Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Denied	**Appeal Number:**	2415989
Decision Date:	1/16/2025	**Hearing Date:**	11/19/2024
Hearing Officer:	Kimberly Scanlon		

Appearance for Appellant:
Pro se

Appearances for MassHealth:
Sherri Paiva - Taunton MEC;
Yvette Prayor, R.N. - DES

The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, Quincy, Massachusetts 02171

APPEAL DECISION

Appeal Decision:	Denied	**Issue:**	Disability; Eligibility
Decision Date:	1/16/2025	**Hearing Date:**	11/19/2024
MassHealth's Reps.:	Sherri Paiva; Yvette Prayor, R.N.	**Appellant's Rep.:**	Pro se
Hearing Location:	Taunton MassHealth Enrollment Center Room 1 (Remote)	**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 August 13, 2024, MassHealth notified the appellant that she does not meet MassHealth disability requirements. (Exhibit 1, p. 6). Through a separate notice dated August 15, 2024, MassHealth notified the appellant that her benefits were being downgraded from MassHealth CommonHealth to Health Safety Net on September 30, 2024, because of a change in circumstances. (Exhibit 1, pp. 1-5). The appellant filed this appeal in a timely manner on October 16, 2024. (130 CMR 610.015(B); Exhibit 2). Denial of assistance is valid grounds for appeal (130 CMR 610.032). The notices were consolidated, and a fair hearing was scheduled for November 19, 2024 (Exhibit 4).

Action Taken by MassHealth

MassHealth notified the appellant that she does not meet MassHealth disability requirements, and that she is not eligible for any MassHealth coverage type.

Issue

The appeal issue is whether MassHealth was correct in determining that the appellant is not totally and permanently disabled, and that she is not eligible for any MassHealth coverage type.

Summary of Evidence

MassHealth was represented at the hearing by an eligibility representative from the MassHealth Enrollment Center and a registered nurse and appeals reviewer from Disability Evaluation Services (DES); both parties participated by telephone. The MassHealth eligibility representative testified as follows:

On August 14, 2024, MassHealth received a denial notice from DES, stating that the appellant was not deemed disabled. Upon receipt, MassHealth erroneously entered an incorrect code into the computer system, which generated an approval notice to the appellant, approving her for MassHealth CommonHealth benefits.[1] On August 15, 2024, the DES form was updated and MassHealth entered the correct code in its computer system, which generated a downgrade notice from MassHealth CommonHealth benefits to Health Safety Net coverage on August 15, 2024. (Exhibit 1, pp. 1-5). The August 15th downgrade notice further stated that the appellant's CommonHealth benefits will end on September 30, 2024. *Id*. However, MassHealth maintains that the appellant was never eligible for MassHealth benefits due to her income and the DES denial determination. The MassHealth representative stated that the appellant is under the age of [redacted] and she resides in a household of 1 as a tax-filer. The appellant grosses $2,817.10 per month from employment, which equates to 219.47% of the Federal Poverty Level (FPL). To qualify for MassHealth CarePlus benefits, an applicant's gross monthly income cannot exceed 133% of the FPL, or $1,670.00. To qualify for MassHealth CommonHealth benefits, DES must first deem an applicant is disabled. Here, the appellant was deemed not disabled by DES, and her income is over the allowable limit to qualify for MassHealth CarePlus coverage. The appellant is eligible for Health Safety Net benefits, and she is eligible to enroll in a ConnectorCare plan through the Health Connector. *Id*.

The DES representative testified as follows: DES's role is to determine for MassHealth if an applicant meets the Social Security Administration (SSA) level of disability from a clinical standpoint. To determine such, a 5-step sequential evaluation process is used, as described within the SSA regulations at Title XX of the Code of Federal Regulations, or CFR, Chapter III, § 416.920 (See, Exhibit 6, pp. 7-9). DES applies this 5-step process using the applicant's medical records and disability supplement submissions. Per SSA CFR § 416.905, disability is defined as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death, or which has lasted or can be expected to

[1] The MassHealth representative explained that when DES sent over the initial denial letter to MassHealth, the denial code was misplaced. This confusion led to MassHealth's erroneous approval of CommonHealth benefits for the appellant.

last for a continuous process of not less than 12 months. To meet this definition, you must have a severe impairment(s) that renders you unable to do your past relevant work or any other substantial gainful work that exists in the regional economy (See, Exhibit 6, p. 5). Per SSA CFR § 416.945, what a person can still do despite an impairment is called his or her residual functional capacity (RFC). Unless an impairment is so severe that it is deemed to prevent you from doing substantial gainful activity, it is this RFC that is used to determine whether a person can still perform his or her past work, or, in conjunction with the person's age, education, and work experience, any other work (See, Exhibit 6, pp. 12-13).

The appellant is an adult female who initially submitted a MassHealth Disability Supplement to DES on August 9, 2024, listing the following health problems: asthma and obesity. (Exhibit 6, pp. 38, 43).[2] DES requested and obtained medical documentation using the medical releases that the appellant provided from her sole treating provider, [redacted] (Exhibit 6, pp. 30-31). Once DES receives the medical documentation, the 5-step review process begins, as follows:

Step 1: Is the applicant engaged in substantial gainful activity (SGA)?

For the appellant's review, Step 1 was marked "No" (Exhibit 6, p. 45). The DES representative explained that Step 1 is waived by MassHealth regardless of whether the applicant is engaging in SGA. However, on the federal level, if an applicant is engaging in SGA, it stops the disability review in its entirety. Here, Step 1 is waived for MassHealth purposes and the review proceeds to Step 2.

Step 2: Does the claimant have a medically determinable impairment (MDI) or a combination of MDIs that is both severe and meets the duration requirement?

The DES representative testified that the duration requirement means that the impairment is expected to result in death, or which has lasted or is expected to last for a continuous process of not less than 12 months at that severity. (See, Exhibit 6, pp. 45). Here, DES received records from [redacted] on behalf of the appellant. [redacted] records indicate the following information:

On August 2, 2024, the appellant was seen for an office visit. (Exhibit 6, pp. 61-66). The purpose of the office visit was to review the following impairments: obesity, anxiety (with an onset date of April 21, 2021), backache, backpain (with an onset date of January 12, 2021), and dysmenorrhea (with an onset date of March 13, 2023). The appellant's height and weight measure at 5 feet and 2.25 inches and 206 pounds. Her oxygen saturation is 99% and her respiratory rate (RR) is 18. The appellant's medications include the following: albuterol inhaler as needed, nebulizer as needed, Zyrtec (cetirizine), Flovent nasal spray (fluticasone), montelukast (Singulair for asthma), Mucinex DM, Symbicort inhaler every day, Ventolin inhaler as needed, acetaminophen, Ibuprofen,

[2] DES subsequently received a letter of intent completed by [redacted] on November 15, 2024. In this letter, [redacted] requested that the appellant's following conditions be reconsidered: Asthma management, obesity treatment, anxiety, dysmenorrhea and dorsalgia. (Exhibit 5).

Paraguard T 380A 380 square mm intrauterine device (beginning on October 23, 2020). The appellant's physical exam as reported by [redacted] noted that the appellant has no acute distress, she has normal muscle tone, and she moves all extremities equally. Further, [redacted] noted that the appellant reports to be doing well with her asthma condition and her lungs were clear on examination. [redacted] also noted that he prescribed Wegovy per the appellant's request, with a plan to reach a goal weight and normal Body Mass Index (BMI) range. With respect to the appellant's reported concerns of hirsutism and familiar thyroid issues, [redacted] noted that a blood work panel of the appellant indicates normal thyroid function at this time.

On July 30, 2024, [redacted] reported that the appellant was seen for an office visit. (Exhibit 6, pp. 67-72). At that time, Dr. Towne reported the following: the appellant's weight is 208 pounds, her oxygen saturation measured at 97%, and RR is 16. The appellant has a history of asthma, she reports that it is currently well-controlled and is consistent with her medications. The appellant's lungs were clear on exam. The appellant's thyroid was slightly enlarged on the left side; her thyroid stimulating hormone lab work results were 1.77 (normal range 0.27-4.20). (See, Exhibit 6, p. 90). As to reported concerns of macromastia, [redacted] noted that he re-issued a referral for plastic surgery for a breast reduction. Regarding the appellant's dysmenorrhea condition, [redacted] noted that she reported that her periods have been generally consistent.

On September 28, 2023, the appellant was seen by [redacted] NP for medication refills due to her asthmatic conditions. (Exhibit 6, pp. 73-76). It was noted that the appellant wondered about a gyn referral for a pap, and guidelines were discussed. The appellant reported that she has contraception and there are no current problems.

On April 5, 2023, the appellant was seen by [redacted] FNP for a telehealth visit. (Exhibit 6, pp. 79-83). The appellant reported that she was doing much better with her asthma condition. She denied shortness of breath. As to her macromastia condition, it was noted that the appellant reported back pain and that she needs a consultation for a breast reduction.

On March 13, 2023, the appellant was seen by [redacted] FNP for a new provider visit. (Exhibit 6, pp. 85-93). At that time, the appellant weighed 191 pounds, her oxygen saturation measured at 100%. The appellant was seen for follow-up for dry/productive cough, chest tightness, wheezing and shortness of breath. Upon examination, it was noted that the appellant has normal respirations, and clear lungs with no wheezing or crackles. With respect to her dysmenorrhea condition, the appellant reports having a regular period and ibuprofen was prescribed for period cramps.

The 5-step disability review concluded at Step 2 with DES's determination that the client's MDIs are not severe. DES concluded that the appellant does not have an MDI or a combination of MDIs that is both severe and meets the duration requirement for SSI. The appellant's reported impairments of asthma and obesity are not severe, because they do not significantly limit her physical ability to do basic work activities. (See, CFR 416.920(c); Exhibit 6, p. 8). DES's review

concluded with the determination that the appellant is not disabled. DES sent the appellant a denial letter on August 13, 2024. (Exhibit 1, p. 6).

The appellant appeared at the hearing telephonically. She did not dispute her income or her employment. The appellant testified that she has struggled with her medical conditions throughout her entire life; she had asthma since she was a child. While her asthma condition may currently appear to be manageable that is only because she was fortunate enough to have access to inhalers. Realistically though, the appellant can barely afford rental expenses and groceries, let alone health insurance. The appellant stated that health insurance is not a luxury, rather it is a necessity for her. The appellant noted that her medical provider documented that she is currently struggling with additional health conditions including anxiety, obesity, and heavy back pain due to the size of her breasts in conjunction with her smaller frame. She stated that these new challenges further add to the difficulties that she already faces. The appellant stated that without MassHealth benefits, her well-being and her life could be at serious risk. The appellant stated that both she and her social worker have contacted the Health Connector. However, the appellant cannot afford any of the plans that were made available to her, given her utilities, rental, and grocery expenses.

In response, the DES representative inquired about the letter that DES received from the appellant's provider, [redacted] on November 15, 2024. (See, Exhibit 5). Specifically, DES asked whether the appellant sought any new providers or treatment for her conditions. The appellant stated that [redacted] made referrals for her; however, there are wait lists involved with each referral. The appellant explained that [redacted] referred her to a plastic surgeon for her back pain, an allergist for her allergies which triggers her asthma, and a referral for a counselor. She has not heard back from, nor has she seen any new providers, due to the waitlists involved.

Findings of Fact

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

1. The appellant is between the ages of [redacted] years old, she is a tax-filer and has a household size of one.

2. The appellant is employed and has a gross monthly income of $2,817.10, which equates to 219.47% of the FPL.

3. The appellant filed a Disability Supplement on August 9, 2024.

4. The appellant alleges that she is disabled because of the following impairments: asthma, obesity , anxiety, dysmenorrhea, and dorsalgia.

5. The appellant's recent medical records indicate that her lungs were clear on examination

and that she reported that she is doing well with her asthma.

6. The appellant's recent medical records indicate that her physician prescribed the medication Wegovy to assist with weight loss.

7. The appellant's recent medical records contain little information regarding dysmenorrhea other than to note that the appellant's periods have been generally consistent and that she was advised to take ibuprofen for period cramps.

8. The appellant's recent medical records note that she suffers from macromastia (large breasts) with associated back pain; her physician issued the appellant more than one referral to a plastic surgeon to address this issue.

9. The appellant's recent medical records do not address the appellant's complaints of anxiety; the appellant noted that she has been referred to a counselor.

10. On August 13, 2024, MassHealth determined that the appellant is not disabled.

11. The disability determination was based on a finding that the appellant's impairments are not "severe."

12. MassHealth found that the appellant is not disabled, and that she currently has no categorical eligibility for MassHealth coverage.

13. The appellant is eligible for Health Safety Net coverage and is eligible to enroll in a ConnectorCare plan through the Health Connector.

Analysis and Conclusions of Law

In order to be found disabled for MassHealth Standard, an individual must be permanently and totally disabled (130 CMR 501.001). The guidelines used in establishing disability under this program are the same as those that are used by the Social Security Administration. *Id*.

Individuals who meet the Social Security Administration's definition of disability may establish eligibility for MassHealth Standard, in accordance with 130 CMR 505.002(E). Pursuant to Title XX, § 416.905, the Social Security Administration defines disability as: the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death, or which has lasted or can be expected to last for a continuous process of not less than 12 months.

Title XX of the Social Security Act establishes standards and the five-step sequential evaluation

process. If a determination of disability can be made at any step, the evaluation process stops at that point. Step 1 considers whether an applicant is engaged in substantial gainful activity. This step is waived in MassHealth cases. Thus, the review proceeds to Step 2.

Step 2 determines whether a claimant has a medically determinable impairment (MDI) or a combination of MDIs that is both severe and meets the duration requirement. To be determined severe, a medically determinable impairment means that said impairment is expected to result in death, or which has lasted or is expected to last for a continuous process of not less than 12 months at that severity.

If an individual does not have any impairment or combination of impairments which significantly limits his or her physical or mental ability to do basic work activities, that individual will be found not to have a severe impairment and, therefore, not disabled. (20 CFR 404.1520(c)).

Here, the evidence supports the DES determination that the clinical information fails to show that the appellant has any significant impairment(s) that affects her ability to perform basic work activities. The appellant's treatment notes from her medical provider reveal that she is "doing well," that her lungs were "clear on exam" regarding her asthma condition. [redacted] report reveals that as of August 2, 2024, the appellant uses inhalers and a nebulizer as needed, in addition to nasal spray. As to the appellant's obesity condition, [redacted] noted that Wegovy was prescribed to the appellant, with a plan to reach a goal weight and a normal BMI range. (Exhibit 6, pp. 61-66). I note that the appellant has additional health problems which include anxiety, dysmenorrhea, and dorsalgia. (See, Exhibit 5). [redacted] recently concluded that upon a physical examination of the appellant, there is no acute distress, normal muscle tone, and that she moves all extremities equally. Additionally, [redacted] has submitted multiple referrals for a counselor, plastic surgeon, and an allergist – all of whom could potentially assist the appellant with her complaints. There is no evidence that the appellant has utilized these specialty services but continues to have the same symptoms, which weakens her argument that her impairments are in fact severe.

The appellant is employed and is in good standing at work. She functions well with her current employment situation, and the evidence demonstrates that the appellant is stable. (Exhibit 6). Therefore, I agree with DES that the appellant's impairments do not meet the severity requirements of Step 2, and that DES correctly determined that the appellant is not disabled pursuant to 130 CMR 505.002 (F).

In light of this conclusion, I find that MassHealth correctly determined that the appellant is not currently eligible for coverage. The MassHealth regulations found at 130 CMR 505.000 *et. seq*. describes 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 [redacted] 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)).

The appellant is categorically eligible for MassHealth CarePlus coverage. An applicant is financially eligible for this coverage type if "the modified adjusted gross income of the MassHealth MAGI household is less than or equal to 133% of the federal poverty level." (See, 130 CMR 505.002(C)(1)(a)). In the present case, the appellant's gross monthly income from employment amounts to $2,817.10, which equates to 219.47% of the FPL. The appellant is therefore financially ineligible for MassHealth CarePlus coverage at this time. As the MassHealth determination was correct, this appeal is denied.[3]

Order for MassHealth

None.

[3] This denial does not preclude the appellant from directing any questions regarding Health Connector plans to 1-877-MA-ENROLL (1-877-623-6765), or inquiries concerning Health Safety Net to 877-910-2100.

Notification of Your Right to Appeal to Court

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

Kimberly Scanlon
Hearing Officer
Board of Hearings

MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780, 508-828-4616

MassHealth Representative: Disability Evaluation Services