

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2413244
<b>Decision Date:</b>	12/20/2024	<b>Hearing Dates:</b>	9/26/2024 & 10/29/2024
<b>Hearing Officer:</b>	Casey Groff		

**Appearances for Appellant:**



**Appearances for MassHealth:**

**9/26/2024:**

Fabienne Jeanniton, Tewksbury MEC;  
Roxana Noriega, Premium Assistance;


**10/29/2024:**

Eileen Cynamon, B.S.N., R.N., Appeals Reviewer,  
Disability Evaluation Services (DES);  
Yvette Prayor, R.N., Appeals Reviewer, DES;  
Jessica Rameriz, Tewksbury MEC



*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>	12/20/2024	<b>Hearing Date:</b>	9/26/24 10/29/2024
<b>MassHealth's Reps.:</b>	Fabienne Jeanniton; Roxana Noriega; Eileen Cynamon, B.S.N., R.N., Yvette Prayor, R.N.; Jesicca Rameriz	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Board of Hearings (Virtual)	<b>Aid Pending:</b>	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 8/8/24, MassHealth informed Appellant that, as a result of its Continuous Disability Review (CDR) evaluation, it determined that she no longer met MassHealth disability criteria. *See* Exh. 7, p. 138. As a result of this determination, MassHealth issued two additional notices, each dated 8/9/24, informing Appellant that she no longer qualified for her CommonHealth and Premium Assistance benefits, and that these benefits would be ending. *See* Exhs. 1 and 2. Appellant filed an appeal in a timely manner on 8/26/24 to challenge the disability determination. *See* 130 CMR 610.015(B) and Exhibit 3. Termination of assistance is valid grounds for appeal. *See* 130 CMR 610.032. At the conclusion of the first hearing date on 9/26/24, the matter was continued to a second hearing date on 10/29/24. *See* Exhs. 4 and 6.

### Action Taken by MassHealth

MassHealth determined that Appellant no longer met MassHealth disability requirements, and on this basis, sought to terminate her CommonHealth and Premium Assistance benefits.

## **Issue**

The appeal issue is whether MassHealth was correct in determining that the Appellant is no longer disabled, and on this basis, whether MassHealth correctly sought to end Appellant's CommonHealth and Premium Assistance benefits.

## **Summary of Evidence**

Evidence for this appeal was presented over the course of two hearing dates: 9/26/24 and 10/29/24. *See* Exhs. 4 and 6. At the first hearing on 9/26/24, MassHealth was represented by an eligibility/benefits specialist and a representative from MassHealth's Premium Assistance (PA) unit. Appellant appeared at the hearing with a health care advocate as her designated appeal representative. All parties appeared remotely, by video conference.

The MassHealth eligibility representative testified that Appellant is an adult under the age of 65 and lives in a household size of one (1). Appellant was approved for MassHealth CommonHealth on 2/20/21 through an administrative disability approval. Appellant is currently employed and receives an average monthly gross income of \$5,166. This places her at 406.69% of the federal poverty level (FPL). Typically, to qualify for MassHealth benefits, individuals who do not have a verified disability, cannot have income that exceeds 133% of the FPL, which, for a household size of one (1) is \$1,670 per month. Because Appellant's income exceeds the program limit, her eligibility for MassHealth benefits is dependent on her disability status.

The MassHealth eligibility representative testified that on 8/8/24, MassHealth received an internal tracking form from MassHealth's Disability Evaluation Services (DES) unit through UMass Medical School, relaying information that Appellant had been deemed "not disabled." *See* Exh. 5. MassHealth processed the form on 8/9/24, which removed Appellant's disability status from her case and prompted an automated eligibility determination using traditional MassHealth financial eligibility rules. As a result, MassHealth generated a notice, dated 8/9/24, informing Appellant that she did not qualify for MassHealth benefits and that her CommonHealth coverage would end on 8/23/24. *See* Exh. 1. However, by filing this appeal, a protection was placed on her case and her CommonHealth benefit currently remains active.

Next, the MassHealth PA representative testified that Appellant had been receiving a premium assistance benefit in conjunction with her CommonHealth benefit because she is enrolled in employer sponsored health insurance (ESI). Appellant's ESI plan is her primary insurance, and her CommonHealth benefit is supplemental. Under her PA benefit, MassHealth issued

payments to Appellant each month to help cover her ESI premiums. After Appellant's disability status was removed, MassHealth issued a second notice on 8/9/24, which informed Appellant that her PA benefit had ended. The PA representative testified that MassHealth issued its final payment to Appellant on 8/5/24 to cover her September 2024 ESI premium.

Appellant testified that she only received the 8/9/24 termination notices, but did not receive direct notice that her disability status ended. Appellant did not dispute the accuracy of her reported income. She confirmed that she remains employed and there have been no substantial changes to her income.

The hearing was continued to 10/29/24, at which time MassHealth was represented by two R.N. disability reviewers from DES, (collectively "DES representatives").<sup>1</sup> Through testimony and documentary submissions, the DES representatives presented the following evidence: First, DES, on behalf of MassHealth, is responsible for determining whether a claimant meets the Social Security Administration (SSA) level of disability from a clinical standpoint. Under SSA 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 12 months." See Exh. 7 at 16. To meet this definition, the individual "must have a severe impairment(s) that makes them unable to do past relevant work or any other substantial gainful work that exists in the regional economy." *Id.*

Next, the DES representatives testified that the SSA uses a "residual functional capacity" (RFC) assessment as a means of determining whether an individual has a disability, as defined above. According to 20 CFR 416.945, RFC refers to the most that a person can do despite their limitations. *Id.* at 14. DES will use the RFC assessment results, to determine whether the individual can still do past work, or, in conjunction with age, education and work experience, any other work. *Id.* at 30-33.

The DES representatives confirmed that Appellant's disability status was initially the result of an administrative approval during the COVID-19 public health emergency (PHE). Once the PHE lifted in April 2023, Appellant underwent an initial disability review (IDR) evaluation through DES. For an IDR, the SSA implements a five-step evaluation process outlined in federal regulations at 20 CFR §§ 416.920; 416.905. See *id.* at 20-22. The process is driven by the claimant's medical records and disability supplement. For Appellant's IDR, Appellant provided an adult disability supplement through which she reported complaints of depression, complex post-traumatic stress disorder (C-PTSD), gastrointestinal problems, anemia, fecal smearing, idiopathic hypersomnia, and short-term memory problems. *Id.* at 478. A mental RFC assessment was completed on 5/19/23 which found that Appellant was capable of basic

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<sup>1</sup> Another MassHealth eligibility representative appeared at this hearing and confirmed that all eligibility factors remained the same as reported at the prior hearing date on 9/26/24. Additionally, Appellant and her designated appeal representative were both present and all parties appeared by video conference.



unskilled work activity in the competitive labor market and would not be sufficient for a psych vocational approval.” *Id.* at 474; 484-490. A physical RFC assessment, which was conducted on 5/30/23 by [REDACTED] M.D. Pursuant to the assessment, Dr. [REDACTED] reported the following findings

[REDACTED]-year-old transgender female on hormone therapy with a [history of] necrotizing enterocolitis [(N.E.)], PTSD, fecal incontinence due to N.E [with]. 3-5 [bowel movements (BMs)] per-day on medicine and pelvic floor physical therapy. Some days 5-6 BM per-day and incontinence. She cannot sustain 40-hour [work] week.

*Id.* at 487-488.

In consideration of the initial review RFCs, the DES disability examiner noted that the “physical RFC by Dr. [REDACTED] indicates [Appellant] is [capable of] performing full range of light work activity [but that] [m]edical evidence indicates signs and symptoms of GI problems / fecal smearing / incontinence [are] at a level of severity, frequency, and duration that would prevent the ability to sustain full time employment.”<sup>2</sup> *Id.* at 484-486. Based on this finding, Appellant was determined to be disabled at Step 5 of the disability evaluation process as a vocational approval (code 120). MassHealth, through DES, sent a letter dated 6/22/23, informing Appellant that she was deemed clinically disabled.

The DES representatives explained that once an individual is deemed “disabled,” they are subject to periodic reviews – referred to as a “Continuous Disability Review (CDR)” - to evaluate whether they remain disabled. *Id.* at 39 (citing 20 CFR § 416.989). The CDR consists of an 8-step evaluation process that is described at 20 CFR 416.994(b)(5). *Id.* at 53-55. In this case, Appellant’s CDR was scheduled to take place on 6/20/24.

In advance of her CDR, DES received an Adult Disability Supplement from Appellant on 5/7/24. In the Supplement, Appellant reported complaints of resistant, persistent major depressive disorder (MDD), C-PTSD, generalized anxiety disorder (GAD), gastrointestinal problems with pernicious anemia, short-term memory complaints with poor cognition challenges, gender-affirming medical needs (transgender), idiopathic hypersomnia/narcolepsy, antithrombin III deficiency (blood clotting disorder) and metabolic dysfunction associated steatotic liver disease (MASLD). *Id.* at 90-92. In response to questions regarding her educational and vocational status, Appellant reported that she completed college, earning a B.S. degree in public health sciences, and completed a graduate program, earning a master’s degree in public health. *Id.* at 95. She reported that she currently works full-time (40 hours per-week) as a project associate – a position she has held since February 2023, and that since January 2023 she held a role as

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<sup>2</sup> The IDR examiner also noted that a mental RFC performed by Dr. Mosbach indicated that Appellant was “capable of performing basic unskilled work activity in the competitive labor market.” *Id.* at 484.

Community Advisory Board member. *Id.* at 96.

Using Appellant's signed medical releases, DES issued requests to Appellant's health care providers, seeking copies of "all medical records and/or psychological records within the last 12 minutes, including office notes, clinic and ER visits, labs, and all test results and discharge summaries." *Id.* at 60-77. In response, DES received over 300 pages medical records by Appellant's treating providers, which were submitted into evidence and can be found in pages 143-469 of Exhibit 7. Upon receiving the requested records, DES determined there was sufficient information to proceed to evaluate Appellant's medical and psychiatric impairments through the 8-Step CDR review process. The DES representatives then summarized, through documentation and testimony, this process as follows:

❖ **Step 1:** Is the claimant engaging in substantial gainful activity (SGA)? *Id.* at 103.

The DES representatives testified that on the federal level, an affirmative answer to Step 1 automatically renders the claimant not disabled; however, MassHealth waives this step regardless of whether the claimant is engaged in SGA. Based on Appellant's current work status, the CDR reviewer for DES marked "Yes" and proceeded to Step 2. *Id.*

❖ **Step 2:** Does any impairment(s) meet or equal a listing in the current Listing of Impairments? *Id.*

At level 2, the CDR reviewer answered, "No" based on having considered the following SSI Listings: 5.05 – Chronic Liver Disease, 5.06 – Inflammatory Bowel Disease, 7.05 – Hemolytic Anemias, 7.08 – Disorders of Thrombosis and Hemostasis, 12.04 – Depressive, Bipolar Related Disorders, 12.06 – Anxiety and Obsessive-Compulsive Disorders, 12.15 – Trauma – And Stressor-Related Disorders. *Id.* at 110-129. Additionally, in advance of this hearing, the DES representative reviewed SSI listings 3.02 - Chronic Respiratory Disorders Due to Any Cause Except Cystic Fibrosis (hypersomnia/ narcolepsy) and 12.11 – Neurodevelopmental Disorders (r/o ADHD, cognitive and memory complaints). No finding was made that Appellant's impairments met or equaled any of the considered listings. Therefore, the evaluation proceeded to Step 3.

❖ **Step 3** asks if there is Medical Improvement (MI) (Decreased Severity)? *Id.*

DES testified that Step 3 involves a review of the claimant's most recent favorable disability determination, which is referred to as the "comparison point decision" (CPD). The applicable CPD in this case is Appellant's initial disability review from June 2023.<sup>3</sup> Under Step 3, the reviewer is instructed to consider "current symptoms, signs, or laboratory findings related to

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<sup>3</sup> For purposes of this Decision, the terms CPD and IDR are used interchangeably to refer to Appellant's initial disability review through which she was deemed "disabled."

the CPD impairment(s) and to identify changes or improvement as the basis for finding MI (decreased medical severity).” *Id.*

Here, the CDR reviewer answered “Yes” for step 3, finding that MI had occurred, and noted the following evidence considered in the “Step 3 MI Comparison” chart:

Evidence at CPD	Current Evidence
6/23 Episode- Fecal Incontinence and smearing- w/ bowel obstruction- up to 5-6 x's daily. Abnormal rectal sensation - See Phy RFC-cannot sustain a 40-hour work week. <i>Id.</i> at 104.	7/24- no evidence to support fecal Incontinence/smearing- BMC- 6/24 Abd: Soft, NT, no HSM, +BS, The patient does not have abdominal discomfort, RUQ discomfort, change in bowel habits or color, jaundice or dark urine. Denies nausea. -ABDOMEN/GASTROINTESTINAL: Soft, non-distended, no shifting dullness, no hepatomegaly or splenomegaly 2/24- no abdominal distension, no areas of tenderness, no palpable hepatosplenomegaly, normoactive bowel sounds-02/01/24 73.6 kg (162 lb 3.2 oz).

*Id.* at 104.

❖ **Step 4** asks if there is Medical Improvement (MI) related to ability to work?

The DES representatives explained that in reviewing disability determinations where the CPD was based on medical-vocational factors using RFC assessments, as was the case here, the review is directed to Step 4b. *Id.* at 105. In such cases, a Medical Improvement Review Standard (MIRS) RFC must be completed. The MIRS RFC compares the prior approved CPD impairments with the same impairments currently to determine if improvement has occurred and is related to the ability to work.

The DES representatives testified that a MIRS RFC, completed by Dr. [REDACTED], M.D. on 8/6/24, concluded that Appellant is capable of performing the full range of medium work activity. On the physical RFC worksheet, Dr. [REDACTED] found that Appellant did not have any exertional, postural, manipulative, visual, communicative, or environmental limitations in considering the impairments that were present at her CPD. *Id.* at 131-132. In his summation, Dr. [REDACTED] noted the following:

[REDACTED]-year-old with a history of PTSD, depression, mild alcohol use, anxiety,

idiopathic hypersomnia and ongoing GI symptoms. Recent visit to pulmonology patient doing well on current regimen for central hypersomnia ongoing 9 to 10 years. Needs to sleep 11 hours per day during periods of stress needs 19 to 20 hours per day. Patient also has a history of fatty liver pertinent medical history pernicious anemia generalized anxiety disorder major depression disorder. Medications Bupropion aripiprazole venlafaxine lorazepam modafinil Abilify Effexor. Physical exam 19/78, pulse 73, weight 163 lbs., BMI 25.52, no cute distress, lungs clear, heart normal, abdomen soft non tender, musculoskeletal normal, liver biopsy April 2024 moderate to severe steatosis consistent with metabolic associating fatty liver disease and evolving cirrhosis and steatohepatitis. Assessment Narcolepsy mild cognitive impairment binge drinking, PTSD, depression, anxiety, memory loss, fatty liver pernicious anemia.

*Id.* at 131-133.

In addition, a mental RFC was completed by Dr. [REDACTED] on 8/6/24, which considered all current listed impairments. Dr. [REDACTED] found that Appellant was “not limited” and/or “slightly limited” in her capacity to sustain each activity listed in the mental RFC worksheet over a normal workday. *Id.* at 134. It was therefore determined that Appellant had no moderate or marked impairments in any functional domain which would interfere with her ability to perform work in the competitive labor market.<sup>44</sup> *Id.* Dr. [REDACTED] highlighted portions of Appellant’s medical records that were pertinent to this review and ultimate findings, as follows:

11/28/23 Boston Medical Center, BU Neurology indicates a WAIS - V, FSIQ = 105. Verbal comprehension was high average sustaining attention, and concentration was average and "mild" cognitive deficit in learning and memory.

1/31/2024 Bournewood Health Systems partial program. Applicant has a long history of depressed mood and was diagnosed with depression at age 16. She has a history of 3 psychiatric hospitalizations, with the most recent in 1/2019. She is currently working and reports being sober x 1 month. The [REDACTED] discharge indicated that applicant's PCP prescribes Donepezil. She has met her goals for treatment and the MSE at discharged indicated: she was alert, well-groomed, cooperative, and pleasant. Her speech was WNL, mood was "stable, clear and optimistic." Affect was congruent, thought process (TP) and thought content (TC) were WNL. No SI and no HI. No perceptual distortions. Insight and judgment were good. She was oriented x 3, memory and concentration were intact. Diagnosis PTSD, MDD and alcohol Use Disorder "mild" in early remission.

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<sup>44</sup> The DES representatives explained that findings of only “not limited” and/or “slightly limited” are not considered to impact one’s overall functioning.



1/16/2024 [REDACTED], LICSW (10/10/2023 PHQ-9 = 17) mood was euthymic, cognition intact, memory intact, attention was WNL, Appearance was WNL. She was cooperative, engaged, TP and TC were WNL, no perceptual distortions and insight and judgment were good. She reports feeling pretty good with improved mood and energy.

6/4/2024 BMC Neurology, applicant is working full time, oriented, speech is normal, naming intact with "mild cognitive deficits in learning and memory."

6/11/2024 [REDACTED] study suggestive of Narcolepsy Disorder, mood appears stable and improving.

3/5/2024 [REDACTED], Psych NP. applicant was conversant, oriented x 4, mood and affect were euthymic, and her cognition was grossly intact. 6/18/2024 Ms. [REDACTED] note, applicant is applying for school to earn her Ph.D. in Public Health. Doing better with social activity. Working. She is stable on medication, her mood and affect remains euthymic, no PMA, no PMR, her fund of knowledge was average, and insight and judgment were fair. All other areas of MSE remain WNL.

Applicant reports myriad medical concerns. This writer defers to medal on this issue. She has a long history of mental health concerns. She has been hospitalized three times and participated in a partial hospitalization program from which she was discharged in [REDACTED]. She has been able to complete her master's degree, work full time and wants to apply to a Ph.D. program. She has been complaint with her treatment and is stable. She does have breakthrough symptoms but has had a stable mood since 2/2024. After a complete review of the available information, it was determined that there is no convincing evidence that her mental health concerns result in a significant reduction in function or in any moderate limitations at the present time.

*Id.* at 135.

- **Step 4b** asks does the comparison of the CPD RFC(s) with a MIRS RFC shows improvement?

In comparing the applicable RFC's, the CDR examiner noted that in Appellant's initial physical RFC, Dr. [REDACTED] found that Appellant was capable of performing the full range of light work activities but unable to sustain a 40-hour work week. *Id.* at 107. In comparison, Dr. [REDACTED], who conducted the MIRS physical RFC, found Appellant to be capable of performing the full range of medium work activity. *Id.* On this basis, the CDR examiner answered "Yes" to Step 4b, concluding that the MI relates to Appellant's ability to work, as she is capable of sustaining a 40-hour work week. *Id.* On this basis, the review proceeded to Step 6.

- ❖ **Step 6** asks if there are current impairments or a combination of impairments that are severe? *Id.* at 108.

The disability examiner selected, “Yes” and proceeded to Step 7.

- ❖ **Step 7** asks, does the claimant retain the capacity to perform Past Relevant Work (PRW)? *Id.* at 109.

The CDR examiner found that Appellant was capable of past relevant work based on her current role as a project associate, which falls within the current RFC guidance. *Id.* at 95-96, 131-135. Accordingly, the examiner answered “Yes” at Step 7, which resulted in the determination that Appellant’s disability had ceased. *Id.* at 109. To conclude the CDR process, a final review and endorsement of the disability decision was made on 8/8/24 by [REDACTED], M.D. and [REDACTED], Ph.D., the respective medical and psychiatric physician advisors (PAs) overseeing this review. *Id.* at 100,136. DES transmitted the decision to MassHealth and mailed a Disability Determination denial letter to the Appellant on 8/8/24. *Id.* at 137.<sup>5</sup>

The DES representatives testified that they had also reviewed the findings and concurred with the DES determination on grounds that (1) Appellant does not meet or equal any of the applicable Adult SSI Listings either individually or in combination of complaints; (2) Appellant’s RFCs indicate she is capable of performing the full range of medium-sized work activity in the competitive labor market, and (3) Appellant’s current/past work as a Project Associate is within her current capabilities.

Appellant and her representative appeared at the hearing and testified that Appellant has not had any clinical improvement in symptoms over the last year. In fact, her state of health has gotten worse. The Appellant disagreed with the examiner’s note in the Step 3 MI Comparison chart that there was “no evidence” to support fecal incontinence/smearing. Appellant testified that this very problem, which also involves bleeding, occurred in the past week and remains a significant problem. Appellant also testified that her condition with her liver has gotten worse and that recent test results have revealed underlying issues that may have been undetected before.

Appellant testified that her narcolepsy is “consistently terrible” and has resulted in her having to request taking off a day of work each week because her need to sleep is so great. In addition, Appellant testified that earlier this year, her narcolepsy was so severe she had to check into a hospital. Appellant testified that she relies on other people around her to keep her living space clean. She lives with an elderly housemate who has cleaners come to their home

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<sup>5</sup> The DES representatives testified that in reviewing the case for this appeal, it was noted that Appellant received a ‘Not Severe’ denial letter instead of the appropriate ‘Capacity for Past Work’ denial letter. The DES representatives testified that, despite this oversight, the letter itself does not alter the outcome.



every other week. If not for her housemate, she would not be able to keep up with maintaining her home and personal space. In addition, she has extreme difficulty showering and her brushing teeth on a routine basis. Appellant testified that she suffers from impaired cognition and short-term memory problems. She is easily lost in conversations and struggles to come up with terms in conversation; she has a recent history of being lost within her own house.

Appellant testified that without her PA benefit, finances have been more difficult to manage. She testified that although she is employed, her workplace has been resistant to proposed accommodations. In addition, Appellant testified that she does have a visual impairment and no depth perception – and this is based on a condition she has had since birth. Appellant testified that nowhere in the medical documentation does it state that she has had medical improvement. In support of her appeal, Appellant submitted the following letters from her treating providers, which, in summary state the following:

- A letter dated 9/6/24 by [REDACTED], M.D. from [REDACTED] [REDACTED] indicates that Appellant is followed at the pulmonary sleep clinic for Type II Narcolepsy. Dr. [REDACTED] states that Appellant's baseline symptoms are severe and require the use of multiple stimulants. The letter indicates that while treatment improves her symptoms, Appellant still experiences excessive daytime sleepiness that can limit productivity and lead to unintentional napping. *See* Exh. 14.
- A letter dated 9/16/24 by [REDACTED], NP, [REDACTED], [REDACTED], indicates that Appellant is a patient in the adult primary care clinic at BMC and that she has a complex medical and psychiatric history that includes generalized anxiety, MDD, PTSD, a history of necrotizing enterocolitis leading to complications of bowel obstruction and continued sequela of gastrointestinal maladies, antithrombin 3 deficiency, and a need for treatment access for gender affirming care. She requires continued specialist consultations and multidisciplinary treatment to manage and optimize her health care. *See* Exh. 11.
- A letter dated 9/14/24 by [REDACTED], M.D., [REDACTED], [REDACTED], indicates that Appellant requires ongoing treatment and monitoring for her condition. *See* Exh. 12.
- A letter dated 9/18/24 from Appellant's therapist, [REDACTED], [REDACTED], requested reconsideration of her disability determination, noting that Appellant's PTSD severely impacts her daily functioning and quality of life. Ms. [REDACTED] opined that Appellant meets criteria for disability based on her difficulties with work engagement, the impact that her symptoms have on her self-care, and her limited support network. *See* Exh. 8.
- A letter dated 9/12/24 written by [REDACTED], M.D. from [REDACTED], indicates that Appellant has been receiving gender affirming hormone therapy since she was 18, and has been followed by endocrinology at [REDACTED] since September of 2021 where she continues to receive this treatment. The letter indicates that Appellant has complex medical history

involving significant liver steatosis, central hypersomnia, chronic PTSD, and recently diagnosed thrombophilia (AT3 deficiency on anticoagulation). Dr. [REDACTED] stated that due to her recently diagnosed thrombophilia and concurrent estrogen therapy, long-term anticoagulation has been recommended by hematology and it is vital that Appellant's insurance be reinstated. See Exh. 13.

- A letter dated 10/17/24 by [REDACTED], M.D., Staff [REDACTED] at [REDACTED], indicates that Appellant has significant liver disease that, if not treated, can lead to adverse liver and cardiovascular events. Dr. [REDACTED] stated that he recommends treatment through medications that are designed to prevent life threatening and debilitating complications. See Exh. 9.
- A letter dated 10/8/24 by [REDACTED], PMHNP-BC, a psychiatric nurse practitioner for [REDACTED] indicates that Appellant has been diagnosed, through neuropsychiatric testing, with complex PTSD, major persistent disorder and generalized anxiety disorder. NP [REDACTED] stated that she has provided medication management to Appellant for three to four years, and that there have been no changes in Appellant's chronic physical and mental condition over the past year. See Exh. 10.

In response, the DES representatives testified that they had reviewed the treatment letters submitted by the Appellant in advance of the hearing; however, did not find they contained information that would warrant a different outcome. In conducting disability reviews, there are various weights which may be placed on the records used. For example, DES typically places more weight on objective medical findings written in a treatment record as opposed to a written statement from a clinician. DES noted that the basis for disability at the initial review was due to the impact her incontinence and gastrointestinal symptoms had on her ability to complete a full 40-hour workweek. The encounters she had related to her digestive conditions, such as those on pages 272 and 236 of Exhibit 7, did not show the severity of issues that were identified in the CPD. This included lab work that was within normal ranges and discussions being focused on routine adjustments in medication dosages. Specifically, in reviewing the entirety of the information provided, the DES representatives opined that the medical records reflected a fairly steady illness that was responding to the treatments being given.

## Findings of Fact

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

1. Appellant is an adult under the age of 65 and lives in a household size of one (1).
2. Appellant is currently employed as a project associate and receives an average monthly gross income of \$5,166, placing her at 406.69% of the FPL.

3. Appellant was approved for MassHealth CommonHealth on 2/20/21 through an administrative disability approval.
4. On 6/22/23, pursuant to an initial disability review (IDR), DES determined that Appellant was disabled at Step 5 of the disability evaluation process based, primarily on findings that Appellant was unable to sustain a 40-hour work week due to severe fecal incontinence and smearing with bowel obstruction up to 5 or 6 times daily.
5. On 5/7/24, DES received an adult disability supplement from Appellant in which she reported complaints of resistant, persistent major depressive disorder (MDD), C-PTSD, generalized anxiety disorder (GAD), gastrointestinal problems with pernicious anemia, short-term memory complaints with poor cognition challenges, gender-affirming medical needs (transgender), idiopathic hypersomnia/narcolepsy, antithrombin III deficiency (blood clotting disorder) and metabolic dysfunction associated steatotic liver disease (MASLD).
6. Pursuant to a CDR, initiated in June of 2024, DES determined that Appellant's condition did not meet any of the SSA Listings set forth for: 5.05 – Chronic Liver Disease, 5.06 – Inflammatory Bowel Disease, 7.05 – Hemolytic Anemias, 7.08 – Disorders of Thrombosis and Hemostasis, 12.04 – Depressive, Bipolar Related Disorders, 12.06 – Anxiety and Obsessive-Compulsive Disorders, 12.15 – Trauma – And Stressor-Related Disorders, 3.02 - Chronic Respiratory Disorders Due to Any Cause Except Cystic Fibrosis (hypersomnia/narcolepsy), and 12.11 – Neurodevelopmental Disorders (r/o ADHD, cognitive and memory complaints).
7. The CDR examiner found that Appellant had demonstrated medical improvement (decreased severity) of the impairments that served as the basis for the CPD, as reflected in the medical documentation received from her providers over the course of the past year.
8. A physical MIRS RFC, completed by Dr. [REDACTED], M.D. on 8/6/24, concluded that Appellant is capable of performing the full range of medium work activity and that she had no exertional, postural, manipulative, visual, communicative, or environmental limitations.
9. A mental RFC, completed by Dr. [REDACTED] on 8/6/24, which considered all current listed impairments, found that Appellant had no moderate or marked impairments in any functional domain which would interfere with her ability to perform work in the competitive labor market.
10. In comparing Appellant's initial physical RFC from June 2023 with the physical MIRS RFC and mental RFC completed during the CDR, the disability examiner concluded that

Appellant's MI relates to her ability to work.

11. Appellant is capable of performing past relevant work, as evidenced by her current role as a project associate.
12. Through a notice dated 8/8/24, MassHealth found that Appellant's disability had ceased based on her medical improvement that related to her ability to work and her ability to perform past relevant work.
13. Through two notices dated 8/9/24, MassHealth informed the Appellant she was no longer eligible for MassHealth benefits and that her CommonHealth and premium assistance benefits were ending.
14. Appellant's CommonHealth benefit currently remains active as a result of filing this appeal; however, her last premium assistance payment was issued in 8/5/24 to cover Appellant's September 2024 ESI premium.

## Analysis and Conclusions of Law

In order to be found disabled under MassHealth regulations, an individual must be "*permanently and totally disabled*." See 130 CMR 501.001. The regulations used by MassHealth to establish disability are derived from the rules used by the Social Security Administration. See *id.* Individuals who meet the Social Security Administration's definition of disability may establish eligibility for MassHealth Standard according to 130 CMR 505.002(F) 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."

Title XVI of the Social Security Act establishes the eligibility standards and 8-step evaluation tool used to conduct Continuing Disability Review (CDR) evaluations. See 20 CFR 416.994. CDR 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). The purpose of the CDR evaluation is to determine if there has been any medical improvement<sup>6</sup> in the applicant's impairments, and, if so, whether this medical improvement is related to their ability to work. See 20 CFR 416.994(a). If the reviewing agency finds medical improvement related to the individual's ability to work has occurred, it must also find that the individual is currently able to engage in substantial gainful activity before it can deem the person no longer disabled. *Id.* Specifically, the 8-

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<sup>6</sup> The term "medical improvement," is defined as "any decrease in the medical severity of [the individual's] impairment(s) which was present at the time of the most recent favorable medical decision that [they] were disabled or continued to be disabled. See 20 CFR § 416.994(b).



step sequential evaluation process, as described in 20 CFR 416.994, is summarized as follows:

- ❖ Step 1: Is the claimant engaged in substantial gainful activity (SGA)? (MassHealth waives Step 1 and begins its review at Step 2).
- ❖ Step 2: Does the claimant have an impairment or combination of impairments that meets or equals the severity of an impairment listed in SSA's Listing of Impairments under 20 CFR 404, Subpart P, App. 1? If not, the review proceeds to Step 3.
- ❖ Step 3: If the claimant's condition does not meet or equal any listing, has there been medical improvement (MI) or decreased severity of the ailment(s)?
- ❖ Step 4: If there has been medical improvement, is it related to the claimant's ability to work? (i.e., has been an increase in the residual functional capacity (RFC) based on the impairment(s) that was present at the time of the most recent favorable determination?).
- ❖ Step 5: If no MI is found under Step 4, do any exceptions apply?
- ❖ Step 6: If MI is found under Step 4, is the impairment or combination of impairments severe? If this Step is answered "Yes," the review proceeds to Step 7.
- ❖ Step 7: Is the claimant capable of sustained past relevant work? At this Step, the reviewer looks to the findings of the current RFC. If this step is answered affirmatively, the disability ceases and the review ends. If not, the review proceeds to Step 8.
- ❖ Step 8: If the claimant is unable to perform sustained past relevant work, using the RFC, age, education and past work experience, can the claimant do any other work sufficiently available in the national economy on a sustained basis?

In the present case, the DES reviewing team correctly determined that Appellant no longer met MassHealth disability criteria. As MassHealth waives Step 1, it began the CDR process at Step 2. To initiate the process, DES sought and obtained medical records from Appellant's health care providers who had evaluated, examined, and treated Appellant during the preceding year. Through a review of these medical records and other supporting documentation provided by Appellant, DES had sufficient grounds to determine that Appellant did not meet or equal any of the considered SSA Listings which included the following: 5.05 – Chronic Liver Disease, 5.06 – Inflammatory Bowel Disease, 7.05 – Hemolytic Anemias, 7.08 – Disorders of Thrombosis and Hemostasis, 12.04 – Depressive, Bipolar Related Disorders, 12.06 – Anxiety and Obsessive-Compulsive Disorders, 12.15 – Trauma – And Stressor-Related, 3.02 - Chronic Respiratory Disorders Due to Any Cause Except Cystic Fibrosis (hypersomnia/ narcolepsy), and 12.11 – Neurodevelopmental Disorders (r/o ADHD, cognitive and memory complaints). See Exh. 7 at 110-129.

There is no dispute that Appellant is currently receiving treatment for a myriad of medical diagnoses and impairments which warranted consideration of the aforementioned SSA Listings. The operative question at Step 2, however, is whether Appellant's medical ailments, either individually, or combined, are of such severity that they either meet or equal the specific criteria outlined in one of the Listings. Although Appellant provided detailed and credible testimony about the challenges that she experiences in managing her diagnoses, there was insufficient evidence to demonstrate that DES erred in concluding that such impairments did not rise to the level of an SSA Listing to render the condition automatically "disabling." Because no listings were met, DES appropriately proceeded to Step 3.

At Step 3, DES had sufficient grounds to find medical improvement in the conditions that were used to support Appellant's initial disability review, which, in the context of the CDR, is referred to as the comparison point determination (CPD). The disability examiner noted the June 2023 disability determination was largely based on medical records which reflected severe episodes of fecal incontinence and fecal smearing with bowel obstruction up to 5-6 times daily with abnormal rectal sensation. *See id.* at 104. Due to the frequency and severity of her gastrointestinal issues apparent in her CPD, the initial disability reviewer determined that Appellant was unable to sustain a 40-hour workweek. *Id.* In comparison, the CDR examiner found no evidence of fecal incontinence or fecal smearing within the past year. In coming to this conclusion, the examiner referenced specific medical encounter and treatment notes reflecting that Appellant had normal abdominal and gastrointestinal examinations, including a February 2024 finding that which she had "no abdominal distension, no areas of tenderness, no palpable hepatosplenomegaly, and had normoactive bowel sounds" and a June 2024 encounter note which reiterated largely the same findings. *Id.* at 104. Based on this information and in the absence of treatment notes describing the level of severity that was previously evidenced, the disability examiner had sufficient grounds to answer "Yes" to Step 3 to proceed to Step 4.

At Step 4, the DES reviewer appropriately found that Appellant's medical improvement was related to her ability to work. In reaching this determination, the examiner considered a Medical Improvement Review Standard (MIRS) RFC, which was completed by Dr. [REDACTED] on 8/6/24. Through the physical MIRS RFC, Dr. [REDACTED] considered the same impairments that were present at Appellant's CPD and found that she did not have any exertional, postural, manipulative, visual, communicative, or environmental limitations. *Id.* at 131-132. On this basis, DES appropriately concluded that Appellant was capable of performing the full range of medium work activity. *Id.*, *see also id.* at 107. In addition, a mental RFC was completed by Dr. [REDACTED], in which all of Appellant's current listed impairments were considered. As Dr. [REDACTED]'s summation indicates, a thorough review of the medical documentation was performed, which supported his conclusion that Appellant had neither moderate nor marked impairments in any functional domain which would interfere with her ability to perform work in the competitive labor market. *Id.* at 107; 134. Based on the findings from the current mental and physical RFCs, and as compared to the findings

from the CDP RFC, DES appropriately answered “Yes” to Step 4b and proceeded to Step 6 (thereby skipping Step 5).

As indicated above, there is no dispute that Appellant’s condition and/or combination of conditions are severe and expected to last more than 12 months. Therefore, DES correctly answered “Yes” to Step 6, and proceeded to Step 7. Under Step 7, the disability examiner had sufficient information to determine that Appellant was capable of past relevant work. This was evidenced by her current role as a project associate, which is a position she has held since February of 2023. Because Step 7 was answered affirmatively, the examiner correctly ended the evaluation on a finding that Appellant’s disability had ceased. *Id.* at 108.

At hearing, Appellant provided detailed and credible testimony about the daily challenges she continues to endure as a result of her ongoing medical issues, which she alleged had worsened over the past year. While there is no reason to doubt Appellant’s testimony, the medical records, as interpreted by the reviewing team and DES representatives, reflect a decrease in the severity of symptoms that served as the basis for the original disability determination. At hearing, DES persuasively testified to having conducted a thorough review of the medical records by a team of examiners, including the R.N. disability examiner, medical and psychological physician consultants, and two reviewing physician advisors. All reviewing parties, including the DES representatives, as R.N. disability appeals reviewers, concurred that the medical improvement was demonstrated as it related to the frequency and severity of bowel incontinence episodes, which, at the time of the CPD, prevented Appellant from working a 40-hour work week. Appellant also submitted numerous letters from her treating providers in support of her position that her disability status should continue. While these letters offered further insight to the complexity of Appellant’s health condition and her need for continued access to health care to manage such diagnoses, the letters, did not, in any meaningful way, rebut the conclusions reached by DES as they pertain to the 8-step evaluation. These letters were reviewed by the DES representatives prior to hearing. DES testified that while such letters may be considered as evidence in the CDR review, there are also various weights assigned to the type of evidence presented. Therefore, the letters were reviewed within the context of the available treatment records that had been obtained during the review period, and which consisted of objective medical findings including laboratory test results and physical examinations that were documented at the time of the respective encounter. Ultimately, the evidence submitted by the Appellant, including the treating provider letters, was insufficient to prove that MassHealth erred in its 8/8/24 disability determination, which found Appellant was no longer disabled under MassHealth program rules, as derived from the federal Social Security Act.

Accordingly, MassHealth did not err in subsequently determining, pursuant to notices dated 8/9/24, that Appellant was no longer eligible for CommonHealth and Premium Assistance (which is based on her CommonHealth benefit). Without a verified disability, the only coverage

type that Appellant would be *categorically* eligible for is MassHealth CarePlus.<sup>7</sup> To be *financially* eligible for CarePlus, individuals must have a household income less than or equal to 133% of the federal poverty level (FPL), which, for 2024, is \$1,670 per-month for an individual in a household size of one (1). See 130 CMR 505.008(A)(2); see also 2024 MassHealth Income Standards & Federal Poverty Guidelines. It is undisputed that Appellant receives a gross income of \$5,166 per-month. This places her at 406.69% of the FPL and renders her financially ineligible to qualify for CarePlus or any other MassHealth benefit at this time.

Based on the foregoing, there is insufficient evidence to demonstrate that MassHealth erred in its 8/8/24 finding that Appellant no longer met MassHealth disability criteria, as well as its subsequent determinations on 8/9/24, which informed her that she was no longer eligible for MassHealth benefits.

The 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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Casey Groff  
Hearing Officer  
Board of Hearings

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<sup>7</sup> As of the hearing date, there was no evidence to indicate that Appellant had a special circumstance to be categorically eligible for MassHealth Standard. Because Appellant is not eligible for MassHealth Standard and is between the ages of 21-65, the most comprehensive coverage type he would be *categorically* eligible for is CarePlus.

cc: Appellant Representative: [REDACTED]  
[REDACTED]

MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876-1957

MassHealth REpresenative: DES

MassHealth Representative: Premium Assistance.