

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision: Dismissed in part;
Denied in part

Appeal Number: 2413475

Decision Date: 11/19/2024

Hearing Date: 11/14/2024

Hearing Officer: Amy B. Kullar, Esq.

Appearance for appellant:
Pro se

Appearances for MassHealth:
Karyn Ngalmibaya, Charlestown MassHealth Enrollment Center; Yvette Prayor, R.N., Appeals Reviewer, Disability Evaluation Services (DES), ForHealth Consulting at UMass Chan Medical School; Eileen Cynamon, B.S.N., R.N., Appeals Reviewer, Disability Evaluation Services (DES), ForHealth Consulting at UMass Chan Medical School

APPEAL DECISION

Appeal Decision:	Dismissed in part; Denied in part	Issue:	Disability Requirements
Decision Date:	11/19/2024	Hearing Date:	11/14/2024
MassHealth's Reps.:	Karyn Ngalimbaya; Yvette Prayor, R.N.; Eileen Cynamon, B.S.N., R.N.	Appellant's Rep.:	Pro se
Hearing Location:	Charlestown MassHealth Enrollment Center - Room 2 (Telephone)	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 July 10, 2024, MassHealth informed the appellant that she was not disabled because MassHealth determined that the appellant did not meet MassHealth's disability requirements. See 130 CMR 505.002(E) and Exhibit 1. Through a notice dated July 11, 2024, MassHealth notified the appellant that the appellant's MassHealth benefits were changing from MassHealth Standard to MassHealth CarePlus because the appellant no longer meets the disability requirement to receive MassHealth Standard. Exhibit 2. The appellant filed this appeal of both notices in a timely manner on August 30, 2024. See 130 CMR 610.015(B) and Exhibit 3. Denial of assistance is valid grounds for appeal. See 130 CMR 610.032.

Actions Taken by MassHealth

MassHealth notified the appellant that she does not meet 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 that this is the second hearing concerning the July 11, 2024 downgrade notice. On October 3, 2024, a hearing was held without the MassHealth Disability Evaluation Services (DES)¹ representative present.² The previous Hearing Officer allowed the October 3, 2024 hearing to go forward as to the July 11, 2024 downgrade notice. Based on testimony and information provided by the appellant at the October 3, 2024 hearing, the MassHealth representative was able to approve the appellant for MassHealth Standard during the hearing because the appellant testified to having a medically frail condition. Testimony.³ The previous Hearing Officer requested that this appeal be rescheduled so that the dispute concerning the July 10, 2024 DES determination notice could be resolved. Testimony. The MassHealth representative confirmed that the appellant would be covered under MassHealth Standard until she either reports a change in income to greater than 133% of the Federal Poverty Level (FPL) or reports a change in her medical condition⁴. The appellant confirmed that she understood the outcome of the previous hearing and that she was satisfied with the restoration of her MassHealth Standard benefit during the October 3, 2024 hearing. Testimony. Therefore, the July 10, 2024 downgrade notice is no longer in dispute.

Two representatives from MassHealth's Disability Evaluation Services at the University of Massachusetts Chan Medical School appeared telephonically and Yvette Prayor, R.N. and DES Appeals Reviewer, testified as follows: She explained that 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 6 at p. 9-11. 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

¹ The Disability Evaluation Services are identified in the regulations as the Disability Determination Unit ("DDU")

² The previous hearing officer did not have a copy of the July 10, 2024 DES decision notice in the case file and the MassHealth caseworker was unable to access the letter in the system during the October 3, 2024 hearing. Testimony.

³ *See*, 130 CMR 505.002(J).

⁴ The MassHealth representative testified that the appellant has a verified income of \$0.00 or an FPL of 0.00%. Testimony.

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 national or 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. Testimony and Exhibit 6 at 18-19.

The DES representative testified that, the appellant, a [REDACTED], was previously administratively approved for MassHealth Adult Disability on August 19, 2021 in response to the Covid-19 Public Health Emergency (PHE). Consistent with the federal continuous coverage requirements and MassHealth coverage protections which were in effect under the PHE, no member could be denied/disenrolled during this period. Testimony. At the conclusion of the PHE, MassHealth returned to standard annual eligibility renewal processes on April 1, 2023. This means that all current MassHealth members are required to renew their health coverage to ensure they still qualify for their current benefits. Testimony. The appellant submitted a MassHealth adult disability supplement to DES on April 18, 2024, and it was returned to her for corrections related to medical releases on April 29, 2024. Testimony. Upon return receipt of the MassHealth Adult Disability Supplement and valid provider release forms, the disability evaluation was initiated May 10, 2024. The appellant listed the following health problems: Chronic Fatigue, Anxiety, Depression, Sleep Apnea, IBS (irritable bowel syndrome) and Other GI (gastrointestinal) Issues. Exhibit 6 at 56 and 62. DES requested and obtained medical documentation using the medical releases the appellant provided. Once medical documentation was received at DES, the 5-step review process began. Testimony.

The appellant listed the following as her health problems: "Chronic Fatigue, Anxiety, Depression, Sleep Apnea, IBS (Irritable Bowel Syndrome) and Other GI (gastrointestinal) Issues." Exhibit 6 at 56, 62. On the supplement, the appellant indicated that she suffers from extreme tiredness, restless legs, nausea and abdominal pain. *Id.* at 56.

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 a five-step sequential evaluation process, which addresses the following:

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

Step 2: Does the claimant have a medically determinable impairment or combination of medically determinable impairments 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)?

- Step 3: Does the claimant have an impairment(s) that meets an adult SSA listing, or is medically equal to a listing, and meets the duration requirement?
- Step 4: Does the claimant retain the capacity to perform any past relevant work?
- Step 5: 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 6 at 59, 64. The DES representative testified that the appellant's review at Step 2 was marked "Yes," indicating that the appellant's impairment is severe and expected to last at least twelve months. The reviewer then proceeded to Step 3. *Id.* at 64.

The DES representative testified that the appellant's review at Step 3 was marked "No." Exhibit 6 at 64. The reviewer compared the appellant's medical records to SSA listings found in the federal *Listing of Impairments* at 20 CFR Ch. III, Pt. 404, Subpt. P, App. 1 to see if the appellant met such criteria, specifically the adult listings for: 3.02 – Chronic Respiratory Disorders due to any Cause (Sleep Apnea), 5.06 – Inflammatory Bowel Disease, 12.04 – Depressive, Bipolar and Related Disorders, 12.06 – Anxiety and Obsessive-Compulsive Disorders and 14.09 – Inflammatory Arthritis (Chronic Fatigue Syndrome) *Id.* at 62-78. The appellant did not meet any of the listings. The DES representative stated that during her own review she "considered additional listings corresponding to associated complaints or references of impairments within the medical records and determined the [appellant] does not meet or medically equal the corresponding SSA listings 1.18 – Abnormality of a Major Joint(s) in Any Extremity." Testimony. The appellant did not meet any of the listings the DES representative reviewed either. The review proceeded to Step 4.

The DES representative testified that for Steps 4 and 5, DES must evaluate the claimant's residual functional capacity. The DES representative explained that the residual functional capacity is the most the claimant can still do despite her limitations. The residual functional capacity evaluations are based on the appellant's case record. Testimony. On June 25, 2024, Dr. Pelletier, Sc.D., performed a mental residual functional capacity assessment of the appellant and found that the appellant is capable of performing basic, unskilled work activity in the competitive labor market, and had moderate limitations in ability to work at a consistent pace as noted in his report:

[The appellant] is a [REDACTED] female who reported having chronic fatigue, anxiety, depression, sleep apnea, and IBS. She has a BA in English Literature and has "never worked due to medical condition."...[The

appellant] reported having [chronic fatigue syndrome] since [REDACTED] and recent dx of sleep apnea; and unable to work full time due to her health condition while having applied to part-time positions at a college bookstore and tutoring at public libraries. On MSE, the client was described as cooperative with good eye contact, euthymic mood and affect, intact judgment, intact memory and attention/concentration-- an impression consistently reported by Ms. DePina since 2/21/24.

(Exhibit 6 at 88)

Dr. Pelletier's report included the review of the appellant's medical records from her psychiatric nurse practitioner, and he found that those records indicate that the appellant is responding positively to treatment with this provider since January of 2023, and that the records "indicate a good response to combined pharmacological and psychosocial treatment" for the appellant. Exhibit 6 at 88. The report concluded by stating that the appellant has "moderate limitations in her ability to work at a consistent pace." *Id.*

On July 5, 2024, Dr. Rohit Vakil, M.D., performed a physical residual functional capacity assessment on the appellant's current state, and a projected assessment based on twelve months in the future. Dr. Vakil found that the appellant has "chronic fatigue syndrome with arthralgias and fatigue with no joint swelling or inflammation and normal ESR, CRP and negative rheumatoid factor. [Range of motion] of joints normal and no neurological deficit." Exhibit 6 at 85. Dr. Vakil determined the appellant is capable of performing sedentary work for up to 8 hours per day and that she is able to stand and/or walk for a total of 6 hours per day. *Id.* This assessment found that the appellant had residual functional capacity.

The DES representative testified that the reviewer selected, "No," at Step 4 because the appellant "self-reported on the MassHealth Adult Disability Supplement to have never worked, therefore there is no work activity to evaluate." Testimony.

The review proceeded to Step 5, which 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?" Here, the reviewer selected "Yes," citing three unskilled jobs available within both the regional and national economy⁵. The Disability Reviewer referenced the Occupational Employment Quarterly (OEQ) and quoted three jobs: 4420 Ushers, Lobby Attendants & Ticket Takers, 4740 Counter & Related Clerks, 5400 Receptionists & Information Clerks.

The Disability Reviewer determined the appellant is 'Not Disabled' using decision Code 231. Exhibit 6 at 64, 93. The 5-step evaluation process concluded with a final review and endorsement of the disability decision by Physician Advisors (PA) Dr. John Pelletier and Dr. John Batbouta on July 10, 2024. *Id.* at 62, 93. DES transmitted the decision to MassHealth and

⁵ See 20 CFR §416.966, 20 CFR §416.967, 20 CFR §416.968, and 20 CFR §416.969a.

mailed a Disability Determination denial letter to the client on July 10, 2024. Exhibit 1.

The DES representative explained that the appellant does not meet or equal the high threshold of adult SSA disability listings. Additionally, the appellant's RFCs indicate that she is capable of performing light, unskilled work activity in the competitive labor market. Finally, within the regional/ national economy, there are a significant number of jobs, in one or more occupations, having requirements which the appellant can meet based on her physical and mental capabilities and her vocational qualifications. The DES reviewer believes that the appellant was correctly found to be "Not Disabled." Testimony.

The appellant appeared telephonically and verified her identity. The appellant testified that, when she first received the July 10, 2024 denial letter from DES, it did not have the explanations that the DES representative included in her testimony. Testimony. She understands the explanations, but she disagrees with the work options that were given to her. Testimony. The appellant began her testimony by describing her history with her illness. She stated that she first applied for Social Security when she was in college, and that application was denied because "they said that if I could go to college I can work, this is what everyone tells me." Testimony. She has a medical review for her current SSDI application on November 27, 2024. Testimony. She stated that she was able to complete her college education because she received accommodations, but that meant that she had to take an extra year to complete her degree. Testimony. The appellant became emotional at times during her testimony, stating "I've been this way since I was 13, it hasn't gotten better and now I have sleep apnea. It changes daily, I am exhausted daily." Testimony.

This Hearing Officer, having reviewed the submission from DES prior to hearing, questioned the appellant about sections of her medical record that indicate she had performed at least part-time work during the review period. The records submitted by the appellant's psychiatric nurse practitioner include encounter notes from the appellant's appointments. Exhibit 6 at 191. Several of the entries include notes such as this entry from May 3, 2022, "Currently works intermittently as a nanny to her cousins although states it can be difficult with her fatigue." *Id.*⁶ The appellant stated that if she nannied for her cousin for four hours in one day, then she would need four days off. Testimony. She acknowledged that she had applied for jobs recently, but became emotional during her testimony and stopped answering questions posed by the Hearing Officer.

Findings of Fact

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

⁶ The note goes on to state that the appellant reported she has plans to attend several concerts and had upcoming travel plans to New York, Mexico, and Maine. Exhibit 6 at 191-192.

1. Through a notice dated July 10, 2024, MassHealth found the appellant did not satisfy the necessary requirements to qualify as disabled. (Exh. 1)
2. Through a notice dated July 11, 2024, MassHealth informed the appellant that her MassHealth Standard was being downgraded to MassHealth CarePlus (Exh. 2)
3. The appellant filed this appeal of both notices in a timely manner on August 30, 2024 (Exh. 3).
4. A fair hearing was scheduled and held for October 3, 2024, but it did not include the DES representatives.
5. During the October 3, 2024 hearing, the appellant's MassHealth Standard benefits were restored. Testimony of MassHealth representative.
6. The appellant is an adult between the ages of 18-64 living in a household of one and reporting an income of \$0.00 and is currently eligible for and receiving MassHealth Standard benefits as "medically frail."
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 set forth in the Social Security Administration's listings for 13.02 – Chronic Respiratory Disorders due to any Cause (Sleep Apnea), 5.06 – Inflammatory Bowel Disease, 12.04 – Depressive, Bipolar and Related Disorders, 12.06 – Anxiety and Obsessive-Compulsive Disorders, 1.18 – Abnormality of a Major Joint(s) in Any Extremity, and 14.09 – Inflammatory Arthritis (Chronic Fatigue Syndrome).
9. The appellant is capable of being consistently employed despite her medical impairments.
10. The appellant is capable of performing a variety of jobs in the regional and national economy, is capable of performing sedentary work for up to 8 hours per day, and is able to stand and/or walk for a total of 6 hours per day.

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 CommonHealth according

to 130 CMR 505.004. In Title XVI, Section 416.405 of the Social Security Act, 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 the 5-step sequential evaluation process used by MassHealth in determining initial eligibility, as well as the related 8-step evaluation tool used to conduct the Continuing Disability Review reevaluations, 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. If a determination of disability can be made at any step of either process, the specific evaluation process stops at that point.

The 5-Step Method for Initial Disability Evaluation

The 5-step method is the sequential evaluation process established by the Social Security Act and described in 20 CFR 404.1520 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 applicant’s impairment is severe and expected to last for at least 12 months. If so, the applicant’s disability application continues and proceeds to Step 3. If not, the review ends and the applicant is found “not disabled.”

At Step 3, it is asked whether the impairment(s) meet or equal a criteria listing utilized by the SSA. If the impairment(s) meet a listing, the review ends and the applicant is found disabled. If no listings are met, the review proceeds to Step 4.

At Step 4, a determination is made as to the applicant’s mental and physical 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 5.

At the final step at Step 5, it is asked whether the applicant can 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 did not qualify as disabled. There is no dispute that the appellant's condition is severe and expected to last 12 months or more to meet Step 2. DES determined, however, that the extent of her condition, as indicated in the appellant's medical records and supporting documentation, did not qualify to meet the listings for 13.02 – Chronic Respiratory Disorders due to any Cause (Sleep Apnea), 5.06 – Inflammatory Bowel Disease, 12.04 – Depressive, Bipolar and Related Disorders, 12.06 – Anxiety and Obsessive-Compulsive Disorders, 1.18 – Abnormality of a Major Joint(s) in Any Extremity, and 14.09 – Inflammatory Arthritis (Chronic Fatigue Syndrome) pursuant to Step 3. The medical records supplied by 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 4. At Step 4, DES correctly found that the appellant could perform several types of work. The appellant's own medical records reveal that she is stable in seeking her ongoing treatments and is medication-compliant in her treatment, and that she currently engages in part-time paid childcare, has recently applied for part-time work, and also is able to engage in travel and a variety of other entertainment activities. Additionally, an RFC examination indicated that the appellant's only limitations are in standing for longer than six hours. She was observed to have no limitations with respect to exertion, manipulation, vision, or communication. In light of the RFC results, DES correctly found that the appellant was able to perform several types of work in the regional and national economy. Accordingly, the review stopped at Step 5 and DES found that the appellant was "not disabled." This decision was correct.

The appeal is dismissed as to the July 11, 2024, MassHealth notice because at the previously-held October 3, 2024 hearing, the MassHealth representative was able to restore the appellant's MassHealth Standard benefit. During the November 14, 2024, hearing the appellant confirmed that she was satisfied with this outcome, and therefore as to the July 11, 2024, MassHealth notice, this appeal is hereby DISMISSED.

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, as to the July 10, 2024, MassHealth notice, this appeal is hereby DENIED.

Order for MassHealth

None, other than to notify the appellant that she is eligible for MassHealth Standard as medically frail, if MassHealth has not already done so.

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.

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

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

cc: Disability Evaluation Services unit, UMass Chan Medical School