father and a DES representative. All appeared by phone, were sworn and documents were marked as evidence.

The DES representative testified as follows: DES is to determine, for MassHealth, if an applicant meets the Social Security Administration (SSA) level of disability from a clinical standpoint. DES uses a 5-step process, as described by SSA regulations at Title 20 of the Code of Federal Regulations (CFR) Ch. III section 416.920, (Ex. 6, pp. 10-12,) to determine disability status. The process is driven by the applicant's medical records and disability supplement. 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, you must have a severe impairment(s) that makes you unable to do your past relevant work or any other substantial gainful work that exists in the regional economy. (SSA CFR §416.905) (Ex. 6, p. 8). (Testimony; Ex. 7).

Per SSA CFR §416.945, what a person can still do despite an impairment is called his or her residual functional capacity (RFC). (Ex. 6, pp.21-22). Unless an impairment is so severe that it is deemed to prevent you from doing substantial gainful activity, it is this residual functional capacity that is used to determine whether you can still do your past work or, in conjunction with your age, education and work experience, any other work. (Testimony; Ex. 7).

Appellant is a female in her early [REDACTED] who was administratively approved for MassHealth Adult Disability in January 2021 in response to the Public Health Emergency (PHE) and consistent with the federal continuous coverage requirements and MassHealth coverage protections which were in effect (no member could be denied/ disenrolled during this period). Upon conclusion of the federal continuous coverage requirements (end of PHE) MassHealth returned to standard annual eligibility renewal processes on April 1, 2023, requiring all current MassHealth members to renew their health coverage to ensure they still qualify for their current benefits. (Ex. 6, p. 32). Appellant submitted a MassHealth Adult Disability Supplement to DES initially on February 21, 2024, which included missing, invalid, or incomplete medical release forms necessary to open a disability review episode. Correspondence was exchanged between appellant and DES several times and upon receipt of completed valid releases a disability review episode was initiated on April 3, 2024. Appellant listed the following health problems: Type I Diabetes Mellitus (T1DM) with complaints of tiredness, nausea, high/ low sugars, blurry vision, and

polycystic ovarian syndrome (PCOS) associated with irregular and painful periods. (Ex. 6, pp. 63-65). DES requested and obtained medical documentation using the medical releases appellant provided. (Ex. 6, pp. 34-51). Once medical documentation was received at DES, the 5-step review process began. (Testimony; Ex. 7).

The DES representative stated **Step 1** asks “Is the claimant engaging in substantial gainful activity (SGA)?” For appellant’s review, Step 1 was marked, “Yes” (Ex. 6, pp. 65-66, 70). This step is waived by MassHealth regardless of whether the claimant is engaging in SGA, while on the federal level engaging in SGA ends the disability review in its entirety.

DES received records from [REDACTED] et al of Atrius Health- Cambridge Internal Medicine (Ex. 6, pp. 100-133) and [REDACTED] of Boston Children’s Hospital (Ex. 6, pp. 96-99). Request For Information (RFI) responses received from Atrius Health (AH) via Sharecare for [REDACTED] of AH Internal Medicine, [REDACTED] RD of AH Chestnut Hill-West Roxbury Medical Specialties, Medford Ophthalmology/ AH Vision Services, [REDACTED] of AH Cambridge Internal Medicine all indicate that no records were found for the listed treating provider. (Ex. 6, pp. 134-144). The Disability Reviewer (DR) determined the provider documentation was sufficient for disability evaluation. (Testimony; Ex. 7).

The DES representative stated **Step 2** asks “Does the claimant have a medically determinable impairment (MDI) or combination of MDIs (CFR §416.923 at Ex. 6, p. 20) 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 referenced the visit notes of [REDACTED] on December 12, 2023, which documented a normal physical exam (Ex. 6, p. 126), C. Leblanc, CNM on January 24, 2024, which indicated a normal GYN exam (Ex. 6, p. 114), and historic BCH endocrinology visit note of February 6, 2023, (Ex. 6, pp. 96-99). A Physical RFC, completed by [REDACTED] on May 15, 2024, indicated the client has no physical limitations that interfere with the ability to perform work activity (Ex. 6, pp. 72-74). Therefore, DES concluded appellant MDIs of T1DM and PCOS do not meet the SSI level of severity requirements; the provider medical evidence did not establish a physical or mental impairment or combination of impairments of sufficient severity as to be the basis of a finding of inability to engage in any substantial gainful activity (see CFR 416.920 416.922, 416.923; Ex. 6, pp. 10-12, 19, 20). When evidence establishes only a slight abnormality or combination of abnormalities which would have no more than a minimum effect on an individual’s ability to work, such impairment(s) will be found “not severe” and a determination of “not disabled” will be made. The reviewer marked, “No” at Step 2 and the disability review concluded. (Ex. 6, p. 70). A final review was completed by [REDACTED], on May 16, 2024, who concurred with the determination (Ex. 6, p. 68, 75). DES transmitted the disability decision to MassHealth and mailed a Disability Determination denial letter to the client on May 16, 2024 (Ex. 6, p. 76). (Testimony).

The DES representative went on to state that while the provider records support the finding of ‘Not Severe’ for client MDIs and the resulting determination that the client is not disabled for

Title XVI level programs, the records do indicate that appellant's T1DM is not optimally managed currently, and she has a history of Diabetic Ketoacidosis (DKA, most recent episode approx. 2 years ago). Although there are no reports of specific recent complications or impacts to her overall functioning, the frequency of hyper/ hypo glycemic episodes is not clearly quantified. The potential impact of persistently elevated blood sugars could have more than a minimum effect on an individual's ability to work. Thus, in preparation for the appeal, in consultation with [REDACTED] and Clinical Training Coordinator [REDACTED], the DES representative brought the appellant's MDIs through severity/ duration at **Step 2**, selecting, "Yes" (Ex. 6, p. 81), continuing to Step 3. (Testimony).

The DES representative stated **Step 3** asks "Does the claimant have an impairment(s) that meets an adult SSI listing, or is medically equal to a listing, and meets the listing level duration requirement?" The reviewer marked Step 3 as "No," (Ex. 6, p. 81) citing the applicable adult SSI listings considered: 1.21 – Soft Tissue Injury or Abnormality under continuing surgical management (no specific listing for PCOS) and 2.02 – Loss of Central Visual Acuity, 5.06 - Chronic Kidney Disease with impairment of kidney function, 11.14 – Peripheral Neuropathy (no specific listing for T1DM), (Ex. 6, pp. 83-87). (Testimony).

The DES representative stated for the rest of the review, Steps 4 & 5, both a Residual Functional Capacity (RFC) assessment along with a vocational assessment are determined. The RFC is the most an applicant can still do despite limitations. A revised Physical RFC for appeal purposes, completed by [REDACTED] on August 16, 2024, (Ex. 6, pp. 88-90), indicates appellant has no exertional limitations to work activity; however, postural limitations of never climbing (ladders, scaffolding etc.) and limiting exposure to environmental hazards (machinery, heights, etc.) has been included given history of DKA. A Mental RFC was not needed as the client did not list mental health/ psychiatric complaints. The reviewer completed a vocational assessment (Ex. 6, p. 80), using the educational and work history reported on the client's supplement, (Ex. 6, pp. 65-66), and the RFC, pursuant to CFR §416.960, 416.967, and 416.969a. (Ex. 6, pp. 23-24, 27, 30-31). With the vocational assessment completed the 5-step review process moves to Step 4. (Testimony; Ex. 7).

The DES representative stated **Step 4** (Ex. 6, p. 82) asks, "Does the claimant retain the capacity to perform any past relevant work (PRW)?" DES determined the client's limitation to environmental hazards could erode her ability to perform her past/ current SGA work in Patient Transport- Hospitals and although her ability to work as a Patient Advisor is not impacted (this work considered alone is not SGA), thus DES selected "No," and the review moved to Step 5. (Testimony; Ex. 7).

The DES representative stated **Step 5** (Ex. 6, p. 82) asks, "Does the claimant have the ability to make an adjustment to any other work, considering the claimant's RFCs, age, education, and work experience?" DES selected "Yes," citing three basic, unskilled jobs available within both the regional and national economy, pursuant to CFR §416.966, (Ex. 6, pp. 25-26), and

referencing the Occupational Employment Quarterly (OEQ) selected job descriptions. (Ex. 6, pp. 91-92). Appellant was determined 'Not Disabled' using decision Code 231 at Step 5a and the review concluded.

The DES representative summarized that appellant was not found disabled for Title XVI level programs in the original disability review (not severe at step 2) as well as after the more comprehensive review conducted in preparation for the hearing. For the more comprehensive review, the MDIs are carried through severity/ duration and the review continues through to Step 5, where DES found that appellant's MDIs do not meet/ equal the very high threshold required for SSI Disability. The DES review concluded the client was determined 'Not Disabled' for Title XVI level programs. (Testimony; Ex. 7).

Appellant testified she is pushing this because preventative care is better and her situation with diabetes is very serious. She stated she needs to take precautions right now to maintain a good quality of life. She stated sugar controls everything, her stress, anxiety and emotions. She thinks of her diabetes every day. She stated she is working at a hospital doing admissions and registrations and most weeks she is working 32 hours a week. (Testimony).

Findings of Fact

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

1. Appellant is an adult female with diagnoses including: Type I Diabetes Mellitus (T1DM) with complaints of tiredness, nausea, high/ low sugars, blurry vision, and polycystic ovarian syndrome (PCOS) associated with irregular and painful periods. (Ex. 6, pp. 63-65).
2. In January 2021, appellant was administratively approved for MassHealth as a disabled adult in response to the PHE and consistent with both the federal continuous coverage requirements and the MassHealth coverage protections which were in effect at the time. (Testimony).
3. On April 01, 2023, the PHE protections ended and all current MassHealth members were required to renew their health coverage to ensure they still qualify for their current benefits. (Testimony).
4. On February 14, 2024, appellant submitted MassHealth Disability Supplement to DES listing the following: back pain, depression, Type 1 Diabetes; PCOS. (Ex. 6, pg. 62-67).
5. DES requested and received appellant's medical records from the previous 12 months. (Ex. 6, pp. 93-145).

6. Appellant is presently employed at a hospital doing admissions and registrations and working up to 32 hours a week. (Appellant Testimony).
7. Appellant has no physical limitations that interfere with the ability to perform work activity and has no significant sustained physical limits. (Ex. 6, pp. 70, 74)
8. DES evaluated the appellant's 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. (Testimony; Ex. 6, pp. 10-12).
9. Step 1 is waived for MassHealth purposes. (Testimony; Ex. 7).
10. At Step 2, DES determined the appellant does not have a severe impairment and appellant was found not disabled. (Ex. 6, p. 70).
11. In preparation for the hearing, DES conducted a more comprehensive review through all five steps, after which it found that the appellant was not disabled at Step 5.

Analysis and Conclusions of Law

At the beginning of the COVID-19 public health emergency (PHE), the federal government issued continuous coverage requirements. Since March 2020, MassHealth put protections in place so that individuals receiving Medicaid would generally not lose their coverage unless they voluntarily withdrew, moved out of state, or passed away.¹ These continuous coverage requirements ended April 01, 2023.²

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. 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

¹ See Eligibility Operations Memo 20-09, April 2020.

² See Eligibility Operations Memo 23-18, July 2023.

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 SGA. This step is waived for MassHealth eligibility.

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 the impairment has lasted or is expected to last for a continuous period of not less than 12 months at that severity. Appellant was reviewed for disability due to a history of Type 1 Diabetes and PCOS. DES determined that the appellant's impairments do not meet the SSI level of severity requirements, specifically referencing notes from [REDACTED] documenting a normal physical exam on December 12, 2023, (Ex. 6, p. 1260, and a normal GYN exam by [REDACTED], CNM on January 24, 2024, (Ex. 6, p. 114), (Ex. 6, p. 72-74). DES found appellant's medical records did not establish a physical or mental impairment or combination of impairments of sufficient severity as to be the basis of a finding of inability to engage in any substantial gainful activity. As a result, DES marked Step 2 a "NO" and the disability review concluded.³ (Ex. 6, p. 70). The record supports this determination.⁴

I find DES's conclusion that appellant does not meet the standard to be considered "permanently and totally" disabled comports with the facts and the relevant MassHealth and Federal regulations. While I find the appellant testified credibly that her blood sugars control everything, including her stress, anxiety, and emotions, and she thinks about her diabetes every day, this testimony is insufficient to be found disabled under the current MassHealth rules and regulations.⁵ Both the DES determination and the related MassHealth eligibility determination are upheld.

As appellant has not met her burden, the appeal is denied.

Order for MassHealth

None.

Notification of Your Right to Appeal to Court

³ The DES representative stated even though the medical records support the finding of "not severe" and the resulting "not disabled" finding, because appellant's diabetes is not optimally managed currently and appellant has a history of Diabetic Ketoacidosis (DKA), the potential impact of elevated blood sugars could have more than a minimum effect on an individual's ability to work. For the purposes of the appeal only, the DES representative reviewed Steps 3, 4 and 5, which is summarized supra at pp. 4-5, but still concluded appellant is not disabled.

⁴ While not specifically related to the DES Step 2 determination, it is notable that the physical RFC completed by [REDACTED] on May 15, 2024, indicated that the appellant has no physical limitations that interfere with her ability to perform work activity.

⁵ While not determinative, it also bears noting that the appellant is in fact currently working at least 32 hours per week.

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 Doyle
Hearing Officer
Board of Hearings

MassHealth Representative: Nga Tran, Charlestown MassHealth Enrollment Center, 529 Main Street, Suite 1M, Charlestown, MA 02129

UMass DES