

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2502503
Decision Date:	04/25/2025	Hearing Date:	03/26/2025
Hearing Officer:	Radha Tilva		

Appearances for Appellant:



Appearances for MassHealth:

Langze Phunkhang, Charlestown MEC Rep.
Yvette Prayor, R.N., DES Rep.



*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 – 5-step review
Decision Date:	04/25/2025	Hearing Date:	03/26/2025
MassHealth's Reps.:	Langze Phunkhang, Yvette Prayor, R.N.	Appellant's Reps.:	[REDACTED]
Hearing Location:	telephonic	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 November 26, 2024, MassHealth notified appellant that he is eligible for the Health Safety Net, but no other benefits through MassHealth (Exhibit 1). On January 21, 2025, MassHealth, through Disability Evaluation Services, sent a notice stating that he was not deemed disabled through federal and state laws (Exhibit 2). The appellant filed this appeal in a timely manner on February 11, 2025, challenging DES's determination that he was not disabled (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

The Board of Hearings dismissed the case on February 11, 2025 because the appeal request was not received within 60 days of the MassHealth notice, dated November 26, 2024 (Exhibit 3). The appellant requested the dismissal be vacated on February 11, 2025 stating that he was challenging the disability determination notice dated January 21, 2025. The Board of Hearings vacated the dismissal and scheduled the hearing.

Action Taken by MassHealth

MassHealth determined that appellant did not meet MassHealth disability requirements.

Issue

The issue on appeal is whether MassHealth erred in finding that appellant is not permanently and totally disabled, pursuant to 130 CMR 505.002(F).

Summary of Evidence

A MassHealth eligibility representative appeared at the hearing and testified that on November 26, 2024, MassHealth issued a notice approving appellant for both the Health Safety Net and the Health Connector. The appellant's purported income put him at 260% of the federal poverty level with a household size of one. The appellant is enrolled in a plan through the Health Connector. On December 9, 2024, MassHealth determined that appellant does not meet MassHealth's disability requirements and thus is not eligible for MassHealth CommonHealth.

The disability specialist testified that she is a registered nurse (RN) and an Appeals Reviewer for Disability Evaluation Services (DES), the unit that makes disability determinations on behalf of MassHealth. The disability reviewer explained the role of DES as one to determine if a client meets the Social Security Administration (SSA) level of disability from a clinical standpoint. She explained that they use a 5-step process, as described by SSA regulations at Title 20 Code of Federal Regulations (CFR) Ch. III subsection (§) 416.920 to determine disability status (Exhibit 7, pp. 12-14). The process is driven by the client's medical records and disability supplement. SSA CFR §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 7, p. 8). To meet this definition, an applicant must have a severe impairment(s) that makes the applicant unable to do his or her past relevant work or any other substantial gainful work that exists in the regional economy (*Id.*).

Per SSA CFR §416.945, what a person can still do despite an impairment is called his or her residual functional capacity (RFC) (Exhibit 7, pp. 17-18). Unless an impairment is so severe that it is deemed to prevent an applicant from doing substantial gainful activity, it is this residual functional capacity that is used to determine whether the applicant can still do his or her past work or, in conjunction with his or her age, education and work experience, any other work.

The disability reviewer explained that appellant is a male in his [REDACTED] who submitted a MassHealth Adult Disability Supplement to DES on December 9, 2024. His medical diagnosis listed in the supplement was left side below-knee amputation with prosthesis (Exhibit 7, pg. 38 and 43). DES requested and obtained medical documentation using appellant's medical releases; the documentation was received from [REDACTED] and [REDACTED] from Prosthetic Orthotic Solutions (Exhibit 7, pp. 59-90). With sufficient information to evaluate all his complaints, the 5-step review process was initiated by the Disability Reviewer (SSA CFR §

416.920b, Exhibit 7, pp. 15-16).

The DES representatives testified that DES performs the following 5-step review in determining disability, which is the same test implemented by the SSA:

- Step 1: Is the applicant engaged in substantial gainful employment? (This step is waived for MassHealth purposes.)
- Step 2: Is the applicant's impairment severe and expected to result in death or last for a continuous period of not less than 12 months?
- Step 3: If so, does the impairment meet or equal a criteria listing?
- Step 4: If not, what is the applicant's residual functional capacity (RFC)? Can applicant perform prior work?
- Step 5: If not, is the applicant able to perform any other work that is available in the national economy?

DES testified that Step 1 is waived for MassHealth purposes and the review proceeds to Step 2. Under Step 2, DES reviewed the medical information obtained and determined that appellant's impairment was severe and expected to last for not less than 12 months. Therefore, the review proceeded to Step 3.

At Step 3, DES evaluated appellant's impairments and compared them to the Social Security Administration listings found in the Listing of Impairments Ch. III, Pt. 404, Subpt P., App. 1 to see if appellant met such criteria. If an individual is found to meet a listing, DES would automatically render a finding of disability. The disability reviewer testified that Step 3 was marked, "No" by the original DES reviewer, citing the appropriate adult SSA listing considered: 1.20 Below-knee amputation with prosthesis (Exhibit 7, pp. 45, 47-48). Listing 1.20(D) states amputation of one or both lower extremities, occurring at or above the ankle (talocrural joint), with complications of the residual limb(s) that have lasted, or are expected to last, for a continuous period of at least 12 months, and medical documentation of criteria 1 and 2:

1. The inability to use a prosthesis (es): and
2. A documented medical need (see 1.00C6a) for a walker, bilateral canes, or bilateral crutches (see 1.00C6d) or a wheeled and seated mobility device involving the use of both hands (see 1.00C6e(i)).

(Exhibit 7, p. 48). The disability specialist from DES testified that they are looking at the inability for appellant to use the prosthesis and complications from it to determine if he meets the listing. Moreover, the inability to use the prosthesis needs to rise to the level of it affecting his

ability more than minimally per month (DES testimony).

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 a client can still do despite limitations. A client's RFC is based on all relevant evidence in the case record (see CFR §416.945, CFR §416.920b, and CFR §416.960). A physical RFC was completed by a DES Physician Advisor (PA) [REDACTED] on January 17, 2025 (pages 49-51), and indicates appellant can perform the full range of light work activity with consideration of environmental limitations to hazards (machinery, heights) (Exhibit 7, pp. 49-51). In [REDACTED]' summary, he noted that during a follow-up appointment on November 6, 2024, the appellant reported doing well and wearing his prosthesis for over 12 hours a day, and that the appellant engages in activities such as running, box jumping, and white-water rafting, along with other normal activities, all without restrictions. The disability reviewer completed a vocational assessment using the educational and work history reported on the appellant's supplement (Exhibit 7, pp. 40-41, 44). The 5-step review process continued to Step 4.

The disability representative testified that under Step 4, there was insufficient information to determine appellant's capacity to perform past relevant work, but that there is a finding of "not disabled" under Step 5 so it is irrelevant. Under Step 5, the disability reviewer had to determine if the claimant has the ability to make an adjustment to any other work, considering his age, education, and work experience (Exhibit 7, p. 46). The disability reviewer selected "yes" citing the Medical-Vocational Guidelines (commonly referred to as the GRID) located within the POMS (Program Operations Manual System) D125025.035 C. 203.00 Maximum Sustained Work Capability Limited to Light Work As A Result Of Severe Medically Determinable Impairment(s), Table No 2. The reviewer determined appellant is not disabled per GRID Ruling 202.20, and quoted three jobs: 4840 - Sales Representatives, Services, All Other, 5860 - Office Clerks General and 9640 - Packers and Packagers, Hand (Exhibit 7, pp. 52-54). The disability reviewer determined appellant is not disabled using decision Code 231 (Exhibit 7, pp. 46 and 55).

The 5-step evaluation process concluded with a final review and endorsement of the disability decision by a physician advisor, [REDACTED] on January 21, 2025 (Exhibit 7, pp. 43, 55). DES transmitted the disability decision to MassHealth and mailed a DES/MassHealth Disability Determination denial letter to the appellant on January 21, 2025 (Exhibit 1).

On March 17, 2025, DES received two documents through the Board of Hearings (BOH). One document is from [REDACTED], [REDACTED], dated March 10, 2025, and the other is from [REDACTED] Hospital, dated March 16, 2025. The disability representative stated that both documents are medical statements outlining potential future complications without any objective medical evidence, which were both considered during the appeals review process. The disability representative testified that she agreed with [REDACTED] letter that there would be complications, but that the appellant is still functional

and his impairment did not reach the level of severity necessary. The disability representative stated that severity needs to rise to the level of it affecting his ability more than minimally per month. The representative testified that ultimately the documents did not change DES's determination. The appellant did not list Dr. Valerio as one of his providers within the past 12 months, and no current clinical records from this provider were submitted (Exhibit 6).

In summary, the disability representative concluded that appellant does not meet or equal the high threshold of adult SSA disability listing requirements. Additionally, his RFC indicates he can perform the full range of light work activity, and his environmental limitations do not erode his ability to perform work activity in the competitive labor market per the GRID.

The appellant appeared by telephone along with a social worker. The appellant testified that he is doing well medically but has plenty of complications with his prosthesis. There are days when he can't use the prosthesis due to exertion and weather. He has roughly two to four days a month where he must use his wheelchair or crutches which impedes his ability to work. He is trying to work, but has to do so with significant medical needs and accommodations. The disability supplement reflects that he is an educator working with students on disability education roughly 16 hours a week (Exhibit 7, p. 41). The appellant stated that, when he overworks, he faces complications which result in him being unable to use the prosthesis. The appellant testified that he had provided documentation to show that he cannot always use the prosthesis.

The letter from [REDACTED] states in relevant part:

Appellant has done remarkably well adjusting to daily prosthetic use with no significant complications over the years. However, although he has not suffered any significant complications, he must still deal with the ongoing difficulties/struggles of being a limb loss patient which can occur at any time, as well as lead to significant periods of time that he is unable to be in his prosthetic socket. With [his] active lifestyle, he does experience frequent episodes of increased nerve pain/swelling of his residual limb which again, requires time out of his socket to help quell his symptoms which can last upwards of a week before he is able to resume use. This also is true for any skin breakdown from overuse of the prosthetic/ill-fit, which again takes [him] out of his prosthetic for days-weeks depending on the severity...having to use his wheelchair/crutches, significantly limiting him from participating in his daily life tasks. He continues to be seen in our outpatient clinic, as there is a high likelihood given his young age he will need additional interventions in the future to address his residual limb.

(Exhibit 8)

The letter from [REDACTED] states:

Appellant is a highly functioning amputee, but there will be many times in his life when he will have trouble with his residual limb or prosthetic device that may require time spent without wearing a device. It would be impossible to predict when it may happen or how frequently it may be, but to say that he would not be living with a disability would be false...He will have to endure a daily struggle to maintain a prosthetic fit within the socket that is optimal for high level ambulation...He will need, at times, to limit his use of the device to quell any symptoms of skin breakdown which may prevent him from what plans he had for that day, or week.

(Exhibit 9)

Findings of Fact

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

1. On November 26, 2024, MassHealth issued a notice approving appellant for both the Health Safety Net and the Health Connector.
2. The appellant's income put him at 260% of the federal poverty level with a household size of one.
3. The appellant is enrolled in a plan through the Health Connector.
4. By notice dated December 9, 2024, MassHealth determined that appellant does not meet MassHealth's disability requirements and thus is not eligible for MassHealth CommonHealth.
 - a. MassHealth issued a subsequent notice dated January 21, 2025 indicating that appellant is not permanently and total disabled.
 - b. The appellant filed this appeal in a timely manner on February 11, 2025, challenging DES's determination that he was not disabled.
5. Appellant is a male in his [REDACTED] who submitted a MassHealth Adult Disability Supplement to DES on December 9, 2024 with a medical diagnosis listed in the supplement of left side below-knee amputation with prosthesis.
6. DES performs the following 5-step review in determining disability, which is the same test implemented by the SSA.
7. Step 1 is waived for MassHealth purposes and asks is the applicant engaged in substantial

gainful employment?

8. Step 2 asks is the applicant's impairment severe and expected to result in death or last for a continuous period of not less than 12 months?
 - a. Under Step 2, DES reviewed the medical information obtained and determined that appellant's impairment was severe and expected to last for not less than 12 months.
9. At Step 3, DES evaluated appellant's impairments and compared SSA Listing 1.20 Below knee amputation with prosthesis which requires amputation of one or both lower extremities, occurring at or above the ankle (talocrural joint), with complications of the residual limb(s) that have lasted, or are expected to last, for a continuous period of at least 12 months, and medical documentation of the inability to use a prosthesis(es) and a documented medical need for a walker, bilateral canes/crutches, or a wheeled and seated mobility device involving the use of both hands.
 - a. DES determined that appellant does not meet Listing 1.20.
10. A physical RFC was completed by [REDACTED], on January 17, 2025, and indicates appellant is capable of performing the full range of light work activity with consideration of environmental limitations to hazards (machinery, heights).
11. Some medical records support that appellant wears his prosthesis for over 12 hours a day and that he engages in activities such as running, box jumping, and white-water rafting, along with other normal activities, all without restrictions.
12. Appellant testified that he has many days when he has to use a wheelchair due to complications with his prosthesis which arise from weather and exertion.
13. He has roughly two to four days a month where he must use his wheelchair or crutches which impedes his ability to work.
14. He presently works as an educator working with students on disability education roughly 16 hours a week.
15. Step 4 asks what is the applicant's residual functional capacity (RFC) and can the applicant perform prior work.
 - a. DES could not make this determination of whether past work could be performed and the review proceeded to Step 5.
16. Step 5 asks if the applicant is able to perform any other work that is available in the national economy?

- a. The reviewer determined appellant is not disabled per GRID Ruling 202.20, and quoted three jobs: sales representatives/services; office clerks general, and packers and packagers.

Analysis and Conclusions of Law

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

Individuals who meet the Social Security Administration's definition of disability may establish eligibility for MassHealth Standard according to 130 CMR 505.002(F). In Title XVI, Section 416.405, 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. If a determination of disability can be made at any step, the evaluation process stops at that point. Step 1 considers whether the individual is substantially gainfully employed. This step is waived in MassHealth cases. Thus, the review proceeds to Step 2.

Step 2 determines whether the individual has a severe impairment. To be determined severe, a medically determinable physical or mental impairment must "be expected to result in death or have lasted or be expected to last for a continuous period of not less than 12 months." See Exhibit 8, p. 7.

In this case, the appellant was reviewed for disability due to below the knee amputation with use of prosthesis. DES determined that appellant's impairment was severe and has lasted, or was expected to last, 12 months. Accordingly, appellant's impairments met Step 2 and the review process proceeded to Step 3.

Step 3 requires the reviewer to determine whether the impairment(s) 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 considering listing 1.20 Below knee amputation with prosthesis (Exhibit 7, pp. 45, 47-48). Listing 1.20(D) states amputation of one or both lower extremities, occurring at or above the ankle (talocrural joint), with complications of the residual limb(s) that have lasted, or

are expected to last, for a continuous period of at least 12 months, and medical documentation of 1 and 2:

1. The inability to use a prosthesis (es): and
2. A documented medical need (see 1.00C6a) for a walker, bilateral canes, or bilateral crutches (see 1.00C6d) or a wheeled and seated mobility device involving the use of both hands (see 1.00C6e(i)).

DES determined that appellant does not meet the listing which requires that appellant meet both criteria 1 and 2 of the listing. The letters submitted by [REDACTED] and [REDACTED] support that while appellant does not have significant complications of his residual limb, he does experience complications/ongoing difficulties and struggles which are common for limb loss patients. These difficulties are expected to last for 12 months or longer as outlined in [REDACTED] letter, which also states that there is a high likelihood that he will need additional interventions in the future to address his residual limb. The letters both outline that appellant has periods of time where he is unable to use his prosthesis, which was corroborated with his testimony.

While the listing criteria do not specify any duration of time required for the inability to use the prosthesis, the testimony from the DES representative supports that the inability to use the prosthesis has to be more than minimal. The appellant testified that he spends approximately 2-4 days a month without being able to wear his prosthesis. Therefore, appellant spends the majority of the days in a month with the ability to wear his prosthesis. The notes reflect that he is doing remarkably well and the appellant does not dispute his ability to box jump, white water raft, and run as outlined by [REDACTED], the Physician Reviewer from DES. All of this supports that appellant does not meet Listing 1.20(D).

DES did not determine whether appellant meets Step 4 in this case as there was insufficient information to determine appellant's capacity to perform past relevant work. Under Step 5, DES determined that appellant's residual functional capacity is that he is capable of performing the full range of light work activity with consideration of environmental limitations to hazards (machinery, heights). The jobs that DES believes he can do were mentioned and included Sales Representatives, Office Clerks General, and Packers and Packagers. The appellant did not dispute his ability to perform these jobs. Moreover, the review reflected, from multiple physicians, that appellant is doing functionally well and able to be physically active. Further support of appellant's ability to perform a job is the fact that he is presently working, albeit in a part-time capacity (per his DES application).

For these reasons, DES did not err in determining that appellant is not permanently and totally disabled.

This 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.

Radha Tilva
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Thelma Lizano, Charlestown MassHealth Enrollment Center,
529 Main Street, Suite 1M, Charlestown, MA 02129

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