

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2503209
Decision Date:	5/13/2025	Hearing Date:	03/27/2025
Hearing Officer:	Marc Tonaszuck		

Appearance for Appellant:
Pro se

Appearances for MassHealth:
Fabienne Jeanniton, MEC; Yvette Prayor, RN,
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:	Community Eligibility – Under 65 – Income. Disability
Decision Date:	5/13/2025	Hearing Date:	03/27/2025
MassHealth’s Reps.:	Fabienne Jeanniton, MEC; Yvette Prayor, RN, DES	Appellant’s Rep.:	Pro se
Hearing Location:	Tewksbury MassHealth Enrollment Center	Aid Pending:	Yes

Authority

This administrative hearing was held pursuant to G.L. c. 118E, Chapter 30A and regulations thereunder.

Jurisdiction

Through a notice dated 02/13/2025, MassHealth notified Appellant that it planned to terminate her MassHealth Standard benefits on 03/31/2025 because the household income exceeds the income guidelines, and the Transitional Medical Assistance (“TMA”) period ended on 01/31/2025. Through the same notice MassHealth informed Appellant of its determination that she is not disabled for MassHealth eligibility purposes (130 CMR 505.002; [Exhibit 1](#)). Appellant filed an appeal in a timely manner on 02/25/2025 and her benefits are protected pending the outcome of this appeal (130 CMR 610.015; [Exhibit 2](#)). Individual MassHealth agency determinations regarding scope and amount of assistance (including, but not limited to, level-of-care determinations) are valid grounds for appeal (130 CMR 610.032).

Action by MassHealth

MassHealth determined that Appellant is not disabled for MassHealth eligibility purposes and is not eligible for MassHealth benefits.

Issue

The appeal issue is whether MassHealth applied accurate facts to the controlling law in determining that Appellant is not disabled for MassHealth eligibility purposes.

Summary of the Evidence

A representative from the Tewksbury MassHealth Enrollment Center testified that Appellant is currently receiving MassHealth Standard benefits pending this appeal. The instant termination notice was issued because Appellant's income exceeds the guidelines for her to receive MassHealth benefits. She is part of a household of three people. The household has countable income totaling \$4,334.00 per month from Appellant's husband's earned income.¹ This income was reported on 12/02/2024 and even though the household's income exceeds the program limits for Appellant to be eligible for MassHealth Standard benefits, MassHealth's Transitional Medical Assistance ("TMA") program made the family eligible for MassHealth benefits for one additional year. The TMA period ended on 01/31/2025. MassHealth issued the instant termination notice because Appellant's benefits will terminate 03/31/2025. As an adult between the ages of 19 and 64, without a disability determination, a pregnancy, a diagnosis of HIV or breast/cervical cancer, the income limit to be eligible for MassHealth benefits is 133% of the Federal Poverty Level ("FPL"), or \$2,954.00. Appellant's income exceeds the guidelines, so she was informed she is eligible for Health Safety Net and she was referred to the Health Connector.

A representative from UMass Disability Evaluation Services (DES), on behalf of MassHealth, appeared at the hearing telephonically. She testified that she is a Registered Nurse and a disability reviewer. She testified that DES could not make a disability determination because Appellant had failed to attend a consultative examination (CE) ordered by DES.

The DES representative submitted copies of Appellant's *Disability Supplement*, a tracking form, Social Security listings, a physical Residual Functioning Capacity (RFC) worksheet and medical records all pertaining to the review of Appellant's medical complaints (collectively, Exhibit 4). MassHealth reached its disability determination by reviewing this material and attempting to apply the following the five-step sequential evaluation process established by Title XVI of the Social Security Act:

Step 1: Is the applicant engaged in substantial gainful activity? (This step is waived for MassHealth purposes.)

¹ The appellant has a child in the home who receives social security benefits, which are not countable in a MassHealth eligibility determination. The countable income of the household does not include the child's social security income.

- Step 2: Is the applicant's impairment severe?
- 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 past work?
- Step 5: If not, is the applicant able to perform any other work that is available in the national economy?

The MassHealth representative reviewed the information Appellant supplied in her Disability Supplement dated 12/03/2024 (Exhibit 4). She stated that DES's job is to determine whether an applicant meets the Social Security Administration (SSA) level of disability from a clinical standpoint. She testified that DES uses a 5-step process, as described by SSA regulations at Title 20 Code of Federal Regulations (CFR) Ch. III section 416.920 (pages 27-29) to determine disability status. The process is driven by the applicants' medical records and disability supplement. SSA CFR §416.905 (page 19) 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. To meet this definition, an applicant must have a severe impairment(s) that makes her unable to do your past relevant work or any other substantial gainful work that exists in the regional economy.

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 applicant from doing substantial gainful activity, it is this residual functional capacity that is used to determine whether she can still do her past work or, in conjunction with her age, education and work experience, any other work.

Appellant is a woman who is in her 50's. She initially submitted a MassHealth Adult Disability Supplement to DES on 12/03/2024 (pages 60, 61-66). No clinical documentation was received with the supplement (CFR § 416.912 page 20-22). DES requested medical documentation using the medical releases for [REDACTED] with [REDACTED] [REDACTED] (pages 42-51).

Request for Information (RFI) letters were generated on 12/06/2024. These letters were faxed successfully to all the listed treating sources, except for [REDACTED] which in turn a physical letter was generated and mailed to the address provided by the appellant from the completed medical release (page 58). Appellant listed the following health problems on her supplement:

asthma, arthritis, radiculopathy (shoulder, back and leg pain), migraines, depression, post-traumatic stress disorder (PTSD) and anxiety (pages 62-63, 67).

Providers are given 30 days to respond to the RFI with all client records for the past 12 months. Upon the 28-day review, the Disability Reviewer (DR) received clinical information from [REDACTED]. The office of [REDACTED] sent documentation indicating that after an extensive search of their files, that Appellant had not been seen within the time that was requested (pages 159-162).

The DR reviewed the available information that was received and found it to be sufficient for evaluation, however, this information did not appear to meet or equal any SSI listings individually or in combination for the client's alleged physical and mental complaints. SSI Listings that were considered for this review are SSI Listing 1.15-Disorders of the Skeletal Spine Resulting in Compromise of a Nerve Root(s), SSI Listing 1.18-Abnormality of a Major Joint(s) in Any Extremity, SSI Listing 3.03-Asthma, SSI Listing 11.02-Epilepsy (Migraines), SSI Listing 12.04-Depressive, Bipolar and Related Disorders, 12.06-Anxiety and Obsessive-Compulsive Disorders, 12.15-Trauma-and Stressor-Related Disorders and 14.09-Inflammatory Arthritis.

At this point of the review the DR requested both a physical and mental Residual Functional Capacity (RFC) exam. First, the Physical RFC was conducted by Physician Advisor, [REDACTED] on 01/14/2025 (page 57, 71-73). The results indicated that the client is capable of performing a full range of light work activities. A mental RFC was conducted by Physician Advisor, [REDACTED] on 01/15/2025 (pages 56-57, 74-75). The results of the mental RFC indicated that the available information is not sufficient, therefore, additional information is needed to finalize the review, and so a psychological Consultative Examination (CE) was requested on 01/06/2025 (Refer to CFR § 416.913 pages 23-25).

Per DES Scheduling department protocol an outbound call was made to the client to schedule this examination. Unfortunately, the client could not be reached by phone, therefore a pre-select letter was sent to the client's address. This pre-select CE letter noted that the client was given the date of 02/14/2025 to respond to complete the CE request. A second attempt through an outbound call to client was made on 01/31/2025. On 02/18/2025, the DES Scheduling department informed the disability reviewer that the client had not responded to several attempts to schedule the exam (Refer to CFR § 416.918 page 26).

The DR terminated the disability review process citing Decision Code: 253 – Failure to Cooperate. On 02/19/2025, Physical Advisors [REDACTED] and [REDACTED] both concurred with the

DR's findings (pages 67, 92), a MassHealth/DES Disability Determination Denial letter was generated on 02/19/2025 (page 93) and was mailed to Appellant, and the decision was transmitted to MassHealth on 02/21/2025 (page 55).

The DES representative concluded that Appellant's disability review was terminated due to a lack of cooperation and failure to arrange the required psychological examination. Without the clinical documentation or engagement from the client in the review process, it is not possible to adequately assess Appellant's eligibility for disability benefits. As such, the review was discontinued, in accordance with standard procedures for cases where essential information is unavailable.

Appellant appeared at the hearing and testified that she never received the telephone calls or the correspondence mailed to her. She testified she would be happy to attend an appointment if it can be rescheduled.

Findings of Fact

The record shows, and I find, by a preponderance of the evidence, the following:

1. Appellant is an adult woman between the ages of 19 and 64. She lives in the community and is counted as part of a household of three people for the purposes of MassHealth eligibility (Testimony; Exhibit 1).
2. The household has countable income of \$4,334.00 per month, which is equal to 190% of the federal poverty level (FPL).
3. Appellant has not been diagnosed with HIV, breast or cervical cancer and she is not pregnant (Testimony).
4. Appellant received MassHealth Standard benefits from 01/31/2024 through a program called Transitional Medical Assistance (Testimony; Exhibit 1).
5. The TMA period ended on 01/31/2025 (Testimony; Exhibit 1).
6. Through a notice dated 02/13/2025, MassHealth notified Appellant that it planned to terminate her MassHealth Standard benefits on 03/31/2025 because the household income exceeds the income guidelines, and the TMA period ended on 01/31/2025. Through the same notice MassHealth informed Appellant of its determination that she is not disabled for MassHealth eligibility purposes (Testimony; Exhibit 1).

7. A timely appeal was filed by Appellant on 02/25/2025. Her benefits are protected pending the outcome of this appeal (Testimony; Exhibit 2).
8. Appellant filed a MassHealth disability supplement on 12/03/2024, alleging the following conditions she identified to be disabling: asthma, arthritis, radiculopathy (shoulder, back and leg pain), migraines, depression, post-traumatic stress disorder (PTSD) and anxiety (Testimony; Exhibit 4).
9. On 02/13/2025, MassHealth notified Appellant that she did not meet MassHealth disability requirements (Testimony; Exhibit 1).
10. The UMass Disability Evaluation Services (DES), on MassHealth's behalf, conducted the evaluation of Appellant's complaint of disability (Testimony; Exhibit 4).
11. DES contacted Appellant's treating sources and received medical information regarding Appellant's medical conditions in response (Testimony; Exhibit 4).
12. The information obtained from Appellant's treating sources was not adequate to make a disability determination regarding her complaints (Testimony; Exhibit 4).
13. DES requested that Appellant attend a psychological CE (consultative examination) (Testimony).
14. Appellant failed to attend the CE, after being reminded by DES by mail and by telephone (Testimony; Exhibit 4).
15. Appellant did not explain why she failed to attend the CE, except to say that she "never received the telephone calls or mail" (Testimony).
16. Because Appellant failed to attend the CEs, DES stopped its review and determined that Appellant does not meet the disability requirements (Testimony; Exhibit 4).

Analysis and Conclusions of Law

In order to be found disabled under the MassHealth rules, 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 used by the Social Security Administration (130 CMR 505.002).

Individuals who meet the Social Security Administration's definition of disability may establish eligibility for MassHealth Standard according to 130 CMR 505.002(F) or CommonHealth according to 130 CMR 505.004. 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 medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

The Social Security Act establishes the eligibility standards and the 5-step sequential evaluation process used to determine disability. Appellant alleged that his complaints of facial pain, weakness, liver problems, heart problems, kidney problems, depression and anxiety render him permanently and totally disabled pursuant to MassHealth standards. DES, on MassHealth's behalf, attempted to evaluate Appellant's impairments in light of these five steps, and concluded that he is not disabled by Social Security standards.

DES contacted Appellant's treating sources and received medical information regarding Appellant's medical conditions in response; however, the information obtained from Appellant's treating sources was not adequate to make a disability determination regarding her complaints. DES requested that Appellant attend a psychological CE. Appellant failed to attend the CE after being reminded by DES. Moreover, Appellant did not explain why she failed to attend the CE, except to say that she "never received the telephone call or the letter." Appellant has a responsibility to cooperate with MassHealth in providing information necessary to establish and maintain eligibility (130 CMR 501.010).

As Step 1 is waived, DES began the evaluation at Step 2, which looks at whether the alleged impairments can be considered severe according to the Social Security definition. "Severity" is found only where the impairment or combination of impairments significantly limit the individual's physical or mental ability to do basic work activities and has lasted or is expected to last for a continuous period of at least 12 months (20 CFR 416.920(a)(4)(ii) and (c), 416.909). In this case, because DES did not have adequate medical information to make a determination at this step, it was unable to determine whether Appellant's complaints were severe and expected to last for a period of 12 months or more. This finding is supported by the medical documentation.

At Step 3, DES next looked to the Listings of Impairment to determine whether Appellant's conditions meet certain criteria. If any of the appellant's conditions meet the criteria to meet or equal any of the listings, Appellant is determined to be disabled. Because DES did not have adequate medical information to perform this step, and because Appellant failed to attend the CE that was appropriately requested, DES was unable to determine whether Appellant's conditions met the criteria of any listing.

Likewise, DES was unable to conduct a residual functional capacity evaluation based on Appellant's medical records, her age and her education. Thus, DES was justified in stopping its

analysis of Appellant's complaints, finding that she does not meet the disability requirements. This portion of the appeal is therefore denied.

MassHealth regulations at 130 CMR 505.001 address MassHealth coverage types as follows:

The MassHealth coverage types are the following:

- (1) **MassHealth Standard** - for people who are pregnant, 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 (DMH) members, and medically frail as such term is defined in 130 CMR 505.008(F);
- (2) MassHealth CommonHealth - for disabled adults, disabled young adults, and disabled children who are not eligible for MassHealth Standard;
- (3) MassHealth CarePlus - for adults 21 through 64 years old who are not eligible for MassHealth Standard;
- (4) MassHealth Family Assistance - for children, young adults, certain noncitizens and persons who are HIV positive who are not eligible for MassHealth Standard, MassHealth CommonHealth, or MassHealth CarePlus;
- (5) MassHealth Limited - for certain lawfully present immigrants as described in 130 CMR 504.003(A): Lawfully Present Immigrants, nonqualified PRUCOLs, and other noncitizens as described in 130 CMR 504.003: Immigrants; and
- (6) MassHealth Medicare Savings Programs (MSP, also called Senior Buy-in and Buy-in) for certain Medicare beneficiaries.

Regulations at 130 CMR 505.002(C) address MassHealth Standard benefit eligibility for parents, as follows:

(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 have 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).

(Emphasis added.)

MassHealth determined that Appellant is not eligible for MassHealth benefits because the household's income exceeds the guidelines for that benefit. MassHealth determined that the household's gross monthly income from employment is \$4,334.00. The family is counted as a household of three people, two adults and one child, who is under 19 years of age. In order to be income-eligible for MassHealth Standard benefits, the family's gross monthly income must be less than 133% of the FPL, or \$2,954.00. Appellant does not dispute the household's income. Therefore, MassHealth's determination that Appellant is a member of a household of three, with gross monthly income of \$4,334.00 is accurate. There is no evidence that Appellant is pregnant, disabled, or diagnosed with HIV or breast/cervical cancer. Accordingly, Appellant has presented no information to show MassHealth's decision to deny her benefits is incorrect. MassHealth's determination is supported by the material facts in the hearing record, as well as the relevant regulations. This appeal is therefore denied.

Appellant can direct any inquiries concerning Health Safety Net to 877-910-2100. Health Connector questions can be addressed by calling 1-877-623-6765. Additionally, if the appellant's income or household size changes, he should contact MassHealth for a new determination of benefits.

Order for MassHealth

Release 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.

Marc Tonaszuck
Hearing Officer
Board of Hearings

MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876-1957

MassHealth Representative: DES