Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

Susan Norquist
[redacted]

Appeal Decision:	Denied	**Appeal Number:**	2419731
Decision Date:	04/15/2025	**Hearing Date:**	2/28/2025
Hearing Officer:	Patrick Grogan	**Record Open to:**	N/A

Appearance for Appellant:
[redacted]

Appearance for MassHealth:
Sherri Paiva, MassHealth Taunton, Yvette Prayor, RN., Appeals Reviewer, Disability Evaluation Services (DES), ForHealth Consulting at UMass Chan Medical School

Interpreter:
N/A

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:**	DES Determination
Decision Date:	04/15/2025	**Hearing Date:**	2/28/2025
MassHealth's Rep.:	Sherri Pavia, MassHealth, Yvette Prayor, RN, (DES),	**Appellant's Rep.:**	[redacted]
Hearing Location:	Remote (Tel)	**Aid Pending:**	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 December 2, 2024, MassHealth notified the Appellant that she does not meet the MassHealth disability requirements. (Exhibit 6, pg. 55). Through a separate notice dated December 14, 2024, MassHealth notified the Appellant that she does not qualify for MassHealth benefits due to excess income. (Exhibit 1) The Appellant filed an appeal in a timely manner on December 26, 2024. (130 CMR 610.015(B); Exhibit 2) Denial of assistance is valid grounds for appeal (130 CMR 610.032).

A Fair Hearing was scheduled for January 28, 2025 regarding the December 14, 2024 Notice. (Exhibit 3) At the January 28, 2025 Hearing, the Appellant indicated that she was seeking appeal of the decision that the Appellant did not meet the MassHealth disability requirements[1]. (Exhibit 6, pg. 55). Since no representative from Disability Evaluation Services (DES) was included in the Hearing held on January 28, 2025, a second day of Hearing was scheduled for February 28, 2025 to

[1] At the January 28, 2025 Hearing, the Appellant indicated that she did not receive the Notice dated December 2, 2024 sent by DES. (Testimony, Exhibit 6, pg. 55). The Appellant's request for a Fair Hearing was filed within the applicable timeframe for both notices (December 2, 2024, Exhibit 6, pg. 55 and December 14,2024, Exhibit 1). Accordingly, a day 2 of Hearing was scheduled to include a representative from DES to address the issue the Appellant was seeking to appeal: MassHealth's determination that the Appellant did not meet the MassHealth disability requirements.

address the issue the Appellant was seeking to appeal, the MassHealth determination that the Appellant does not meet the MassHealth disability requirements. (Testimony, Exhibit 5)

Action Taken by MassHealth

MassHealth notified the Appellant that she does not meet the MassHealth disability requirements.

Issue

The appeal issue is whether MassHealth was correct in determining that the Appellant is not totally and permanently disabled.

Summary of Evidence

At the January 28, 2025, MassHealth was represented by a representative from the MassHealth Enrollment Center in Taunton, and the Appellant represented herself. (Testimony) Both parties participated by telephone. MassHealth testified that the Appellant resided in a household of 2, with a monthly income of $4,737.60, which exceeded the income limitation for MassHealth benefits. (Testimony).

The Appellant testified that she was seeking to appeal the determination that she did not qualify for CommonHealth due to MassHealth's determination that the Appellant did not meet the MassHealth disability requirements. (Testimony) The DES Notice, dated December 2, 2024 was not included in the Appellant's request. No representative from DES was included in the Hearing held on January 28, 2025. (Testimony) Accordingly, the Hearing was suspended, and a day 2 was scheduled for a representative from DES to appear to address the issue the Appellant was seeking to appeal: MassHealth's determination that the Appellant did not meet the MassHealth disability requirements[2]. (Testimony, Exhibit 5)

MassHealth was represented at the day 2 of Hearing by an eligibility representative from MassHealth and a registered Nurse and appeals reviewer from Disability Evaluation Services (DES); both parties participated by telephone. The Nurse from DES explained that DES determines for MassHealth if an applicant meets the Social Security Administration (SSA) level of disability from a clinical standpoint. DES utilizes a 5-step process, as described by SSA regulations at Title 20 Code of Federal Regulations (CFR) Ch. III section 416.920 (Exhibit 9) to determine disability status. The review relies on an applicants' medical records and disability supplement. SSA CFR

[2] The Appellant confirmed at both Hearings that she was appealing the DES determination that she was not disabled, confirmed the accuracy of the income figures about which MassHealth testified during day 1 of the Hearing, and was not appealing MassHealth's financial determination. (Testimony)

§416.905 states the definition of disability is the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death, or which has lasted or can be expected to last for a continuous period of not less than 12 months. (Exhibit 6, pg. 8) In order for an application to meet this definition, an applicant must have a severe impairment that makes one unable to do past relevant work or any other substantial gainful work that exists in the regional economy. (Testimony, Exhibit 8)

The DES Nurse explained that in accordance with SSA CFR §416.945 (Exhibit 6, pgs. 16-17) 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 one from doing substantial gainful activity, it is this residual functional capacity that is used to determine whether one can still do one's past work or, in conjunction with an applicant's age, education and work experience, any other type of work. (Testimony, Exhibit 8)

The Nurse explained that the Appellant is an adult under the age of 65, who originally had been administratively approved for MassHealth Adult Disability (February 23, 2023) in response to the Public Health Emergency (PHE) and consistent with the federal continuous coverage requirements and MassHealth coverage protections which were in effect (stating no member could be denied/ disenrolled during this period). Upon conclusion of the federal continuous coverage requirements (end of PHE) MassHealth returned to standard annual eligibility renewal processes on April 1, 2023; requiring all current MassHealth members to renew their health coverage to ensure they still qualify for their current benefits. (Testimony, Exhibit pg. 8)

The Appellant submitted a MassHealth Adult Disability Supplement to DES on November 22, 2024. The Appellant had listed the following health problems: Acid Reflux, Asthma, Inflammatory Bowel Disease with Diarrhea (IBS-D) and Migraines. DES requested and obtained medical documentation using the medical releases the Appellant had provided. (Testimony, Exhibit 6, pgs. 25-29) Medical documentation was received from [redacted] (Exhibit 6, pgs. 84-106). Once medical documentation was received at DES, the 5-step review process began.

Step 1 asks "Is the claimant engaging in substantial gainful activity (SGA)? For the Appellant's review, Step 1 was marked, "No" (Exhibit 6, pg. 43). This step is waived by MassHealth regardless of the claimant engaging in SGA and does not impact final determination. Yet, the nurse noted that on the federal level engaging in SGA would stop the disability review in its entirety. (Testimony, Exhibit 8)

Step 2 asks "Does the claimant have a medically determinable impairment (MDI) or combination of MDIs that is <u>both</u> 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). The disability reviewer (DR) determined the documentation was sufficient to evaluate the clients' complaints and meet the severity/ duration requirements. The reviewer

had marked, “Yes” continuing to Step 3 (Exhibit 6, pg. 43).

Step 3 asks “Does the claimant have an impairment(s) that meets an adult SSA listing, or is medically equal to a listing, and meets the listing level duration requirement?” Step 3 was marked, “No” by the reviewer (Exhibit 6, pg. 43). citing the appropriate adult SSA listings considered: 3.03 – Asthma, 5.06 – IBS-D, Acid Reflux, and 11.02 – Migraines.

For the rest of the review, Steps 4 & 5, both a Residual Functional Capacity (RFC) assessment along with a vocational assessment were determined. The RFC is the most an applicant can still accomplish despite limitations. An applicant’s RFC is based on all relevant evidence in the case record (see CFR §416.945, Exhibit 6, pgs. 16-17). A Physical RFC, completed by a Physician Advisor (PA) on December 2, 2024 (Exhibit 6, pgs. 51-53), indicates that the Appellant has no exertional limitations, however, the Appellant has non-exertional environmental limitations to fumes, odors, dust, gases, etc. The DR completed a vocational assessment (Exhibit 6, pg. 42), utilizing the educational and work history reported on the client’s supplement (Exhibit 6, pgs. 38-39, pg. 42) and the RFC; additional references include CFR §416.960 (Exhibit 6, pg. 19), CFR §416.965 (Exhibit 6, pg. 20), CFR §416.967 (Exhibit 6, pg. 21) and CFR §416.968 (Exhibit 6, pgs. 22-23). The 5-step review process continues to Step 4.

Step 4 (page 44) asks, “Does the claimant retain the capacity to perform any past relevant work (PRW)?” The reviewer selected “Yes.” The Appellant’s supplement indicated she possesses a Business Management and Psychology college education. The Appellant currently holds the position of Account Manager, as outlined in the Appellant's job description section of the supplement (Exhibit 6, pg. 39). According to the Dictionary Occupational Titles of ‘Accounting’ (DOT #216.482-010) this job falls within the sedentary – skilled category. The disability reviewer evaluated the Appellant’s Past Relevant Work (PRW) and Residual Functional Capacity (RFC) and concluded that Appellant’s role as an Account Manager fell within her RFC, leading to the determination that she is capable of performing her past work. As a result, The Appellant was classified as 'Not Disabled' under decision code 230. This concluded the disability review. (Testimony, Exhibit 8)

A final review and endorsement of the DR determination was completed by a Physician Advisor, on December 2, 2024 (Exhibit 6, pgs. 41, 55). A Disability Determination denial letter was created and placed in the mail to the client and the decision was transmitted to MassHealth on December 2, 2024 (Exhibit 6, pgs. 32, 55).

The Appellant had submitted information not reviewed in the initial determination. (Exhibit 7) The submission included Notices from MassHealth, the Disability Determination from DES, a statement from the Appellant as well as medical information. (Exhibit 7) The Appellant’s submission was considered by the DES Nurse who testified at the Day 2 of Hearing. The Nurse indicated that the submitted material supported the Appellant’s medical records, but that the information did not change DES’s ultimate decision. (Testimony, Exhibit 8)

The Nurse summarized the DES decision. The Nurse stated the Appellant's diagnosis of Acid Reflux, Asthma, Inflammatory Bowel Disease with Diarrhea (IBS-D) and Migraines and her associated symptoms do not currently meet or equal the high threshold for adult SSA disability. The Nurse continued that the Appellant's Physical RFC shows she has no exertional limitations to work activity however there's consideration of environmental limitations. The Nurse testified that the Appellant is able to perform her current work as an Account Manager, which falls within her Physical RFC. Therefore, the nurse concluded that the review finds that Appellant was correctly determined as 'Not Disabled' for Title XVI level benefits. (Testimony, Exhibit 8)

In the submission from the Appellant, the Appellant stated that she had been receiving CommonHealth for the past 3 years. (Exhibit 7, pgs. 11-14) The Appellant stated that she had been informed that she would always be covered by MassHealth CommonHealth. The Appellant stated that her condition would never improve, rather it would become progressively worse. The Appellant expressed concern that without CommonHealth her quality of life would diminish. The Appellant indicated that she was concerned that she would not be able to work without CommonHealth. (Exhibit 7, pgs. 11-14)

The Appellant is seeking CommonHealth to cover her medications, which she indicated her employer-sponsored health insurance would not cover. The Appellant indicated that she was informed by her doctors that no one from DES spoke with her doctors, however, her medical records from her doctors are included within DES's submission. (Exhibit 6, pgs. 57-106) The Appellant stated she suffers from severe IBS, migraines and asthma. (Exhibit 7, pgs. 11-14) The Appellant explained her concerns and difficulties leaving the house without the medication. (Exhibit 7, pgs. 11-14)

The Appellant testified regarding her concerns highlighted within her submission. (Exhibit 7, pgs. 11-14). The Nurse discussed, in detail, the Appellant's medical records (Exhibit 6), and indicated that although the Appellant had concerns, the Nurse was bound by the Regulations, and currently her condition did not rise to the high level required for a DES determination of a disability. The Appellant indicated that she would not be able to afford her medication, and ultimately was concerned that her conditions would revert back to the point that she would not be able to work any further. (Testimony)

Findings of Fact

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

1. The Appellant is an adult under the age of 65 who has been diagnosed with Acid Reflux, Asthma, Inflammatory Bowel Disease with Diarrhea (IBS-D) and Migraines. (Testimony, Exhibit 6, Exhibit 7, Exhibit 8)

2. The Appellant originally had been administratively approved for MassHealth Adult Disability (February 23, 2023) in response to the Public Health Emergency (PHE) and consistent with the federal continuous coverage requirements and MassHealth coverage protections which were in effect (stating no member could be denied/ disenrolled during this period). (Testimony, Exhibit pg. 8).

3. Upon conclusion of the federal continuous coverage requirements (end of PHE) MassHealth returned to standard annual eligibility renewal processes on April 1, 2023; requiring all current MassHealth members renew their health coverage to ensure they still qualify for their current benefits (Testimony, Exhibit pg. 8).

4. DES received and reviewed the Appellant's medical records within the disability determination review. (Testimony, Exhibit 6, pgs. 57-106)

5. The Appellant currently holds the position of Account Manager, as outlined in the Appellant's job description section of the supplement (Testimony, Exhibit 6, pg. 39).

6. DES evaluated whether the Appellant has a disability using a 5-step sequential evaluation process as described within the SSA regulations at Title XX of the Code of Federal Regulations, or CFR, Chapter III, § 416. (Testimony, Exhibit 6, Exhibit 8)

7. At Step 1, which explores whether the applicant engaged in substantial gainful employment (SGA), DES explained that this step is waived for MassHealth purposes. (Testimony, Exhibit 6, Exhibit 8)

8. At Step 2, DES determined that the Appellant has a severe impairment. (Testimony, Exhibit 6, Exhibit 8)

9. At Step 3, the reviewer indicated "No" (Exhibit 6, pg. 43). citing the appropriate adult SSA listings considered: 3.03 – Asthma, 5.06 – IBS-D, Acid Reflux, and 11.02 – Migraines. (Testimony, Exhibit 6, Exhibit 8)

10. At Step 4 (Exhibit 6, pg. 44) the disability reviewer evaluated the Appellant's Past Relevant Work (PRW) and Residual Functional Capacity (RFC) and concluded that Appellant's role as an Account Manager fell within her RFC, leading to the determination that she is capable of performing her past work. As a result, the Appellant was classified as 'Not Disabled' under decision code 230. This concluded the disability review. (Testimony, Exhibit 8)

Analysis and Conclusions of Law

The Appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007). See also Fisch v. Board of Registration in Med., 437 Mass. 128, 131 (2002); Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn., 11 Mass. App. Ct. 333, 334 (1981); Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance, 45 Mass. App. Ct. 386, 390 (1998).

In order for an individual to be determined eligible for MassHealth services, the Appellant must undergo an eligibility determination. During the eligibility process, an applicant has certain rights and responsibilities. For individuals under the age of 65, the duty to cooperate is codifying within 130 CMR 501.010:

> **501.010: Responsibilities of Applicants and Members**
> (A) Responsibility to Cooperate. The applicant or member must cooperate with the MassHealth agency in providing information necessary to establish and maintain eligibility and must comply with all the rules and regulations of MassHealth, including recovery and obtaining or maintaining available health insurance. The MassHealth agency may request corroborative information necessary to maintain eligibility, including obtaining or maintaining available health insurance. The applicant or member must supply such information within 30 days of the receipt of the agency's request. If the member does not cooperate, MassHealth benefits may be terminated.
> (B) Responsibility to Report Changes. The applicant or member must report to the MassHealth agency, within ten days or as soon as possible, changes that may affect eligibility. Such changes include, but are not limited to, income, the availability of health insurance, and third-party liability.
> (C) Cooperation with Quality Control. The Quality Control Division periodically conducts an independent review of eligibility factors in a sampling of case files. When a case file is selected for review, the member must cooperate with the representative of Quality Control. Cooperation includes, but is not limited to, a personal interview and the furnishing of requested information. If the member does not cooperate, MassHealth benefits may be terminated.

During this eligibility process, 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. The Social Security Administration requirements include the responsibilities for an applicant, which is codified within Title XX § 416.912:

§ 416.912. Responsibility for evidence.

(a) *Your responsibility* —

(1) *General.* In general, you have to prove to us that you are blind or disabled. You must inform us about or submit all evidence known to you that relates to whether or not you are blind or disabled (*see* § 416.913). This duty is ongoing and requires you to disclose any additional related evidence about which you become aware. This duty applies at each level of the administrative review process, including the Appeals Council level if the evidence relates to the period on or before the date of the administrative law judge hearing decision. We will consider only impairment(s) you say you have or about which we receive evidence. When you submit evidence received from another source, you must submit that evidence in its entirety, unless you previously submitted the same evidence to us or we instruct you otherwise. If we ask you, you must inform us about:

(i) Your medical source(s);

(ii) Your age;

(iii) Your education and training;

(iv) Your work experience;

(v) Your daily activities both before and after the date you say that you became disabled;

(vi) Your efforts to work; and

(vii) Any other factors showing how your impairment(s) affects your ability to work, or, if you are a child, your functioning. In §§ 416.960 through 416.969, we discuss in more detail the evidence we need when we consider vocational factors.

(2) *Completeness.* The evidence in your case record must be complete and detailed enough to allow us to make a determination or decision about whether you are disabled or blind. It must allow us to determine—

(i) The nature and severity of your impairment(s) for any period in question;

(ii) Whether the duration requirement described in § 416.909 is met; and

(iii) Your residual functional capacity to do work-related physical and mental activities, when the evaluation steps described in §§ 416.920(e) or (f)(1) apply, or, if you are a child, how you typically function compared to children your age who do not have impairments.

(3) *Statutory blindness.* If you are applying for benefits on the basis of statutory blindness, we will require an examination by a physician skilled in diseases of the eye or by an optometrist, whichever you may select.

(b) *Our responsibility* —

(1) *Development.* Before we make a determination that you are not disabled, we will develop your complete medical history for at least the 12 months preceding the month in which you file your application unless there is a reason to believe that development of an earlier period is necessary or unless you say that your disability began less than 12 months before you filed your application. We will make every reasonable effort to help you get medical evidence from your own medical sources and entities that maintain your medical sources' evidence when you give us permission to request the reports.

(i) *Every reasonable effort* means that we will make an initial request for evidence from your medical source or entity that maintains your medical source's evidence, and, at any time between 10 and 20 calendar days after the initial request, if the evidence has not been received, we will make one follow-up request to obtain the medical evidence necessary to make a determination. The medical source or entity that maintains your medical source's evidence will have a minimum of 10 calendar days from the date of our follow-up request to reply, unless our experience with that source indicates that a longer period is advisable in a particular case.

(ii) *Complete medical history* means the records of your medical source(s) covering at least the 12 months preceding the month in which you file your application. If you say that your disability began less than 12 months before you filed your application, we will develop your complete medical history beginning with the month you say your disability began unless we have reason to believe your disability began earlier.

(2) *Obtaining a consultative examination.* We may ask you to attend one or more consultative examinations at our expense. See §§ 416.917 through 416.919t for the rules governing the consultative examination process. Generally, we will not request a consultative examination until we have made every reasonable effort to obtain evidence from your own medical sources. We may order a consultative examination while awaiting receipt of medical source evidence in some instances, such as when we know a source is not productive, is uncooperative, or is unable to provide certain tests or procedures. We will not evaluate this evidence until we have made every reasonable effort to obtain evidence from your medical sources.

(3) *Other work.* In order to determine under § 416.920(g) that you are able to adjust to other work, we must provide evidence about the existence of work in the national economy that you can do (see §§ 416.960 through 416.969a), given your residual functional capacity

(which we have already assessed, as described in § 416.920(e)), age, education, and work experience. [82 FR 5874, Jan. 18, 2017]

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.

The Appellant has been diagnosed with Acid Reflux, Asthma, Inflammatory Bowel Disease with Diarrhea (IBS-D) and Migraines. (Testimony, Exhibit 6, Exhibit 7, Exhibit 8) DES determined that the Appellant's impairments have lasted or expected to last 12 months. I find this determination is accurate. Accordingly, the Appellant's impairments meet Step 2, and the review process proceeds to Step 3.

Step 3 requires the reviewer to determine whether the claimant has an impairment(s) that meets an adult SSA listing or is medically equal to a listing and meets the listing level duration requirement. The pertinent adult listings are set forth in the federal *Listing of Impairments* that can be found at 20 CFR Ch. III, Pt. 404, Subpart P, App. 1. DES reviewed the appellant's diagnoses, and determined that the impairments do not meet the high threshold of adult SSA listings and the listing level duration requirement. I find this determination is accurate.

Accordingly, the review process proceeds to Step 4. Step 4 requires the reviewer to determine whether the claimant retains the capacity to perform any past relevant work. The reviewer selected "Yes." The Appellant's supplement indicated she possesses a Business Management and Psychology college education. The Appellant currently holds the position of Account Manager, as outlined in the appellant's job description section of the supplement (Exhibit 6, pg. 39). According to the Dictionary Occupational Titles of 'Accounting' (DOT #216.482-010) this job falls within the sedentary – skilled category. The disability reviewer evaluated the applicant's Past Relevant Work (PRW) and Residual Functional Capacity (RFC) and

concluded that Appellant's role as an Account Manager fell within her RFC, leading to the determination that she is capable of performing her past work. As a result, The Appellant was classified as 'Not Disabled' under decision code 230. This concluded the disability review. (Testimony, Exhibit 8)

While I find the Appellant testified credibly, the Appellant's current stability supports DES's determination. The Appellant's testimony regarding her concerns of reversion to her stated prior to being medicated is insufficient to meet the burden here. Therefore, I find that DES was correct in determining that the Appellant is not disabled at this time pursuant to the Regulations supra. According, this appeal is denied.[3]

Order for MassHealth

None, except to remove aid pending.

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.

Patrick Grogan
Hearing Officer
Board of Hearings

MassHealth Representative: CC: DES

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

[3] This denial does not preclude the Appellant from re-applying for disability through DES.