

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



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|-------------------------|---------------------|------------------------|------------|
| <b>Appeal Decision:</b> | Denied              | <b>Appeal Number:</b>  | 2410275    |
| <b>Decision Date:</b>   | 9/16/2024           | <b>Hearing Date:</b>   | 08/15/2024 |
| <b>Hearing Officer:</b> | Amy B. Kullar, Esq. | <b>Record Open to:</b> | 08/26/2024 |

**Appearance for Appellant:**  
Pro se

**Appearances for MassHealth:**  
Asia Brown, Quincy MassHealth Enrollment Center  
Eileen Cynamon, B.S.N., R.N., Appeals Reviewer, Disability Evaluation Services (DES), ForHealth Consulting at UMass Chan Medical School



*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

|                            |  |                          |            |
|----------------------------|--|--------------------------|------------|
| <b>Appeal Decision:</b>    | Denied                                   | <b>Issue:</b>            | Disability |
| <b>Decision Date:</b>      | 9/16/2024                                | <b>Hearing Date:</b>     | 08/15/2024 |
| <b>MassHealth's Reps.:</b> | Asia Brown; Eileen Cynamon, B.S.N., R.N. | <b>Appellant's Rep.:</b> | Pro se     |
| <b>Hearing Location:</b>   | Quincy Harbor South 3 (Telephone)        | <b>Aid Pending:</b>      | 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 13, 2024, MassHealth informed the Appellant that as a result of MassHealth's Continuous Disability Review (CDR), MassHealth determined that the Appellant no longer meets MassHealth's disability requirements (*See* 130 CMR 505.002(E) and Exhibit 1). The Appellant filed this appeal in a timely manner on May 14, 2024 (*See* 130 CMR 610.015(B) and Exhibit 3). Termination of assistance is valid grounds for appeal (*See* 130 CMR 610.032).

### Action Taken by MassHealth

MassHealth notified the Appellant that she no longer meets 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 telephonically and testified as follows: on May 13, 2024, MassHealth received a determination from Disability Evaluation Services (DES) that the Appellant is not disabled. The MassHealth representative testified that MassHealth reviewed DES's determination, agreed with it, and that, due to the Appellant being not disabled, MassHealth issued a notice terminating the Appellant from MassHealth Standard. The MassHealth representative testified that the Appellant resides in a household of 5, and she is eligible for a Health Connector plan as the household federal poverty level (FPL) equates to 355.93%. The Appellant did not dispute this determination.

A representative from MassHealth's Disability Evaluation Services ("DES")<sup>1</sup> at the University of Massachusetts Medical School appeared in person and 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. 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 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. 24-25.

The DES representative testified that, the Appellant, a [REDACTED] had previously been declared disabled by MassHealth.<sup>2</sup> For adult MassHealth recipients that have previously been declared disabled, and when requested by MassHealth, DES will perform a CDR to determine if an applicant remains clinically eligible for disability. Testimony. She testified that the CDR is an 8-step evaluation process that is described at 20 CFR 416.994(b)(5). *See* Exhibit 5 at 48-50. The DES representative further explained that the appellant was previously determined to be disabled in 2003, reporting complaints of Post-Traumatic Stress Disorder (PTSD), Major Depressive Disorder (MDD) with psychotic features, and blurry vision both per her Disability Supplement and the Emergency Aid to the Elderly, Disabled and Children (EAEDC) Medical

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<sup>1</sup> The Disability Evaluation Services are identified in the regulations as the Disability Determination Unit ("DDU").

<sup>2</sup> The Appellant was originally determined to be disabled on [REDACTED] Exhibit 5, page 186.

report, which was signed by [REDACTED] on [REDACTED] 2003. Testimony and Exhibit 5 at 196-201.

The DES representative testified that the Appellant submitted a MassHealth adult disability supplement to DES on March 18, 2024. The Appellant listed the following as her health problems: “Bipolar Disorder, anxiety, PTSD, OCD (Obsessive-Compulsive Disorder), chronic pain: back, knee, and RA (rheumatoid arthritis)” and also reports having HTN (Hypertension), left hand/wrist pain and low iron. Exhibit 5 at p. 71-76. On the supplement, the Appellant indicated that she experienced pain when “sitting for long period back hurts/whole left side of body hurts was unable to sit, stand, or walk for long periods,” and that she had difficulty concentrating or focusing. Exhibit 5 at 73.

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 the 8-step CDR review process, which addresses the following:

Step 1: Is the claimant engaging in substantial gainful activity (SGA)?

Step 2: Do any impairment(s) meet or equal a listing in the current Listing of Impairments?

Step 3: Is there any Medical Improvement (MI) (Decreased Severity)?

Step 4: Is there Medical Improvement (MI) related to ability to work?

Step 4b<sup>3</sup>: This step is a vocational assessment, and it asks the reviewer to compare the Comparison Point Decision (CPD) <sup>4</sup> RFC(s) with a MIRS (Medical Review Improvement Review Standard) RFC(s) and to determine if there is improvement

Step 6: This step asks if there are current impairment(s) or a combination of impairments that are severe?

Step 7: Does the claimant retain the capacity to perform Past Relevant Work (PRW)?

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<sup>3</sup> The DES representative explained in her testimony that because the answer to Step 3 was Yes based on medical-vocational factors using an RFC assessment, the regulations direct the reviewer to proceed to Step 4b, not Step 5. Testimony.

<sup>4</sup> The Comparison Point Decision (CPD) is the most recent favorable medical decision that the individual was disabled or continued to be disabled. The most recent favorable medical decision is the latest final determination or decision involving a consideration of the medical evidence and whether the individual was disabled or continued to be disabled. Testimony and 20 CFR 404.1594(b)(7), 416.994(b)(1)(vii), and 416.994a(c)(1).

Step 8: 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. The Appellant's review at Step 1 was marked "No." Exhibit 5 at p. 80. The DES representative testified that the Appellant's review at Step 2 was marked "No." The listings considered were 1.15 – Disorders of the Skeletal Spine Resulting in compromise of the nerve root(s), 1.18 – Abnormality of any Joint(s) in any extremity, 4.04 – Ischemic Heart Disease, 12.04 – Depression, Bipolar and Related Disorders, 12.06 – Anxiety and Obsessive-Compulsive Disorders, 12.11 – Neurodevelopmental Disorders, 12.15 – Trauma- and Stressor-Related Disorders, 14.09 – Inflammatory Arthritis. In these circumstances, the reviewer is directed to proceed to Step 3. Exhibit 5 at 87-106.

The DES representative testified that the Appellant's review at Step 3 was marked "Yes." Exhibit 5 at 80. The reviewer then completed the Medical Improvement (MI) Comparison. This is a comparison of records of the original determination of disability and the current medical situation of the appellant. Testimony. In April 2003, the Appellant reported that she had been losing weight, crying a lot, and suffering from nightmares, flashbacks, poor sleep, voices, reduced drive, and depression. The EAEDC report indicates that at the time of her original disability determination, the Appellant had moderate limitations in: "remembering and carrying out simple instructions, maintaining attention and concentration in order to complete tasks in a timely manner, mak[ing] simple work decisions, interact[ing] appropriately with co-workers and supervisors, work[ing] at a consistent pace without extraordinary supervision, and respond[ing] appropriately to changes in work routine or environment." Exhibit 5 at 81. For the current time period comparison, the review used medical records that were provided by the Appellant's own providers. [REDACTED] the Appellant's psychiatrist, conducted telehealth interviews with the appellant on [REDACTED] 2024 and [REDACTED] 2024, and reported the following: On [REDACTED] 2024, the appellant was "engaged in interview. Mood anxious and affect full range. Speech fluent and coherent." Exhibit 5 at 81. On [REDACTED] 2024, [REDACTED] noted:

History of bipolar, PTSD, last episode 2 years ago after death of brother. got sleeve for weight loss. Working PT and feeling better overall. Had triplets; overwhelmed after all 3 were diagnosed with autism. Presented overweight, middle aged, well groomed. Engaged during interview. Mood "so so, busy" and affect full range. Speech fluent and coherent. Denies auditory or visual hallucinations; does not appear overtly delusional. Cognitive exam unremarkable. Judgment seems good and is able to contract for safety. GAF=55. Currently stable, taking care of triplets (one year old). Now dealing with weight loss and inability to keep food

down

(Exhibit 5 at 81)<sup>5</sup>

██████████ is the appellant's provider that she sees for her pain, and he provided the following information following an in-person examination on ██████████ 2024:

██████████ pounds; BMI ██████████ ██████████ 17 left knee Mako medical unicondylar knee replacement. returned after L5-S1 facet injection, some improvement. Continues to have severe left-sided low back pain with some radiation to left leg. gait normal; mild tenderness over facets on left L5-A1. normal sensation, 5/5 strength, pulses 2+, normal ROM in low back; weakly positive SLR on left. No complaints of SOB, palpitations, chest pain. Vitals AVSS

(Exhibit 5 at 81).

██████████ also notes an injection on ██████████ 2023 and a ██████████ 2023 visit that documented a two-year report of "low back pain." An MRI discussed on that same date revealed "no significant stenosis at any level," but it did reveal "moderate bilateral facet arthropathy at L5-S1 with facet effusions' nerve root irritation." Exhibit 5 at 81. Lastly, ██████████ noted no current complaints of blurry vision were reported by the Appellant.

To complete Step 3, a Residual Functional Capacity (RFC)<sup>6</sup> is necessary. ██████████ completed the physical RFC for DES in person on ██████████ 2024. His observations state that the Appellant is capable of lifting or carrying up to 25 pounds occasionally and is capable of lifting or carrying up to 20 pounds frequently. Testimony and Exhibit 5 at 109. His report states that the Appellant is capable of standing or walking with normal breaks for a duration of up to 6 hours, and that in an 8-hour workday the Appellant is capable of sitting for up to 8 hours with normal breaks. Exhibit 5 at 109. The Appellant has limitations for pushing/pulling in her lower extremities and no limits in her upper extremities. Exhibit 5 at 109. ██████████ states the following as the basis for his opinion:

Chronic Lumbar spondylosis without radiculopathy. L5-S1 tenderness to palp. Gait normal. Normal motor and sensory lower extremities. NI ROM lower spine. MRI no significant spinal stenosis. Facet arthropathy at L5-S1. (7/23) Left knee pain s/p surgical Partial Knee reconstruction (6/13). Surgical scar intact. No gross instability or effusion. NI motor and sensory. No joint line tenderness. X-ray, mild degenerative changes in the lateral joint

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<sup>5</sup> GAF is an abbreviation for Global Assessment of Functioning.

<sup>6</sup> A Residual Functional Capacity (RFC) is a medical assessment that describes the most that a person can do despite their impairments. Testimony.

compartment.

(Exhibit 5 at 109)

summary on the RFC worksheet reads: “client is capable of the full range of light work activity; no limitations in vision.” Exhibit 5 at 109.

completed the Mental RFC Worksheet for DES on 2024. Exhibit 5 at 107. His observations state that the Appellant is “Not Limited” in her ability to “understand, remember & carry out very short and simple instructions” and “ability to ask simple questions or request assistance.” Exhibit 5 at 107. The Appellant is Slightly Limited in 13 categories, including “Understand, remember & carry out detailed instructions,” “Ability to make simple work-related decisions,” and “Work in proximity to others without being distracted.” Exhibit 5 at 107. The Appellant is “Moderately Limited” in 3 categories: “Respond appropriately to changes in the work setting,” “Maintain attention & concentration to sustain employment,” “Ability to work at a consistent pace.” Exhibit 5 at 107.

summarizes his observations as follows:

Records indicate the [Appellant] is treated for ADHD. Records do not review current impact of inattention, distractibility, hyperactivity, or impulsivity on capacity to manage instrumental activities of daily living. Records indicate the [Appellant] is treated for bipolar disorder. Records indicate there was inpatient psychiatric 2 years previously with current treating notes documenting stable condition. Records indicate positive response to weight loss surgery and physical therapy for management of pain, and records indicate ongoing injections for management of persistent pain. Records indicate the claimant is caring for who have their own providers and specialists for management of developmental disorders. Records indicate the claimant has been able to travel<sup>7</sup> and has been stable with psychiatric treatment. Treatment currently includes polypharmacy with approximately monthly psychiatric consultations. Mental status observations have been consistently benign, without test results or abnormal exam findings or other clinician observed sign of emotional or behavioral or cognitive impairment. In light of the current level of care it is reasonable to support mild to moderate impairment (e.g., pace and adaptation), without support for severe impairment related to psychiatric disorder. In light of claimant-reported challenges with attention, it is

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<sup>7</sup> 2023 psychiatric consultation notes the claimant made a recent trip to Disney. Exhibit 5 at 110.

reasonable to support mild to moderate impairment in that domain.

(Exhibit 5 at 107)

Step 4 asks if there is Medical Improvement (MI) related to the Appellant's ability to work. The DES representative explained that since the Appellant's CDR determination was based on medical-vocational factors using an RFC assessment the review then continues to Step 4b. Testimony.

The DES representative explained that Step 4b asks, "does the comparison of the CPD RFCs, the 2003 record compared to the 2024 record, with a Medical Review Improvement Review (MIRS) standard RFCs show improvement?" Testimony. She stated that the CDR reviewer determined that the MI related to the ability to work using the RFC comparison on page 84 of Exhibit 5 and answered "Yes." The CDR reviewer is then directed to proceed to Step 6. Testimony. The DES representative stated that Step 6 asks if there are current impairments or a combination of impairments that are severe? Testimony and Exhibit 5 at 85. The CDR reviewer selected "Yes" and the review process proceeded to Step 7. Testimony. The DES representative stated that Step 7 asks does the claimant retain the capacity to perform Past Relevant Work (PRW)? Testimony and Exhibit 5 at 86. She explained that per the [Appellant's] current Supplement her past work history as a Cashier and Cashier/Stockier was part-time and does not meet SGA. Testimony and Exhibit 5 at 75. The CDR Reviewer selected "No" and the review proceeded to the final step, Step 8. Testimony.

The DES representative stated that Step 8 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?" Testimony and Exhibit 5 at 86. The CDR reviewer selected "Yes." The reviewer referenced the Occupational Employment Quarterly (OEQ) and quoted three jobs available within both the regional and national economy: 5510 Couriers and Messengers, 5860 Office Clerks General, 7750 Assemblers and Fabricators, All Other<sup>8</sup>. The DES reviewer explained that this result of "Yes" on Step 8 means that the Appellant's disability ceases and results in a determination that the Appellant is "Not Disabled" using decision code 231. Testimony. The 8-step CDR disability review process concluded with a final review and endorsement of the disability decision by Medical and Psychiatric Physician Advisors (PA) [REDACTED] and [REDACTED] on [REDACTED] 2024. Testimony. DES transmitted the decision to MassHealth and mailed a Disability Determination denial letter to the Appellant on May 13, 2024. Testimony and Exhibit 1.

The DES representative concluded her testimony by stating

[the Appellant] no longer meets or equals the current or prior Adult SSI listings either individually or in combination of complaints...[the Appellant's] RFCs indicated she is capable of performing basic,

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<sup>8</sup> Descriptions of the quoted jobs are included on pages 111-113 of the appeal packet (Exhibit 5). Testimony.



unskilled, light work activity in the competitive labor market...there are, within the regional/national economy, a significant number of jobs, in one or more occupations, having requirement [the Appellant] can meet based on her physical and mental capabilities and her vocational qualifications. The Appeals Review finds [the Appellant] was correctly determined 'Not Disabled.'

(Testimony)

The Appellant appeared telephonically and verified her identity. The Appellant testified that she has been disabled due to her mental health. Testimony. She has Bipolar Disorder and she cannot concentrate. Testimony. She stated she had a knee replacement, and she has "tingling down [her] leg." Testimony. The Appellant expressed that she did not think her mental status would improve because she gave birth to [REDACTED] in 2022, and they were all recently diagnosed with autism. Testimony. The Appellant stated that she "can't stay still, can't work, would love to work." Testimony.

The Appellant asked if the Hearing Officer had received the documents her "personal helper" had emailed to the Board of Hearings on 7/31/2024 or 8/1/2024. As of the date of the hearing, those records were not received by the Hearing Officer or DES representative. The Appellant expressed unhappiness about this. The Appellant wanted those records to be considered by the DES representative and the Hearing Officer, so a record open period was agreed to by all parties. The record was held open until August 26, 2024, to allow the submission of the records by the Appellant and it was agreed that DES could submit their response after the conclusion of the record open period.

On August 19, 2024, [REDACTED] Insurance Outreach Coordinator at the Insurance Resource Center for Autism and Behavioral Health at the University of Massachusetts Chan Medical School, emailed the Appellant, the Hearing Officer, the DES representative, and the MassHealth representative the Appellant's record open submission.<sup>9</sup> On August 29, 2024, the DES representative emailed the DES response to the Appellant's submission to all parties.

The Appellant's email submission had four attached documents:

1. The first was a partial image of a Board of Hearings (BOH) confirmation email receipt. DES's response to this document is that it has no clinical bearing on the Appellant's disability determination. Exhibits 7 & 8.
2. The second document was a 7/31/2024 letter from [REDACTED] Family Care Center [REDACTED] This letter stated that the Appellant

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<sup>9</sup> In the email to the parties, [REDACTED] the "personal helper" referred to by appellant. stated that she has been "assisting [the Appellant] with her appeal." Exhibit 7.

is under care by [REDACTED] Pain Management for low back pain, pinched nerves, and possible lumbar radiculopathy. It references a Lumbar MRI report that was available at time of original review. Exhibit 5, page 147. The note indicates that [REDACTED] Pain Management is managing her pain with left L5-S1 (disc segment) transforaminal epidural (TFE) and S1 selective nerve root blocks (SNRB). Exhibits 7. In her response, the DES reviewer stated that this provider was not listed on the Appellant's supplement and no medical release forms for this provider were submitted to DES. It is DES's position that the records received from [REDACTED] all of [REDACTED] Medical [REDACTED] (Mobility Bone & Joint Institute) were considered and determined sufficient to evaluate the Appellant's medical complaints. Exhibit 8.

3. The third document was a letter dated [REDACTED] 2024 from [REDACTED] of [REDACTED] Associates, Inc. This letter stated that appellant is receiving treatment on a monthly basis for her mental health diagnosis of Bipolar Disorder, Borderline Personality Disorder (BPD), Attention Deficit Hyperactivity Disorder (ADHD) and Anxiety Disorder. Exhibit 7. To this submission, DES responded that DES reviewed visit notes from [REDACTED] spanning April [REDACTED] 2023 to March [REDACTED] 2024, as part of the disability review<sup>10</sup> and these were deemed sufficient to evaluate the client's mental health complaints.
4. The fourth and final document was a Personal Statement by the Appellant, dated 7/31/2024. The Appellant recounts the facts of her health complaints and disability status, stating she began receiving Social Security at age [REDACTED] due to her mental health diagnosis which was discontinued in 2013. She lists her diagnoses as Bipolar Disorder, Anxiety, BPD, ADHD, high blood pressure, pinched nerve, back cyst, chronic arthritis and having had a left knee replacement, and the medications she is currently taking for these issues. She reports being the caretaker for [REDACTED] with Autism. The appellant states, "I cannot work due to my mental health as well as physical health and since I take care of my children." Exhibit 7. The DES response to this letter is that the "impairments reported by [the Appellant] were all identified during the course of the disability review process and have been evaluated individually and in combination of complaints. The appellant is not reporting any novel complaints or impairments that could potentially alter the disability determination." Exhibit 8.

## Findings of Fact

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

1. Through a notice dated May 13, 2024, MassHealth found the appellant no longer satisfied the necessary requirements to qualify as permanently and totally disabled. Exhibit 1.

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<sup>10</sup> See Exhibit 5, pages 150-178.

2. Through a notice dated May 14, 2024, MassHealth informed the Appellant she was no longer eligible for MassHealth Standard because her income was too high. Exhibit 1.
3. The Appellant filed this appeal of both notices in a timely manner on May 14, 2024 (Exhibit 2).
4. The Appellant's medical conditions that she receives treatment for are bipolar disorder, anxiety, PTSD, and obsessive-compulsive disorder and arthritis.
5. The Appellant is an adult between the ages of 18-64 living in a household of five and reporting an income that is equal to 355.93% of the federal poverty level (FPL). Testimony of MassHealth Representative.
6. The EAEDC originally determined that the Appellant was disabled on September 4, 2003. Exhibit 5, page 186.
7. 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.
8. DES determined that the appellant's condition did not meet any of the categories or listings set forth in the Social Security Administration's listings for 1.15 – Disorders of the Skeletal Spine Resulting in compromise of the nerve root(s), 1.18 – Abnormality of any Joint(s) in any extremity, 4.04 – Ischemic Heart Disease, 12.04 – Depression, Bipolar and Related Disorders, 12.06 – Anxiety and Obsessive-Compulsive Disorders, 12.11 – Neurodevelopmental Disorders, 12.15 – Trauma- and Stressor-Related Disorders, 14.09 – Inflammatory Arthritis. Exhibit 5 at 79.
9. A RFC examination revealed that the appellant is physically capable of the full range of light work activity, with no limitations in vision; that the Appellant is mentally capable of basic unskilled work activity with moderate limitations and that the Appellant is able to respond appropriately to changes in the work setting, work at a consistent pace, maintain attention and concentration. Exhibit 5 at 84 and 108.
10. 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 for CommonHealth according to 130 CMR 505.004. Per 20 CFR 416.905, 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 8-step evaluation tool used to conduct the Continuing Disability Review (CDR) reevaluations. The Continuing Disability Review reevaluations are 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(b)(5). If a determination of disability can be made at any step of the process, the specific evaluation process stops at that point.

The purpose of the CDR evaluation is to determine if there has been any medical improvement in the Appellant’s impairments, and, if so, whether this medical improvement is related to their ability to work. If the appellant’s impairment(s) has not so medically improved, the reviewer must consider whether one or more of the exceptions to medical improvement applies. If medical improvement related to the appellant’s ability to work has not occurred and no exception applies, the appellant’s benefits will continue. Even where medical improvement related to the appellant’s ability to work has occurred or an exception applies, in most cases, (see paragraph (b)(4) of this section for exceptions), the reviewer must also show that the appellant is currently able to engage in substantial gainful activity before the reviewer can find that the appellant is no longer disabled.

### **The 8-Step Method for Continuous Disability Review**

The 8-step method is the sequential evaluation process established by the Social Security Act and described in 20 CFR 416.994(b)(5) 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 the applicant’s impairments meet or equal a listing in the current Listing of Impairments. The review then proceeds to Step 3.

At Step 3, it is asked whether there has been medical improvement or decreased severity of the ailment(s), which is determined by the Residual Functional Capacity (RFC) assessment. The review proceeds to Step 4, which asks the question of if there is Medical Improvement related to the ability to work. In order to determine the Medical Improvement, the CDR reviewer is directed to Step 4b and compares the record at the initial determination of disability with the current record,

including the physical and mental RFCs and the MIRS RFC.

At Step 6 the CDR determines whether there are current impairments or a combination of impairments that are severe? If this step is answered “Yes,” the review proceeds to Step 7.

At Step 7, 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 8.

At the final step at Step 8, 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 no longer qualifies as disabled. There is no dispute that the appellant’s condition is severe and expected to last 12 months or more to meet Step 6. 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 1.15 – Disorders of the Skeletal Spine Resulting in compromise of the nerve root(s), 1.18 – Abnormality of any Joint(s) in any extremity, 4.04 – Ischemic Heart Disease, 12.04 – Depression, Bipolar and Related Disorders, 12.06 – Anxiety and Obsessive-Compulsive Disorders, 12.11 – Neurodevelopmental Disorders, 12.15 – Trauma- and Stressor-Related Disorders, 14.09 – Inflammatory Arthritis. 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 3. At Step 3 the DES correctly found that the Appellant’s medical situation has vastly improved. In the past three years, the Appellant has been able to organize and plan a trip to Disney; has been able to coordinate and adhere to the recovery period for a gastric sleeve surgery, and has been able to care for [REDACTED] for whom she endured an extensive medical process to conceive using IVF. Rather than documenting that her condition continues to worsen, her own testimony and submissions show that her medical improvement in the last [REDACTED] years has been significant. Her own providers state that she is stable and medication-compliant in managing her mental health issues. Under the totality of the Appellant’s circumstances, it is simply not credible that she is struggling and unable to cope with her medical ailments to the point that she is unable to work. DES did not err in determining that the Appellant no longer meets or equals the current or prior Adult SSI listings either individually or in combination of complaints, and the Appellant was correctly determined to be “Not Disabled.”

The Appellant also appealed MassHealth’s notice dated May 14, 2024, terminating her MassHealth Standard benefits. 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;
- (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's household of 5 reported an income that is equal to 355.93% of the 2024 federal poverty limit and the Appellant did not dispute this calculation at the hearing. To qualify to MassHealth Standard, the household income may not exceed 133% of the 2024 FPL. Therefore, her household is financially eligible for a Health Connector plan and the Appellant is urged to contact the Health Connector directly and enroll in a plan of her choosing.

MassHealth did not err in issuing the notice dated May 14, 2024, informing the Appellant that she was financially ineligible to receive MassHealth Standard.

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 and totally disabled from performing all employment.

Therefore, this appeal is DENIED.

## **Order for MassHealth**

None.

## **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.

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

MassHealth Representative: Quincy MEC, Attn: Appeals Coordinator, 100 Hancock Street, 6th Floor, Quincy, MA 02171

Disability Evaluation Services: DES Appeals Unit, 333 South Street, Shrewsbury, MA 01545