

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2508192
<b>Decision Date:</b>	08/26/2025	<b>Hearing Date:</b>	06/26/2025
<b>Hearing Officer:</b>	Casey Groff, Esq.		

**Appearances for Appellant:**



**Appearances for MassHealth:**

Katie Burgess, Taunton MEC;  
Eileen Cynamon, BSN, RN, Appeals Reviewer,  
Appeals & Regulatory Compliance  
Disability Evaluation Services (DES), UMass  
Medical School;  
[REDACTED], MSW, LICSW, Program  
Mgr, Appeals & Regulatory Compliance, DES  
(observing only)



*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

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Disability
<b>Decision Date:</b>	08/26/2025	<b>Hearing Date:</b>	06/26/2025
<b>MassHealth's Rep.:</b>	Katie Burgess; Eileen Cynamon, BSN, RN	<b>Appellant's Rep.:</b>	[REDACTED]
<b>Hearing Location:</b>	Board of Hearings (By Video)	<b>Aid Pending:</b>	Yes

### Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

### Jurisdiction

Through notices dated 4/17/25 and 4/22/25, MassHealth informed Appellant that he no longer qualified for MassHealth benefits because his income exceeded the program limit and because he was not disabled as defined under Title XVI of the Social Security Act and the applicable state regulations. *See* 130 CMR 501.000 and Exh. 1. Appellant filed this appeal in a timely manner on 05/29/25. *See* 130 CMR 610.015(B) and Exhibit 2. An agency action to suspend, reduce, terminate, or restrict a member's assistance, and a change in the scope or amount of assistance are valid grounds for appeal. *See* 130 CMR 610.032(A)(3)-(5).

### Action Taken by MassHealth

MassHealth determined that Appellant was ineligible for benefits because his income exceeded the program limit and because he was not permanently and totally disabled under federal and state law and regulations.

### Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR §§ 501.001 and

505.002(F), in determining that Appellant was ineligible for benefits on the basis that he was not permanently and totally disabled as defined under Title XVI of the Social Security Act.

## Summary of Evidence

A MassHealth eligibility representative appeared at the hearing and testified that Appellant is between the ages of 21 and 65. He is a single tax-filer in a household size of one (1). Based on a renewal application received by MassHealth on 4/17/25, Appellant verified that he has a current gross income of \$2,416.67 per month, placing him at 180.30% of the federal poverty level (FPL). To qualify for MassHealth benefits, an individual must have a household income that does not exceed 133% of the FPL, which, for a household size of 1 is a maximum income of \$1,735 per month. At the time of the renewal, Appellant was receiving CarePlus; however, based on his updated income, MassHealth notified Appellant, through a letter dated 4/17/25, that his CarePlus benefit would end on 5/31/25.<sup>1</sup> See Exh. 1. The eligibility representative explained that MassHealth offers a separate coverage type, CommonHealth, for individuals who are over the income limit but who have a verified disability. The representative testified that Appellant does not have a verified disability on file and therefore is not eligible for CommonHealth or any other MassHealth benefit at this time.

Also appearing on behalf of MassHealth was a registered nurse and appeals reviewer from UMass Medical School's Disability Evaluation Services (DES) Unit. Through oral testimony and documentary submissions, the DES representative presented the following evidence: DES, through its contract with MassHealth, renders clinical determinations on whether an applicant is "permanently and totally disabled" as defined by the Social Security Administration. (SSA). SSA's definition of permanent and total disability, as set forth in Title 20 of the Code of Federal Regulations (CFR) Ch. III § 416.905, 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." See Exh. 6, p. 8. To meet this definition, the individual "must have a severe impairment(s) that makes them unable to do past relevant work or any other substantial gainful work that exists in the regional economy." *Id.*

To evaluate whether this standard has been met, DES uses SSA's 5-step sequential evaluation process for disability determinations as set forth in 20 CFR § 416.920. *Id.* at 13-15. The evaluation is driven by the information contained in the claimant's medical records and adult disability supplement.

The representative testified that on 1/15/25, DES received Appellant's adult disability supplement, in which Appellant listed the following health problems: anxiety with panic

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<sup>1</sup> Because Appellant filed a timely appeal of the notice with the Board of Hearings, his CarePlus benefit is being protected through the pendency of this appeal.

attacks, post-traumatic stress disorder (PTSD), depression, and left shoulder pain due to a torn labrum. *Id.* at 58-60. In the supplement, Appellant reported that his first language is English, which he is able to read, speak, and write; he is a high school graduate and attended some college; he currently works 20-30 hours per week as a server/bartender and has held this position since [REDACTED]. *Id.* at 60-61. For his job, Appellant reported that he performs tasks that involve serving people, cleaning, using a computer, and using a cash register. *Id.*

Once all Appellant's signed and completed medical releases were obtained, DES requested and obtained pertinent medical records from the two treating providers Appellant identified in his supplement: [REDACTED], PMH-NP of [REDACTED] (SNB) Care for dates of service 3/4/24 through 2/11/25 (*id.* at 90-144) and [REDACTED], NP (with [REDACTED], MD and [REDACTED] MD) of [REDACTED] for dates of service 1/13/24 to 1/15/25 (*id.* at 145-254). DES found that the medical records contained sufficient information to evaluate Appellant's mental health complaints but not his physical impairment of left shoulder pain. Therefore, DES arranged for Appellant to undergo a medical consultative examination (CE) with Dr. Agostino Iarrobino, M.D., on 4/15/25. *Id.* at 63-65.

In the CE report, [REDACTED] wrote, in summary, that Appellant sustained a left shoulder injury many years ago after falling off a fence; a recently obtained MRI showed an extensive labral tear; Appellant is able to work part time as a bartender; he has chronic discomfort in his left shoulder, which is worsened by certain motions and which sometimes wakes him up or prevents him from falling asleep; and that he uses ibuprofen to manage the pain. *Id.* at 63. Pursuant to a physical examination, [REDACTED] reported that Appellant was in no apparent distress; had no sign of cyanosis, clubbing or edema; he had fair range of motion in his left shoulder with decreased external rotation on the left shoulder; and that he had a positive "empty can test, but a negative Hawkins test." *Id.* Based on the CE, [REDACTED] noted that Appellant may likely require an anterior labral repair and/or total left shoulder replacement, however, given his age, Appellant was willing to wait and/or try plasma exchange for pain and healing. *Id.*

After collecting all necessary medical information, DES began its 5-step sequential evaluation, as follows.

❖ Step 1 asks "Is the claimant engaging in substantial gainful activity (SGA)?"

The DES representative explained that because SSA does not consider part time employment to be SGA, the DES disability reviewer answered "no" at step 1. The DES representative explained that while an affirmative answer at step 1 at the federal level automatically renders the claimant "not disabled," MassHealth waives step 1 regardless of whether the claimant is engaged in SGA.

❖ Step 2 asks "Does the claimant have a medically determinable impairment (MDI) or combination of MDIs that is *both* severe and meets the duration requirement (i.e.,

expected to result in death or has lasted or is expected to last for a continuous period of not less than 12 months?”

Based on the medical documentation submitted by Appellant’s providers, DES answered “yes” at step 2 and proceeded to step 3.

- ❖ Step 3 asks “[d]oes 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 DES representative testified that at step 3, DES must assess whether Appellant meets any SSA listing found in the federal *Listing of Impairments* at 20 CFR Ch. III, Pt. 404, Subpt. P, App.1. Based on Appellant’s complaints, DES reviewed the following listings: 1.18 *Abnormality of a Major Joint(s) in any Extremity*; 12.04 *Depressive, Bipolar and Related Disorders*; 12.06 *Anxiety and Obsessive-Compulsive Disorders*; 12.15 *Trauma- and Stressor-Related Disorders*. *Id.* at 70-77. Copies of each listing were entered into evidence.

To meet listing 1.18, the claimant must satisfy all four criteria levels, designated as paragraphs (A)-(D), summarized as follows: (A) chronic joint pain or stiffness; (B) abnormal joint motion, instability, or immobility; (C) anatomical joint abnormality found through examination or imaging; and (D) at least 1 year of continuous impairment in musculoskeletal functioning *and* medical documentation of at least one of the following: (1) a medical need for a walker, bilateral canes, crutches, or wheelchair; (2) an inability to use one upper extremity to independently perform work-related activities involving fine and gross movements, and a documented medical need for a one-handed, hand-held assistive device used by the other upper extremity (or one-handed wheelchair); or (3) an inability to use both upper extremities such that neither can be used to independently perform work-related activities involving fine and gross movements. *Id.* at 70.

To meet the applicable mental health impairment listings (12.04, 12.06, and 12.15), the claimant must satisfy two of the three criteria levels, designated as paragraphs (A)-(C), either in the form of A&B or A&C. Paragraph A requires that the disorder be characterized by a specified number of the listed symptoms of the applicable disorder. Paragraph B requires there be an extreme limitation in one, or marked limitation in two, of the following four areas of functioning: 1) understand, remember, or applying information 2) interact with others; 3) concentrate, persist, or maintain pace; and 4) adapt or manage oneself. Paragraph C requires that the mental disorder be “severe” and “persistent,” i.e., the disorder is documented to have existed for at least two years and evidence of both: 1. medical treatment or support that is ongoing and diminishes the symptoms and signs of the mental disorder; and 2. marginal adjustment, i.e., minimal capacity to adapt to changes in your environment or to demands that are not already part of your daily life. *Id.* at 72-77.

On review DES found that the medical evidence did not sufficiently show that Appellant met and/or equaled an adult SSA listing based off a single impairment or a combination of impairments. Therefore, DES answered “no” to the question at step 3. *Id.* at 4, 68.

❖ *Residual Functional Capacity Assessment for Steps 4 and 5.*

The DES representative testified that if disability is not found at step 3, a residual functional capacity (RFC) assessment must be performed in preparation for steps 4 and 5. An RFC, as defined under 20 CFR 416.945, is the most that a person can do despite their limitations. *Id.* at 24-26. It is the RFC assessment that is used at this stage of the review to determine whether a claimant is disabled, and specifically, whether they can still do past work, or, in conjunction with age, education and work experience, any other work. *Id.* at 30-33. The RFC is based on all relevant evidence in the case.

A physical RFC, completed by [REDACTED] on [REDACTED] documented the following findings: Appellant had exertional limitations related to lifting heavy weights with his left upper extremity but no exertional restrictions in his ability to stand, walk, or sit within the course of an 8 hour day; Appellant had no postural limitations except for climbing (ladders, scaffolding, etc.) and crawling due to limited ROM and pain in the left shoulder; he had occasional or frequent manipulative limitations in reaching (overhead or bench level) with the upper left extremity only and no manipulative limitations in his fine motor coordination, gross motor coordination, or feeling (skin receptors, sensation, etc.); he had no visual or communicative limitations; and aside for limitations with hazards (machinery, heights, etc.), Appellant had no environmental limitations. *Id.* at 78-79.

On 3/15/25, [REDACTED] Psy.D. completed a mental RFC assessment based on all relevant information, including the medical records submitted by Appellant’s mental health providers and which [REDACTED] summarized, in part, as follows:

[REDACTED] PMHNP provided a progress note for a 20-minute psychiatric medication management visit on 02/11/2025. The patient’s diagnoses include generalized anxiety disorder; adjustment disorder with depressed mood; and opioid dependence, in remission. He has been on suboxone for several years. He described his depression and anxiety symptoms as moderate but manageable. He denied suicidal and homicidal ideation or any thoughts of self-harm or harm to others. He was cooperative, conversant, and fully oriented. He had euthymic affect and speech was spontaneous and with no problems expressing himself. His judgement and insight appear fair. His medications include Xanax, Vistaril, Seroquel, and gabapentin. On 12/09/2024, the patient reported that he is doing well and he reported his symptoms were manageable. On 11/6/2024, the patient reported that both sleep and appetite are good and he described his anxiety and depression as manageable. On observation, he was in good overall health and with

no physical or behavioral concerns noted. On 10/9/2024, the patient reported he is compliant with treatment plan and he denied any suicidal ideation or thoughts of harm to self or others. On 7/10/2024, a mental status examination described the patient as having cooperative attitude, normal affect and his mood was euthymic, calm, and relaxed. His speech was clear and thought process was normal, clear, and concrete. He was fully oriented and his memory was intact. He had normal judgment and good insight. He has no problems with sleeping and his behavior was cooperative. He was attentive and there were no problems with activities of daily living. He has normal functioning at work and he has normal socialization with others.<sup>2</sup>

██████████, NP provided a follow-up note for the patient's recovery for opioid use disorder. On 7/31/2024, the patient's diagnoses include opioid dependence; cocaine dependence; nicotine dependence; generalized anxiety disorder, depression, unspecified; low back pain, and polyneuropathy. A mental status examination was within normal limits. On 11/20/2024, he reported that he has been stable and free of relapses and having no cravings. He feels comfortable in his sobriety and he continues to do well on Subutex regimen. His affect was positive and mood is good. Insight and judgment were good. On 12/18/2024, the patient reported that he is doing well and has no cravings, no withdrawal, and no side effects. He is able to see how much his life has changed and he is enjoying it. He will continue with current treatment plan through the holidays and discuss tapering at his next appointment. Mood and affect were positive and concentration and attention were normal. On 1/15/2025, the patient reported that he has been stable and free of relapses and having no cravings. He is feeling well on current Buprenorphine dose. He would like to discuss tapering the medication at his next visit. He is comfortable in sobriety and he has no questions or concerns. There were no new changes in medical or psychiatric status. On observation, he was alert and lucid, his mood was good and his affect was positive. Concentration, attention and cognition were normal. His insight and judgment were good. Medications include buprenorphine 8 mg BID and baclofen 10 mg TID.<sup>3</sup>

*Id.* at 82 (footnote references added).

According to the mental RFC worksheet, ██████████ concluded that Appellant did not have any mental limitations with his ability to: understand and carry out simple instructions, learn new tasks and adapt to new work with training; sustain familiar work with ordinary supervision, make simple work related decisions, ask simple questions or request assistance; maintain socially appropriate behavior and hygiene; and travel outside the home and be aware of normal hazards/take

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<sup>2</sup> Copies of the underlying medical records, summarized herein, can be found in pages 91-119 of Exh. 6.

<sup>3</sup> Copies of the underlying medical records, summarized herein, can be found in pages 184 – 215 of Exh. 6.

appropriate precautions. *Id.* at 81. █████ found Appellant was slightly limited”<sup>4</sup> in his ability to work at a consistent pace, respond appropriately to criticism from supervisors, and interact and cooperate appropriately with co-workers and general public. *Id.* █████ found that Appellant was moderately limited (i.e., impaired) in his ability to understand and carry out detailed instructions, maintain attention and concentration to sustain employment, work in proximity to others without being distracted, and respond appropriately to changes in the work setting. *Id.* In her summation, █████ explained that Appellant’s moderate limitations “are in the context of the applicant’s difficulties secondary to probable attention deficit/hyperactivity (ADHD) symptoms in which the applicant has reported difficulty with focus, multi-tasking, tolerating and adjusting to change, new situations, and performing under deadline. *Id.* at 82. She further noted that “the applicant has been referred for a neuropsychological evaluation for diagnostic clarification based on his challenges with sustained concentration and distractibility.” *Id.* █████ identified no “marked limitations” in mental functioning, meaning, there were no limitations that prevented Appellant from being able to usefully perform or sustain an activity. *Id.*

❖ Step 4 asks “does the claimant retain the capacity to perform any past relevant work?”

Because Appellant’s work hours were considered part-time, it did not meet SSA’s definition of SGA and therefore could not be considered past relevant work in the context of step 4. Therefore, the reviewer answered “no” and proceeded to step 5. *Id.* at 69.

❖ Step 5 asks “does the claimant have the ability to make an adjustment to any other work, considering their RFCs, age, education, and work experience?”

The disability reviewer evaluated the relevant factors for consideration at step 5, noting that Appellant is █████, has a 12<sup>th</sup> grade education with some college, and is literate in English; his physical RFC shows he is capable of performing light work with consideration for the noted limitations; and his mental RFC shows he is capable of performing basic, unskilled work activity in the competitive labor market. *Id.* at 67. Based on these factors, the DES reviewer answered “yes” to the question at step 5 and cited the following three unskilled jobs available within both the regional and national economy according to the *Occupational Employment Quarterly (OEQ)*<sup>5</sup> (1) 4420: Ushers, Lobby Attendants & Ticket Takers; (2) 5400: Receptionists and Information Clerks; and (3) 5510: Couriers & Messengers. *Id.* at 69. Descriptions of the quoted jobs were included in the DES submission. *Id.* at 83-84.

Based on the affirmative answer at step 5, DES concluded that Appellant was “not disabled.” *Id.* at 69. This determination was reviewed and endorsed by DES physician advisors █████ MD and █████, Ed.D., effectively concluding the 5-step evaluation process. *Id.* at 66,

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<sup>4</sup> The RFC worksheet states that “slightly limited” means that “the effects of the mental disorder are transient and do not impact overall general functioning.” *Id.*

<sup>5</sup> The DES representative testified that this assessment is made in accordance with the process outlined in federal regulations CFR §416.966, CFR 416.967, CFR §416.968, 416.969a. *Id.* at 22-28.



85. Through a notice dated 4/22/25, DES, on behalf of MassHealth, informed Appellant that it determined he was not disabled based on the applicable federal and state laws and regulations. *Id.* at 86; *see also* Exh. 2.

Appellant and his mother appeared at the hearing and testified that they disagreed with DES's disability determination. Appellant's mother testified that her son has struggled with mental health issues since he was [REDACTED]; he also has diagnoses of postural orthostatic tachycardia syndrome (POTS) and pectus excavatum, which resulted in him having to undergo a whole chest reconstruction. His diagnosis of PTSD stems from his father having died unexpectedly and tragically. Until recently, Appellant was depressed to the point he could not get out of bed or go to work. Over the past several years, however, he has received treatment and has become more stable after finding the right medication. Appellant's mother testified that MassHealth covers his current team of health care providers and all his prescribed medications. She has been unable to find any available plan through the Health Connector that will cover all of his current providers and medications.

Appellant raised issue with the thoroughness of DES's review. Appellant testified that the DES doctor who performed the CE met with him for a total of three minutes and suggested to him that he would qualify for disability given his need for a total shoulder replacement. Appellant testified that he had been referred to orthopedic doctors for evaluation, but these had not been included in DES's review. Appellant also testified that in early March of this year, after receiving a neuropsychiatric evaluation, he was diagnosed with ADHD. Appellant testified that he has been successful in maintaining his sobriety and is "doing ok" for the moment. Appellant argued that it does not make sense for MassHealth to end the health care coverage that allows him to remain stable and functional, and doing so will jeopardize the progress he has made.

In response, the DES representative testified that DES can only request medical records from the providers identified within the adult disability supplement. Appellant only listed the two providers he sees for his mental health and addiction treatment. Because there were no orthopedic doctors listed in the supplement, DES ordered the CE to obtain the necessary information on his physical impairments. The DES representative also testified that although no official ADHD diagnosis was present at the time of review, the medical records did reflect Appellant's intention to undergo a neuropsychiatric evaluation for his ongoing concerns with attention, and such impairments were acknowledged in the mental RFC findings.

## Findings of Fact

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

1. Appellant is between the ages of 21 and 65; he is a single tax-filer in a household size of one.
2. Appellant receives an average gross income of \$2,416.67 per month, placing him at 180.30% of the FPL.
3. Through a notice dated 4/17/25, MassHealth informed Appellant that he was over the income limit to remain eligible for CarePlus and therefore his benefit would end on 5/31/25.
4. On 1/15/25, DES received Appellant's adult disability supplement in which Appellant reported complaints of anxiety with panic attacks, PTSD, depression, and left shoulder pain due to a torn labrum.
5. Appellant is literate in English, he is a high school graduate and attended some college, he currently works 20-30 hours per week as a server/bartender and has held this position since October of 2023.
6. Medical records from Appellant's provider [REDACTED], PMH-NP for dates of service 3/4/24 through 2/11/25 show that Appellant is treated for generalized anxiety disorder, adjustment disorder with depressed mood, and opioid dependence, in remission; he has been on suboxone for several years; he is also prescribed Xanax, Vistaril, Seroquel, and gabapentin; his depression and anxiety symptoms are moderate but manageable; he consistently reports that both his sleep and appetite are good; he was consistently observed to be in good health with no physical or behavioral concerns noted; during a 7/10/24 encounter, Appellant's provider noted that pursuant to a mental status examination, Appellant had clear speech, clear thought process, he was fully oriented with intact memory, he had good judgment and insight, and normal functioning at work and socialization with others.
7. Medical records from Appellant's provider, [REDACTED], NP (with [REDACTED], MD and [REDACTED] MD) for dates of service 1/13/24 to 1/15/25 indicate that Appellant is being treated for opioid dependence; over the past year, he has been stable and free of relapses; he is well-managed on a Subutex regimen; he was consistently observed to have positive affect and mood, as well as good insight and judgment; during a 1/15/2025 visit, Appellant reported feeling well on his current Buprenorphine dose and discussed the potential for tapering his dosage.
8. A CE performed by DES physician [REDACTED] on [REDACTED] indicates that Appellant has a

long-term left shoulder injury involving an extensive labral tear; the injury causes Appellant to experience chronic discomfort which he currently manages with ibuprofen; on examination, Appellant was in no apparent distress; had no sign of cyanosis, clubbing or edema; he had fair range of motion in his left shoulder with decreased external rotation on the left shoulder; and that he had a positive empty can test, but a negative Hawkins test.

9. Appellant has an MDI(s) that is *both* severe and meets the duration requirement.
10. DES determined that Appellant's condition did not meet the criteria to satisfy an SSA listing, including those reviewed for: 1.18 *Abnormality of a Major Joint(s) in any Extremity*; 12.04 *Depressive, Bipolar and Related Disorders*; 12.06 *Anxiety and Obsessive-Compulsive Disorders*; 12.15 *Trauma- and Stressor-Related Disorders*.
11. A mental RFC on 3/15/25 indicated that Appellant had "slight" limitations in his ability to work at a consistent pace, respond appropriately to criticism from supervisors, and interact and cooperate appropriately with co-workers and the general public, as well as "moderate" limitations in his ability to understand and carry out detailed instructions, maintain attention and concentration to sustain employment, work in proximity to others without being distracted, and respond appropriately to changes in the work setting.
12. A physical RFC on [REDACTED] indicates that Appellant is capable of performing light work with consideration for his limitations in performing tasks that involve lifting heavy weights or machinery, climbing, heights, or reaching with his left upper extremity.
13. DES determined that based on the RFC assessments and, in consideration of his age, education, and work experience, Appellant is capable of performing light, unskilled work activity in the competitive labor market.
14. Through a notice dated 4/22/25, DES, on behalf of MassHealth, informed Appellant that he was not deemed disabled, and therefore not eligible for benefits on the basis of disability.

## Analysis and Conclusions of Law

MassHealth provides access to health care by determining eligibility for the coverage type that provides the most comprehensive benefits for which an individual is eligible. 130 CMR 501.003. Eligibility determinations are based on factors related to the individual's income and circumstances. *Id.* Generally, MassHealth offers two coverage types for individuals who have a verified disability: MassHealth Standard - for individuals with income below the regulatory limit, and MassHealth CommonHealth - for individuals who do not qualify for Standard. *See* 130 CMR 505.002(F), 130 CMR 505.004. MassHealth only recognizes disability determinations that have been verified through the Massachusetts Commission for the Blind; the Social Security

Administration (SSA); or Disability Evaluation Services (DES).<sup>6</sup> See 130 CMR 505.002(E)(2).

For purposes of establishing eligibility for MassHealth benefits, being “disabled” means to have a “permanent and total disability as defined under Title XVI of the Social Security Act.” See 130 CMR 501.001. For adults 18 years of age or older, the Social Security Act (“the Act”) defines permanent and total 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.” See 20 CFR 416.905, 130 CMR 501.001. To meet this definition, the claimant’s physical or mental impairment(s) be of “such severity that the individual is not only unable to do his or her previous work, but cannot, considering age, education, and work experience, engage in any other kind of substantial gainful work that exists in the national economy, regardless of whether such work exists in the immediate area in which the individual lives, whether a specific job vacancy exists, or whether the individual would be hired if he or she applied for work.” *Id.* It is the claimant’s responsibility for identifying and/or producing the evidence of disability for the reviewing agency. See 20 CFR § 416.912.

In this case, DES, acting on behalf of MassHealth, conducted an initial disability evaluation of Appellant based on his reported complaints of left shoulder pain, PTSD, depression, and anxiety. DES determines disability using the same standards established by SSA under Title XVI of the Act, including SSA’s 5-step sequential evaluation process as codified in 20 CFR 416.920(a)(4). After collecting all requested records from Appellant’s medical providers, as well as obtaining a consultative examination (CE) report, DES had sufficient information to conduct the disability review.

Waiving step 1, DES began the evaluation at step 2 and appropriately found that Appellant had a medically determinable impairment (or impairments) which was (were) severe. At step 3, however, DES concluded that those impairments did not - either in isolation or in combination - meet or equal a set of criteria in SSA’s Listing of Impairments in 20 CFR Pt. 404 Subpt. P, App 1. See 20 CFR 416.911. Based on Appellant’s complaints, DES reviewed SSA listings for 1.18 *Abnormality of a Major Joint(s) in any Extremity*; 12.04 *Depressive, Bipolar and Related Disorders*; 12.06 *Anxiety and Obsessive-Compulsive Disorders*; and 12.15 *Trauma- and Stressor-Related Disorders*. *Id.* at 70-77.

Based on the information contained in Appellant’s supplement, medical records, and CE report, DES had sufficient grounds to determine that Appellant’s impairments did not satisfy the level of severity that is required to meet an SSA listing. While Appellant did not directly contest this finding, it is noted that the medical evidence did not show that Appellant satisfied paragraph D

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<sup>6</sup> DES is a unit that consists of physicians and disability evaluators who determine permanent and total disability of an applicant or member seeking coverage under a MassHealth program for which disability is a criterion using criteria established by the Social Security Administration under Title XVI, and criteria established under state law. This unit may be a part of a state agency or under contract with a state agency. See 130 CMR 501.001.

of 1.18, namely, that Appellant had a medical need to use any of the listed mobility aids (wheelchair, crutches, cane, etc.), a one-handed, hand-held assistive device for use by the non-impaired upper extremity, or an inability to use both upper extremities. *Id.* at 70. With respect to the mental health impairment listings 12.04, 12.06, and 12.15, the medical documentation did not show that Appellant met the necessary criteria set forth in either paragraphs B or C (at least one of which must be met); namely evidence of an impairment in functioning at either the extreme or marked level, or evidence of ongoing treatment and support with minimal capacity to adapt to changes in environment or demands that are not already a part of life. *Id.* at 72-77. DES therefore correctly answered “no” at step 3 and proceeded to obtain mental and physical RFCs in preparation for evaluation steps 4 and 5.

As Appellant’s current part-time employment as a server/bartender was not considered substantial gainful activity, as defined by SSA, DES could not evaluate it for purposes of determining whether he had the capacity to perform “past relevant work.” Therefore, DES appropriately answered “no” at step 4 and proceeded to step 5.

At step 5, DES concluded that based on the RFC assessments, and in conjunction with age, education and work experience, Appellant was capable of other work within the national and regional economy and therefore “not disabled” under SSA standards. *Id.* at 67-69. DES identified 3 examples of unskilled jobs, as listed in the *OEQ*, consisting of (1) 4420: *Ushers, Lobby Attendants & Ticket Takers*; (2) 5400: *Receptionists and Information Clerks*; and (3) 5510: *Couriers & Messengers*. *Id.* at 69.

DES’ finding at step 5 is supported by the evidence in the record. Appellant is [REDACTED] of age, he is able to read and write English, he completed high school and attended some college. While not considered SGA, Appellant has maintained part time employment as a server/bartender since October of 2023. Medical records show that Appellant is in remission from opioid dependence, he receives suboxone treatment, and he has successfully maintained his sobriety for the past year. *Id.* at 149-254. Psychotherapy notes consistently show that Appellant’s anxiety and depression symptoms, though moderate, are manageable, that he remains stable with his medication regimen, and he has normal socialization and functioning at work. *Id.* at 82, 91-116. At the hearing, Appellant credibly testified that despite the improvements he has made with treatment, his ability to remain stable will be placed at risk without continued access to MassHealth covered services. While this may be true, the focus of review under the applicable SSA guidelines, is based on the claimant’s *current* capacity to perform SGA. It is undisputed that Appellant continues to face multiple challenges as a result of his physical and mental impairments, many of which were accounted for in DES’s disability review. Specifically, the RFC assessments showed that Appellant is restricted in his ability to perform tasks that involve climbing, carrying heavy weights, or reaching with his left upper extremity, and that he has “slight” to “moderate” impairments in several areas of mental function, including those domains the DES physician considered as secondary to probable ADHD. *Id.* at 78-82. Despite having accounted for these limitations, DES found that

Appellant still retained sufficient capacity in other areas of functioning to perform light and unskilled work activity within the local and national economy. *Id.*

Based on the foregoing, there is insufficient evidence to conclude that DES, acting on behalf of MassHealth, erred in determining, pursuant to its 4/22/25 notice, that Appellant was not disabled. Without a verified disability and with income over 133% of the federal poverty level (FPL), MassHealth correctly determined, pursuant to its 4/17/25 notice, that Appellant was ineligible for MassHealth benefits. The appeal is DENIED.

## **Order for MassHealth**

Remove aid pending protection.

## **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.

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Casey Groff  
Hearing Officer  
Board of Hearings

cc: [REDACTED]

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