

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2501382
Decision Date:	4/4/2025	Hearing Date:	03/05/2025
Hearing Officer:	Emily Sabo		

Appearance for Appellant:
Pro se

Appearances for MassHealth:
Carmen Rivera, Quincy MEC; Eileen Cynamon,
R.N., B.S.N., Disability Evaluation Services



*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:	Community Eligibility—Under 65; Income; Disability
Decision Date:	4/4/2025	Hearing Date:	03/05/2025
MassHealth's Reps.:	Carmen Rivera, Eileen Cynamon	Appellant's Rep.:	Pro se
Hearing Location:	Quincy Harbor South (Virtual)	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 January 3, 2025, MassHealth notified the Appellant that her MassHealth benefit was being downgraded from MassHealth Standard plus Premium Assistance to Health Safety Net, due to the Appellant's Transitional Medical Assistance period ending. 130 CMR 505.002(L)(5) and Exhibit 1. The Appellant filed this appeal in a timely manner on January 21, 2025. 130 CMR 610.015(B) and Exhibit 2. Denial of assistance is valid grounds for appeal. 130 CMR 610.032.

Action Taken by MassHealth

MassHealth notified the Appellant that her MassHealth benefit was being downgraded from MassHealth Standard plus Premium Assistance to Health Safety Net.

Issue

The appeal issue is whether MassHealth was correct in determining that the Appellant was not eligible for MassHealth benefits on the basis of income or disability.

Summary of Evidence

The hearing was held virtually. MassHealth was represented by a benefits eligibility specialist and an appeals reviewer from Disability Evaluation Services. The benefits eligibility specialist testified that upon the Appellant's marriage, the household gained an adult member and more income, for a total of three (two adults and one minor child) and income that is 263.69% of the federal poverty level. The benefits eligibility specialist testified that the Appellant was approved for transitional medical assistance for the period of December 31, 2023 until December 31, 2024. Based on a self-attested disability, MassHealth also directed the Appellant to complete an adult disability supplement. On December 12, 2024, MassHealth received a notice from Disability Evaluation Services that the Appellant is not disabled. Prior to the hearing, the benefits eligibility specialist and the Appellant spoke, and the Appellant provided updates on the household's adjusted gross income, which the benefits eligibility specialist testified was now 326.34% of the federal poverty level.

The appeals reviewer testified as follows: Disability Evaluation Services determines, for MassHealth, if an applicant meets the Social Security Administration (SSA) level of disability from a clinical standpoint. Disability Evaluation Services uses a 5-step process, as described by SSA regulations at Title 20 Code of Federal Regulations (CFR) Ch. III section 416.920 to determine disability status. The process is driven by the applicant's medical records and disability supplement. SSA 20 CFR §416.905 states that 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. To meet this definition, an individual must have a severe impairment(s) that makes them unable to do their past relevant work or any other substantial gainful work that exists in the regional economy.

Per SSA 20 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 an individual from doing substantial gainful activity, it is this residual functional capacity that is used to determine whether they can still do their past work or, in conjunction with their age, education and work experience, any other work.

The Appellant is a ■■■ year-old female who initially submitted a MassHealth Adult Disability Supplement on July 22, 2024. Once all required documents were deemed complete the disability review process was initiated. The Appellant listed the following health problems on her supplement: Attention Deficit Hyperactivity Disorder (ADHD), depression, anxiety, asthma, and benign hypermobility syndrome with joint and back pain. The Appellant also submitted a

copy of a 2010 psychiatric evaluation. The information, while historically relevant, alone was insufficient to complete the current disability determination. Disability Evaluation Services requested and obtained current provider documentation using the medical releases the Appellant provided.

Once the medical documentation was received, the 5-step review process was initiated:

Step 1 asks “Is the claimant engaging in substantial gainful activity (SGA)?” For the Appellant, Step 1 was marked, “Yes.” This step is waived by MassHealth regardless of the claimant engaging in SGA, while on the federal level engaging in SGA stops the disability review in its entirety.

Step 2 asks “Does the claimant have a medically determinable impairment (MDI) or combination of MDIs (20 CFR §416.923) 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).” Disability Evaluation Services requested and obtained medical documentation using the medical releases provided. Information was received from Dr. [REDACTED] of [REDACTED] -- [REDACTED], [REDACTED] -- [REDACTED] et al. providers, Dr. [REDACTED] of [REDACTED] and from [REDACTED] et al. providers. No records were received from [REDACTED], licensed marriage and family therapist (LMFT). The Disability Reviewer made an additional outreach attempt to obtain records from [REDACTED], placing a clinical targeted call to the provider on October 21, 2024, and left a message requesting a return call. No response was received from Ms. [REDACTED]; thus the Appellant was called on October 23, 2024, in an attempt to inform the Appellant that provider records had not been received and again leaving a message requesting a return call. No return call was received.

The disability reviewer consulted with both physician advisors Dr. [REDACTED] and Dr. [REDACTED], determining that the provider information was sufficient to establish the Appellant MDIs met the severity and duration requirements for Step 2, the disability reviewer selected, “Yes.” The appeals reviewer testified that the review looks at the whole person, to see if a combination of different disabling factors may tip the balance.

Dr. [REDACTED] wrote in an evaluation:

A review of the documentation confirmed that the client has valid diagnoses of ADHD, combined type, and major depressive disorder, recurrent. The client is working 32 hours weekly as a [REDACTED] and reported that her primary difficulty is fatigue and that she is unable to work full-time. Situational stressors have included an ongoing custody battle and positive factors include that the client has recently (or will soon) be married. The client’s ongoing mental status examinations, assessed by her psychiatrist are consistently within normal

limits and there were no objective (quantifiable) assessments (PHQ-9, GAD-7, MMSE) except for a significantly dated neuropsychological evaluation which confirmed diagnosis of ADHD, symptoms of which continue to be well managed with medication. Taken together, there was no evidence of marked limitations due to severe functional impairment in any domain of function. There was no indication of impaired function in the client's capacity for social interaction, understanding and memory, or training and supervision. Moderate limitations are supported in her ability to maintain attention, concentration, and work at a consistent pace. A moderate limitation in the client's adaptive function in responding to changes in the work setting is supported. She has communicated that fatigue and attention deficit symptoms can contribute to adjustment issues with changes and when coping with significant psychosocial stressors.

Exhibit 5 at 105.

Although the provider documentation was sufficient to evaluate the Appellant's medical/physical complaints, both the disability reviewer and their program manager concurred there continued to be insufficient mental health documentation to complete the disability evaluation. A psychiatric consultative examination was ordered to ensure sufficient clinical documentation was obtained before proceeding to Step 3. The Appellant attended a psychiatric consultative examination appointment with [REDACTED] Ph.D., and Dr. [REDACTED] provided a report to Disability Evaluation Services. Once sufficient clinical objective documentation was obtained to fully address all the Appellant's complaints, the disability reviewer proceeded to Step 3.

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?" The Appellant's provider records and her own reporting during the psychiatric consultative examination identified several additional complaints/diagnoses, not included on her supplement, which were considered within the context of this disability review: obstructive sleep apnea, Post Traumatic Stress Disorder (PTSD), Major Depressive Disorder (MDD), and bipolar disorder. When a specific impairment or diagnosis does not have its own listing under the SSI criteria, the evaluation will consider the listing that most closely matches the impairment, or the findings related to the impairment(s) will be evaluated to confirm they are at least of equal medical significance to those of a listed impairment. Step 3 was marked, "No" by the reviewer citing the applicable adult SSA listings considered: 1.15 – Disorders of the Skeletal Spine resulting in compromise of a Nerve Root(s), 1.18 – Abnormality of a Major Joint(s) in any Extremity, 3.03 – Asthma (also used for obstructive sleep apnea), 12.04 – Depressive, Bipolar and Related Disorders, and 12.06 – Anxiety and Obsessive-Compulsive Disorders. The appeals reviewer also considered SSI listings: 12.11 – Neurodevelopmental Disorders (ADHD), and 12.15 - Trauma- and Stressor-Related Disorders.

For the rest of the review, Steps 4 & 5, both a Residual Functional Capacity (RFC) assessment along with a vocational assessment are determined. The RFC is the most an applicant can still

do despite limitations. An applicant's RFC is based on all relevant evidence in the case record. A Physical RFC, completed by Dr. [REDACTED] on July 31, 2024, indicates the client is capable of performing the full range of light work with consideration of postural limitation for never climbing (ladders, scaffolding, etc.), manipulative limitation of left upper extremity occasional overhead reaching, and environmental limitation to hazards (machinery, heights, etc.). A Mental RFC, completed by Dr. [REDACTED] on December 10, 2024, indicates that the Appellant is capable of performing basic, unskilled work activity when considering moderate limitations in her ability to maintain attention and concentration to sustain employment and ability to work at a consistent pace, as well as to respond appropriately to criticism from supervisor. The disability reviewer completed a vocational assessment, using the educational and work history reported on the client's supplement and the Physical and Mental RFCs. The 5-step review process continued to Step 4.

Step 4 asks, "Does the claimant retain the capacity to perform any past relevant work (PRW)?" The Appellant is currently employed as a [REDACTED] and all her previous employment has also been in similar roles. The dictionary of occupational titles for [REDACTED] includes [REDACTED], which is classified as light, skilled work. Therefore, the client's current/past work exceeds her current Mental RFC capabilities as outlined by Dr. [REDACTED]. The disability reviewer selected "No" and the review proceeded to Step 5. The appeals reviewer explained that the Appellant is currently working beyond what Dr. [REDACTED] found to be the Appellant's capabilities.

Step 5 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?" The reviewer selected "Yes," citing three unskilled jobs available within both the regional and national economy. The disability reviewer referenced the Occupational Employment Quarterly publication and quoted three jobs: 4030 Food Preparation Workers, 9350 Parking Lot Attendants, 9610 Cleaners of Vehicles & Equipment. Additionally, the appeals reviewer selected alternate jobs which are also applicable: 4420 Ushers, Lobby Attendants & Ticket Takers, 5320 Library Assistants, Clerical, 5400 Receptionists & Information Clerks. The appeals reviewer testified that she tried to select jobs that she thought would fit the Appellant better. The appeals reviewer explained that the Appellant may be overqualified for those jobs, but that so long as their evaluation can find three job titles, then the conclusion is that work is available.

The disability reviewer determined the Appellant is 'Not Disabled' using decision Code 231. The 5-step evaluation process concluded with a final review and endorsement of the disability decision by [REDACTED], MD, and [REDACTED], Ed.D., both on December 10, 2024. Disability Evaluation Services mailed a disability determination denial letter to the Appellant on December 10, 2024 and transmitted the decision to MassHealth on December 11, 2024.

Disability Evaluation Services found that the Appellant does not meet or equal the high threshold of adult SSA disability listings. Additionally, the Appellant's RFCs indicate she is

capable of performing work activity in the competitive labor market. Finally, there are, within the regional/national economy, a sizable number of jobs (in one or more occupations) having requirements which the client can perform based on her physical and mental capabilities and her vocational qualifications. Therefore, the Appellant is not clinically eligible for Title XVI level benefits and was correctly determined “Not Disabled.”

The appeals reviewer explained that the definition of disabled for the SSA evaluation is stricter than how “disability” is defined elsewhere, including for accommodations under the Americans with Disabilities Act.

The Appellant did not dispute the income information provided by MassHealth. The Appellant shared her concern about using up her sick leave time, and concern about keeping employment based on absenteeism related to her medical issues and those of her child. The Appellant testified that she has medication-resistant depression and other challenges with finding the right medication for her ADHD. The Appellant testified that due to her need to take time off, she did not think that she could retain a job in any of the job categories that Disability Evaluation Services had listed. She testified that as of the day of the hearing, so far in 2025, she had taken 25 sick days for herself, and 12 days for the medical needs of her child. The Appellant testified that she loves and enjoys her work as a [REDACTED], and that even with that, it can be a struggle to get out of bed, and so she envisions that it would be very hard to do that with the other categories of jobs. The Appellant fears falling into a crevice. The Appellant explained that her different conditions — including ADHD, anxiety, and depression — intersect and make functioning harder for her. The Appellant stated that she appreciated the explanation that the standard is total and permanent disability, as opposed to what might make her work more do-able.

Regarding absenteeism, the appeals reviewer explained that under Title XVI of the Social Security Act, the disability has to be sustained and last 12 months at a high level of severity. The appeals reviewer explained that if an individual has a condition where they experience flares or bouts of severity, unless that impairment lasts at a severe level for 12 months, the individual is not considered disabled. The appeals reviewer also shared that the review does not factor in time off for a child’s medical issues or conditions.

Findings of Fact

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

1. The Appellant is a [REDACTED] year-old adult. The Appellant has a household size of three, consisting of two adults and a minor child. The household's income is 326.34% of the federal poverty level. Testimony and Exhibit 4.
2. The Appellant had Transitional Medical Assistance from December 31, 2023 to December 31, 2024. Testimony.
3. On July 22, 2024, the Appellant submitted a MassHealth Adult Disability Supplement to Disability Evaluation Services. The Appellant listed the following health problems on her supplement: ADHD, depression, anxiety, asthma, and benign hypermobility syndrome with joint and back pain. Testimony.
4. Once Disability Evaluation Services received all required documentation, it initiated the 5-step disability review process. Testimony.
5. At Step 1, Disability Evaluation Services found that the Appellant was engaged in SGA and marked "yes." However, this step is waived by MassHealth. Testimony.
6. At Step 2, Disability Evaluation Services found that the Appellant had an MDI that is both severe and meets the duration requirement and marked "yes." Testimony.
7. Dr. [REDACTED]'s evaluation of the Appellant's record stated: "A review of the documentation confirmed that the client has valid diagnoses of ADHD, combined type, and major depressive disorder, recurrent. The client is working 32 hours weekly as a [REDACTED] [REDACTED] and reported that her primary difficulty is fatigue and that she is unable to work full-time. Situational stressors have included an ongoing custody battle and positive factors include that the client has recently (or will soon) be married. The client's ongoing mental status examinations, assessed by her psychiatrist are consistently within normal limits and there were no objective (quantifiable) assessments (PHQ-9, GAD-7, MMSE) except for a significantly dated neuropsychological evaluation which confirmed diagnosis of ADHD, symptoms of which continue to be well managed with medication. Taken together, there was no evidence of marked limitations due to severe functional impairment in any domain of function. There was no indication of impaired function in the client's capacity for social interaction, understanding and memory, or training and supervision. Moderate limitations are supported in her ability to maintain attention, concentration, and work at a consistent pace. A moderate limitation in the client's adaptive function in responding to changes in the work setting is supported. She has communicated

that fatigue and attention deficit symptoms can contribute to adjustment issues with changes and when coping with significant psychosocial stressors.” Exhibit 5.

8. At Step 3, Disability Evaluation Services found that the Appellant did not have an impairment that met an adult SSA listing, or is medically equal to a listing, and meets the listing level duration requirement, and therefore marked “no.” Testimony.
9. The Appellant’s provider records and her own reporting during the psychiatric consultative examination identified several additional complaints/diagnoses, not included on her supplement, which were considered within the context of this disability review: obstructive sleep apnea, Post Traumatic Stress Disorder (PTSD), Major Depressive Disorder (MDD), bipolar disorder. The disability reviewer considered: 1.15 – Disorders of the Skeletal Spine resulting in compromise of a Nerve Root(s), 1.18 – Abnormality of a Major Joint(s) in any Extremity, 3.03 – Asthma (also used for obstructive sleep apnea), 12.04 – Depressive, Bipolar and Related Disorders, 12.06 – Anxiety and Obsessive-Compulsive Disorders. The appeals reviewer also considered SSI listings: 12.11 – Neurodevelopmental Disorders (ADHD) and 12.15 - Trauma- and Stressor-Related Disorders.
10. In advance of steps 4 and 5, Disability Evaluation Services performed an RFC and vocational assessment. A Physical RFC, completed by Dr. [REDACTED] on July 31, 2024, indicates the Appellant is capable of performing the full range of light work with consideration of postural limitation for never climbing (ladders, scaffolding, etc.), manipulative limitation of left upper extremity occasional overhead reaching, and environmental limitation to hazards (machinery, heights, etc.). A Mental RFC, completed by Dr. [REDACTED] on December 10, 2024, indicates that the Appellant is capable of performing basic, unskilled work activity when considering moderate limitations in her ability to maintain attention and concentration to sustain employment and ability to work at a consistent pace, as well as to respond appropriately to criticism from supervisor. Testimony and Exhibit 5.
11. At Step 4, Disability Evaluation Services found that the Appellant does not retain the capacity to perform any PRW and marked “no.” Because the Appellant’s current work is classified as light, skilled work, it exceeds her Mental RFC as determined by Dr. [REDACTED]. Testimony.
12. At Step 5, Disability Evaluation Services found that the Appellant has the ability to make an adjustment to other work, considering her RFCs, age, education, and work experience, and therefore marked “yes.” The disability reviewer referenced the Occupational Employment Quarterly publication and quoted three jobs: 4030 Food Preparation Workers, 9350 Parking Lot Attendants, 9610 Cleaners of Vehicles & Equipment. Additionally, the appeals reviewer selected alternate jobs which are also applicable: 4420 Ushers, Lobby Attendants & Ticket Takers, 5320 Library Assistants,

Clerical, 5400 Receptionists & Information Clerks. The appeals reviewer explained that the Appellant may be overqualified for those jobs, but that so long as their evaluation can find three job titles, then the conclusion is that work is available. Testimony.

13. Disability Evaluation Services concluded that the Appellant is not disabled and notified MassHealth of that conclusion on December 11, 2024.
14. On January 3, 2025, MassHealth notified the Appellant that her MassHealth benefit was being downgraded from MassHealth Standard plus Premium Assistance to Health Safety Net, due to the Appellant's Transitional Medical Assistance period ending. Exhibit 1.
15. The Appellant filed a timely appeal with the Board of Hearings on January 21, 2025. Exhibit 2.

Analysis and Conclusions of Law

MassHealth regulations provide as follows:

505.002: MassHealth Standard

....

(C) Eligibility Requirements for Parents and Caretaker Relatives.

- (1) A parent or caretaker relative of a child younger than 19 years old is eligible for MassHealth Standard coverage if
 - (a) the modified adjusted gross income of the MassHealth MAGI household is less than or equal to 133% of the federal poverty level (FPL);
 - (b) the individual is a citizen as described at 130 CMR 504.002: *U.S. Citizens* or a qualified noncitizen as described in 130 CMR 504.003(A)(1): *Qualified Noncitizens*; and
 - (c)
 1. the parent lives with their children, and assumes primary responsibility for the child's care, in the case of a parent who is separated or divorced, has custody of their children, or has children who are absent from home to attend school; or
 2. the caretaker relative lives with children to whom they are related by blood, adoption, or marriage (including stepsiblings), or is a spouse or former spouse of one of those relatives, and assumes primary responsibility for the child's care if neither parent lives in the home.
- (2) The parent or caretaker relative complies with 130 CMR 505.002(M).

....

(E) Disabled Individuals.

- (1) Disabled Adults. A disabled adult 21 through 64 years old or a disabled young adult 19 through 20 years old who does not meet the requirements described at 130 CMR 505.002(B)(3)(a)1. is eligible for MassHealth Standard coverage if they meet the following requirements:
 - (a) the individual is permanently and totally disabled as defined in 130 CMR 501.001:

Definition of Terms;

- (b) the modified adjusted gross income of the MassHealth Disabled Adult household as described in 130 CMR 506.002(C): *MassHealth Disabled Adult Household* is less than or equal to 133% of the federal poverty level (FPL), or the individual is eligible under section 1634 of the Social Security Act (42 U.S.C. § 1383c) as a disabled adult child or as a disabled widow or widower, or is eligible under the provisions of the Pickle Amendment as described at 130 CMR 519.003: *Pickle Amendment Cases*;
- (c) the individual is a citizen as described in 130 CMR 504.002: *U.S. Citizens* or a qualified noncitizen as described in 130 CMR 504.003(A)(1): *Qualified Noncitizens*; and
- (d) the individual complies with 130 CMR 505.002(M).

- (2) Determination of Disability. Disability is established by
 - (a) certification of legal blindness by the Massachusetts Commission for the Blind (MCB);
 - (b) a determination of disability by the SSA; or
 - (c) a determination of disability by the Disability Evaluation Services (DES).
- (3) Extended MassHealth Eligibility. Disabled persons whose SSI disability assistance has been terminated and who are determined to be potentially eligible for MassHealth continue to receive MassHealth Standard until the MassHealth agency makes a determination of ineligibility.

....

(L) Extended Eligibility.

- (1) Members of an EAEDC or TAFDC household whose cash assistance terminates continue to receive four months of MassHealth Standard coverage beginning in the month the household became ineligible if they are
 - (a) terminated from EAEDC or TAFDC and are determined to be potentially eligible for MassHealth; or
 - (b) terminated from TAFDC because of receipt of or an increase in spousal or child support payments.
- (2) Members of a TAFDC household who become ineligible for TAFDC for employment-related reasons continue to receive MassHealth Standard for a full 12-calendar-month period beginning with the date on which they became ineligible for TAFDC if
 - (a) the household continues to include a child;
 - (b) a parent or caretaker relative continues to be employed; and
 - (c) the parent or caretaker relative complies with 130 CMR 505.002(M).
- (3) Members of a MassHealth MAGI household who receive MassHealth Standard (whether or not they receive TAFDC) and have earnings that raise the MassHealth MAGI household's modified adjusted gross income above 133% of the federal poverty level (FPL) continue to receive MassHealth Standard for a full 12-calendar-month period that begins with the date on which the members MAGI exceeds 133% of the federal poverty level (FPL) if
 - (a) the MassHealth household continues to include a child younger than 19 years old living with the parent or caretaker;

- (b) a parent or caretaker relative continues to be employed;
 - (c) the parent or caretaker relative complies with 130 CMR 505.002(M); and
 - (d) the member is a citizen or a qualified noncitizen.
- (4) MassHealth independently reviews the continued eligibility of the TAFDC, EAEDC, and MassHealth MAGI households at the end of the extended period described in 130 CMR 505.002(L)(1) through (3).
- (5) If an individual in a MassHealth MAGI household who receives MassHealth under 130 CMR 505.002(L)(1) or (2) had income at or below 133% of the FPL during their extended period, and now has income including earnings that raise the MassHealth MAGI modified adjusted gross income above that limit, the MassHealth MAGI household is eligible for another full 12-calendar-month period that begins with the date on which the member's MAGI exceeds 133% of the federal poverty level (FPL) if
- (a) the MassHealth household continues to include a child younger than 19 years old living with the parent or caretaker;
 - (b) a parent or caretaker relative continues to be employed; and
 - (c) the parent or caretaker relative complies with 130 CMR 505.002(M).
- (6) If a MassHealth MAGI household's modified adjusted gross income decreases to 133% of the FPL or below during its extended eligibility period, and the decrease is timely reported to MassHealth, the MassHealth MAGI household's eligibility for MassHealth Standard may be redetermined. If the MassHealth MAGI household's gross income later increases above 133% of the FPL, the MassHealth MAGI household is eligible for a new extended eligibility period.

130 CMR 505.002(C), (E), (L).

505.004: MassHealth CommonHealth

(A) Overview.

- (1) 130 CMR 505.004 contains the categorical requirements and financial standards for CommonHealth coverage available to both disabled children and disabled adults, and to disabled working adults.
- (2) Persons eligible for MassHealth CommonHealth coverage are eligible for medical benefits as described in 130 CMR 450.105(E): *MassHealth CommonHealth*.

(B) Disabled Working Adults. Disabled working adults must meet the following requirements:

- (1) be 21 through 64 years of age (for those 65 years of age or older, see 130 CMR 519.012: *MassHealth CommonHealth*);
- (2) be employed at least 40 hours per month, or if employed less than 40 hours per month, have been employed at least 240 hours in the six-month period immediately preceding the month of receipt of the application or MassHealth's eligibility review;
- (3) be permanently and totally disabled (except for engagement in substantial gainful activity) as defined in 130 CMR 501.001: *Definition of Terms*;

- (4) be a citizen as described in 130 CMR 504.002: *U.S. Citizens* or a qualified noncitizen as described in 130 CMR 504.003(A)(1): *Qualified Noncitizens*;
- (5) be ineligible for MassHealth Standard; and
- (6) comply with 130 CMR 505.004(J).

....

- (H) Determination of Disability. Disability is established by
- (1) certification of legal blindness by the Massachusetts Commission for the Blind (MCB);
 - (2) a determination of disability by the SSA; or
 - (3) a determination of disability by the Disability Evaluation Services (DES).

130 CMR 505.004(A), (B), (H).

In order to be found disabled for MassHealth, an adult must be permanently and totally disabled. 130 CMR 501.001. The guidelines used in establishing disability under this program are the same as those used by the SSA. 130 CMR 501.001.

Individuals who meet the Social Security Administration's definition of disability may establish eligibility for MassHealth Standard according to 130 CMR 505.002(E). At 20 CFR §404.1505, the Social Security Administration defines disability as:

the inability to engage in any substantial gainful activity by reason of any medical 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 standards and the five-step sequential evaluation process for the Medical Assistance Program. See 20 CFR 416.920; 20 CFR 416.905; Exhibit 5.

If a determination of disability can be made at any step, the evaluation process stops at that point. Step 1 considers whether the Appellant is substantially gainfully employed. This step is waived in MassHealth cases. Thus, the review proceeds to Step 2.

Step 2 determines whether the Appellant has a MDI. In this case, Disability Evaluation Services determined that the Appellant's impairments have lasted, or are expected to last, twelve months. 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 impairments meet certain criteria found in the federal *Listing of Impairments* at 20 CFR Ch. III, Pt. 404, Subpt. P, App. 1. DES reviewed the Appellant's case in light of the various impairments and determined that the Appellant did not meet the listings for 1.15 – Disorders of the Skeletal Spine resulting in compromise of a Nerve Root(s), 1.18 – Abnormality of a Major Joint(s) in any Extremity, 3.03 – Asthma (also used for obstructive sleep apnea), 12.04 – Depressive, Bipolar and Related Disorders, 12.06 – Anxiety

and Obsessive-Compulsive Disorders, 12.11 – Neurodevelopmental Disorders (ADHD), and 12.15 - Trauma- and Stressor-Related Disorders. I agree with the determination of disability evaluation services and find there is insufficient evidence to support a finding that Appellant met any of the listings.

Disability Evaluation Services performed an RFC and vocational assessment, which found that the Appellant is physically capable of performing the full range of light work with consideration of postural limitation for never climbing (ladders, scaffolding, etc.), manipulative limitation of left upper extremity occasional overhead reaching, and environmental limitation to hazards (machinery, heights, etc.). The mental RFC found that the Appellant is capable of performing basic, unskilled work activity when considering moderate limitations in her ability to maintain attention and concentration to sustain employment and ability to work at a consistent pace, as well as to respond appropriately to criticism from supervisor. Because the Appellant's current work as a [REDACTED] is classified as light, skilled work, at Step 4, Disability Evaluation Services found that the Appellant does not retain the capacity to perform any PRW and marked "no."

At Step 5, Disability Evaluation Services found that the Appellant can make an adjustment to other work, considering her RFCs, age, education, and work experience and marked "yes." The disability reviewer referenced the occupational employment quarterly and quoted three jobs: 4030 Food Preparation Workers, 9350 Parking Lot Attendants, 9610 Cleaners of Vehicles & Equipment. Additionally, the appeals reviewer selected alternate jobs which are also applicable: 4420 Ushers, Lobby Attendants & Ticket Takers, 5320 Library Assistants, Clerical, 5400 Receptionists & Information Clerks. The appeals reviewer explained that the Appellant may be overqualified for those jobs, but that so long as their evaluation can find three job titles, then Disability Evaluation Services concludes that work is available. Consistent with the evaluation provided by Dr. Gay, I find that the Appellant is capable of working and thus is not disabled. See Exhibit 5 at 105, 108-113.

The Appellant did not dispute that her household income is 326.34% of the federal poverty level. Therefore, she is not financially eligible for MassHealth Standard as a parent, because her income exceeds 133% of the federal poverty level. 130 CMR 505.002(C)(1)(a), (E)(1)(b). Due to the determination of disability evaluation services that she is not disabled, the Appellant is not otherwise eligible for MassHealth. See 130 CMR 505.002(E)(1)(a), (2)(c); 130 CMR 505.004(B)(3).

While I find the Appellant's testimony regarding her health conditions and challenges to be credible, her testimony provides insufficient evidence to meet the high burden that she is permanently and totally disabled. I find that the record supports the conclusion that the Appellant can perform light, unskilled work, and that this type of work exists and is available. Therefore, I find that Disability Evaluation Services did not err in concluding that the Appellant is not disabled, and therefore not eligible for MassHealth.

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.

Emily Sabo
Hearing Officer
Board of Hearings

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

MassHealth Representative: DES Appeals, UMMS/Disability Evaluation Services, 333 South Street, Shrewsbury, MA 01545