

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2511530
<b>Decision Date:</b>	11/24/2025	<b>Hearing Date:</b>	10/01/2025
<b>Hearing Officer:</b>	Kimberly Scanlon		

**Appearance for Appellant:**  
Pro se

**Appearances for MassHealth:**  
Elizabeth Cruz– Tewksbury MEC;  
Eileen Cynamon, R.N. - 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

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Disability; Eligibility
<b>Decision Date:</b>	11/24/2025	<b>Hearing Date:</b>	10/01/2025
<b>MassHealth's Reps.:</b>	Elizabeth Cruz; Eileen Cynamon, RN	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Tewksbury MassHealth Enrollment Center Room 1	<b>Aid Pending:</b>	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 July 7, 2025, MassHealth notified the appellant that he does not meet MassHealth disability requirements. (Exhibit 1). The appellant filed this appeal in a timely manner on August 3, 2025. (130 CMR 610.015(B); Exhibit 2). A hearing was scheduled to take place on September 9, 2025, and was rescheduled for October 1, 2025. (Exhibits 5-7). Denial of assistance is valid grounds for appeal. (130 CMR 610.032).

## Action Taken by MassHealth

MassHealth notified the appellant that he does not meet MassHealth disability requirements.

## Issue

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

## Summary of Evidence

MassHealth was represented at the hearing by an eligibility representative from the MassHealth Enrollment Center and a registered nurse and appeals reviewer from Disability Evaluation Services (DES). The MassHealth eligibility representative testified as follows:

The appellant is under the age of [REDACTED] and he resides in a household of 2 with his mother. The appellant's mother claims him as a tax dependent. His mother's gross household income amounts to \$2,825.70 per month received from employment and yearly rental income, which equates to 155.33% of the Federal Poverty Level (FPL). To qualify for MassHealth CarePlus benefits, an applicant's gross monthly income cannot exceed 133% of the FPL, or \$2,345. for a household of 2. To qualify for MassHealth CommonHealth benefits, DES must first deem an applicant is disabled. Here, the appellant was deemed not disabled by DES and his household income is over the allowable limit to qualify for MassHealth CarePlus coverage. The appellant is eligible for and currently receives a health plan through the Health Connector. The MassHealth representative explained that if the appellant should choose to file his own taxes in the future, he can opt to have his mother remove him as a tax dependent and apply as his own household of 1. To qualify for MassHealth CarePlus benefits as a household of 1, an applicant's gross monthly income cannot exceed 133% of the FPL, or \$1,735.

The DES representative testified as follows: DES's role is to determine for MassHealth if an applicant meets the Social Security Administration (SSA) level of disability from a clinical standpoint. To determine such, a 5-step sequential evaluation process is used, as described within the SSA regulations at Title XX of the Code of Federal Regulations (CFR), Chapter III, § 416.920. (Exhibit 8, pp. 12-14). DES applies this 5-step process using the applicant's medical records and disability supplement submissions. Per SSA CFR § 416.905, disability is defined as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death, or which has lasted or can be expected to last for a continuous process of not less than 12 months. (Exhibit 8, p. 8). To meet this definition, you must have a severe impairment(s) that renders you unable to do your past relevant work or any other substantial gainful work that exists in the regional economy. Per SSA CFR § 416.945, what a person can still do despite an impairment is called his or her residual functional capacity (RFC). (Exhibit 8, pp. 24-26). Unless an impairment is so severe that it is deemed to prevent you from doing substantial gainful activity, it is this RFC that is used to determine whether a person can still perform his or her past work, or, in conjunction with the person's age, education, and work experience, any other work.

The appellant is an adult male in his [REDACTED] who was initially determined disabled under MassHealth Child SSI listing 112.04 (Mood Disorders) in [REDACTED] with a recommended review date of May 2021. On March 31, 2025, the appellant submitted his first MassHealth Adult Disability Supplement to DES, listing the following health problems: low back pain/spasms daily, depression with complaints of decreased interest, worthlessness, and irritability, and anxiety with nervous feeling and trouble concentrating. (Exhibit 8, p. 52). DES requested and obtained medical

documentation using the medical releases that the appellant provided from his treating provider located at [REDACTED] (Exhibit 8, pp. 41-42; 79-124). The records received span from July 17, 2024, through March 10, 2025. The DES reviewer determined that those records were insufficient to fully evaluate the appellant's current complaints. On April 15, 2025, the DES reviewer called the appellant to inquire if he had any other treatment providers or whether he received care within the past 12 months at any other facilities. The appellant confirmed that he had not received care anywhere else and that he had not seen a mental health provider in several years. The appellant agreed to attend Consultative Exam(s) (CE) so that DES could obtain the necessary objective documentation to complete his disability review. The DES reviewer elected to pursue the appellant's mental health complaints first and ordered a Psych CE. The DES Medical Scheduling staff placed an outbound call to the appellant to complete the pre-select scheduling process and left a voice mail for him, requesting a return call regarding his appointment (i.e. his preference and availability (day/ time)).

On April 16, 2025, DES sent the appellant a CE Pre-Select Letter, along with instructions to contact DES within ten business days to complete this process. (Exhibit 8, p. 40). On April 24, 2025, the appellant contacted the Medical Scheduling Department and agreed to attend a Zoom Telehealth Psych CE with [REDACTED] on May 1, 2025, at 2:45 p.m. A Zoom telehealth link was sent via email to the appellant (DES confirmed receipt that the link was successfully sent to him). On April 30, 2025, DES made an outbound appointment reminder call to the appellant, and the Zoom link was sent to him again. On May 1, 2025, DES's scheduler and [REDACTED] appeared on the Zoom link, however the appellant failed to attend. DES sent the appellant another Zoom link. At 3:00 p.m. the appointment concluded, and the appellant was listed as a "No Show."

On May 2, 2025, the appellant contacted DES and reported that he was having technical issues at the time of the May 1<sup>st</sup> CE appointment. The Disability Administrative Supervisor (DAS) authorized the rescheduling of the appellant's CE appointment with [REDACTED] to take place on May 15, 2025, at 11:45 a.m. (Exhibit 8, p. 39). On May 14, 2025, DES sent the appellant a new Zoom link and a reminder call was also placed to him. The appellant attended the Zoom Telehealth Psych CE with [REDACTED] on May 15, 2025. DES received the signed Psych CE report on May 27, 2025. (Exhibit 8, pp. 128-132). The DES reviewer determined that the appellant's mental health impairments met the SSI severity and duration requirement.

On May 28, 2025, DES obtained the appellant's Mental RFC. DES determined that the appellant did not meet the SSI listings solely on his mental health complaints and ordered a Medical CE to take place on July 2, 2025. On July 3, 2025, DES received confirmation of the appellant's attendance and the completed Medical CE report from [REDACTED] ([REDACTED] provided supervision). (Exhibit 8, pp. 125-127). The DES reviewer determined that sufficient objective clinical documentation was obtained to evaluate all the appellant's claims, and the 5-Step review process was initiated:

Step 1: Is the applicant engaged in substantial gainful activity (SGA)?

For the appellant's review, Step 1 was marked "No" (Exhibit 8, p. 59). The DES representative explained that Step 1 is waived by MassHealth regardless of whether the applicant is engaging in SGA. However, on the federal level, if an applicant is engaging in SGA, it stops the disability review in its entirety. Here, Step 1 is waived for MassHealth purposes, and the review proceeds to Step 2.

Step 2: Does the claimant have a medically determinable impairment (MDI) or a combination of MDIs that is both severe and meets the duration requirement?

The DES representative testified that the duration requirement means that the impairment is expected to result in death, or which has lasted or is expected to last for a continuous process of not less than 12 months at that severity. (Exhibit 8, p. 20). Here, the provider information was sufficient to establish the appellant's MDIs met the severity and duration requirements for Step 2. Therefore, DES determined that the appellant meets Step 2, and the review process proceeded to Step 3. (Exhibit 8, p. 59).

Step 3: Does the claimant have an impairment(s) that meet an adult SSA listing or is medically equal to a listing and meets the listing level duration requirement?

At Step 3, the DES reviewer marked "no" citing the applicable adult SSA listings that were considered. *Id.* DES explained that 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. Here, the pertinent listings that most closely matched are:

- 1:15 – Disorders of the Skeletal Spine resulting in a Compromise of a Nerve Root(s);
- 12:04 – Depressive, Bipolar and Related Disorders;
- 12:06 – Anxiety and Obsessive-Compulsive Disorders; and
- 12:11 – Neurodevelopmental Disorders

(Exhibit 8, pp. 21-22).

The DES representative explained that with respect to the listings, there are certain criteria that must be met. Specifically, for listing 1:15-Disorders of the Skeletal Spine resulting in a Compromise of a Nerve Root, the following criteria set forth in A, B, C, and D must be met:

- A. Neuro-anatomic (radicular) distribution of **one or more** of the following symptoms consistent with compromise of the affected nerve root(s):
1. Pain; **or**
  2. Paresthesia; **or**
  3. Muscle fatigue

**AND**

- B. Radicular distribution of neurological signs present during physical examination or on a diagnosis test and evidenced by **1, 2, and either 3 or 4:**
1. Muscle weakness; **and**
  2. Sign(s) of nerve root irritation, tension, or compression, consistent with compromise of the affected nerve root; **and**
  3. Sensory changes evidenced by:
    - a. Decreased sensation; **or**
    - b. Sensory nerve deficit (abnormal sensory nerve latency) on electrodiagnostic testing; **or**
  4. Decreased deep tendon reflexes

**AND**

- C. Findings on imaging consistent with compromise of a nerve root(s) in the cervical or lumbosacral spine.

**AND**

- D. Impairment-related physical limitation of musculoskeletal functioning that has lasted or is expected to last, for a continuous period of at least 12 months; and medical documentation of at least **one** of the following:
1. A documented medical need for a walker, bilateral canes, or bilateral crutches or a wheeled and seated mobility device involving the use of both hands; **or**
  2. An inability to use **one** upper extremity to independently initiate, sustain, and complete work-related activities, involving fine and gross movements, **and** a documented medical need for a one-handed, hand-held assistive device that requires the use of the other upper extremity or a wheeled and seated mobility device involving the use of one hand; **or**
  3. An inability to use both upper extremities to the extent that neither can be used to independently initiate, sustain, and complete work-related activities involving fine and gross movements.

(Exhibit 8, pp. 61-62).

The DES representative explained that DES included this listing due to the appellant's reported back pain. She further explained that at this listing, DES will look to see if certain nerves and parts of the spinal column are impacting the appellant's body continuously for the past 12 months (i.e. numbness, muscle weakness, decreased sensation, etc.). Here, the appellant's CEs and medical records do not include: a documented medical need or an inability to ambulate, any deficits in his neurological system, nor in his gait, and strength. Thus, DES determined that he does not meet the criteria for this listing.

DES then reviewed the criteria set forth in listing 12:04 – Depressive, Bipolar and Related Disorders. The criteria set forth in this listing includes:

A. Medical documentation of the requirements of paragraph 1 or 2:

1. Depressive disorder, characterized by **five or more** of the following:

- a. Depressed mood;
- b. Diminished interest in almost all activities;
- c. Appetite disturbance with change in weight;
- d. Sleep disturbance;
- e. Observable psychomotor agitation or retardation;
- f. Decreased energy;
- g. Feelings of guilt or worthlessness;
- h. Difficulty concentrating or thinking, or
- i. Thoughts of death or suicide.

2. Bipolar disorder, characterized by **three or more** of the following:

- a. Pressured speech;
- b. Flight of ideas;
- c. Inflated self-esteem;
- d. Decreased need for sleep;
- e. Distractibility;
- f. Involvement of activities that have a high probability of painful consequences that are not recognized;
- g. Increase in goal-directed activity or psychomotor agitation.

**AND**

B. **Extreme limitation of one, or marked limitation of two**, of the following areas of mental functioning:

1. Understand, remember, or apply information.
2. Interact with others.
3. Concentrate, persist, or maintain pace.
4. Adapt or manage oneself.

**OR**

C. ..Medically documented history of the existence of the disorder over, a period of **at least 2 years**, and there is evidence of **both**:

1. Medical treatment, mental health therapy, psychosocial support(s), or a highly structured setting(s) that is ongoing and that diminishes the symptoms and signs of your mental disorder; **and**
2. Marginal adjustment, that is, you have minimal capacity to adapt to changes in your environment or to demands that are not already part of your daily life.

(Exhibit 8, pp. 63-64).

The DES representative explained that because the appellant's CE indicates that he was pleasant, cooperative, appropriate, alert and orientated, and because his medical records do not include any documentation of all the above criteria, the DES reviewer determined that he does not meet this

listing. Additionally, the DES representative explained that while the appellant may have moderate limitations with attention and concentration, an applicant must have extreme limitations.

The DES reviewer then proceeded to review listing 12:06 – Anxiety and Obsessive-Compulsive Disorders. The criteria set forth in this listing includes:

A. Medical documentation of the requirements of paragraph **1, 2, or 3**:

1. Anxiety disorder, characterized by **three or more** of the following:
  - a. Restlessness;
  - b. Easily fatigued;
  - c. Difficulty concentrating;
  - d. Irritability;
  - e. Muscle tension; or
  - f. Sleep disturbance
2. Panic disorder or agoraphobia, characterized by **one or both**:
  - a. Panic attacks followed by a persistent concern or worry about additional panic attacks or their consequences; or
  - b. Disproportionate fear or anxiety about **at least two** different situations (for example, using public transportation, being in a crowd, being in a line, being outside your home, being in open spaces).
3. Obsessive-compulsive disorder, characterized by **one or both**:
  - a. Involuntary, time-consuming preoccupation with intrusive, unwanted thoughts;  
**or**;
  - b. Repetitive behaviors aimed at reducing anxiety.

**AND**

B. **Extreme limitation of one, or marked limitation of two**, of the following areas of mental functioning:

1. Understand, remember, or apply information.
2. Interact with others.
3. Concentrate, persist, or maintain pace.
4. Adapt or manage oneself.

**OR**

C. ..Medically documented history of the existence of the disorder over, a period of **at least 2 years**, and there is evidence of **both**:

1. Medical treatment, mental health therapy, psychosocial support(s), or a highly structured setting(s) that is ongoing and that diminishes the symptoms and signs of your mental disorder; **and**
2. Marginal adjustment, that is, you have minimal capacity to adapt to changes in your environment or to demands that are not already part of your daily life.

(Exhibit 8, pp. 65-66).

The DES representative stated that the appellant's medical records do not indicate that the

appellant meets this listing for the same reasoning set forth above. Specifically, while the appellant may have moderate limitations, to meet this listing his limitations must be extreme. The DES reviewer next proceeded to review listing 12:11 – Neurodevelopmental Disorders. The criteria set forth in this listing include:

A. Medical documentation of the requirements of paragraph **1, 2, or 3**:

1. **One or both** of the following:

- a. Frequent distractibility, difficulty sustaining attention, and difficulty organizing tasks; **or**
  - b. Hyperactive and impulsive behavior (for example, difficulty remaining seated, talking excessively, difficulty waiting, appearing restless, or behaving as if being “driven by a motor”).
2. Significant difficulties learning and using academic skills; **or**
  3. Recurrent motor movement or vocalization.

**AND**

B. **Extreme limitation of one, or marked limitation of two**, of the following areas of mental functioning:

1. Understand, remember, or apply information.
2. Interact with others.
3. Concentrate, persist, or maintain pace.
4. Adapt or manage oneself.

(Exhibit 8, p. 67).

The DES representative stated that the appellant’s medical records do not indicate that the appellant meets this listing for the same reasoning set forth above. Specifically, while the appellant may have moderate limitations, to meet this listing his limitations must be extreme. Thus, the DES reviewer determined that the appellant does not have an impairment that meets a listing or is medically equal to a listing or that meets the level duration requirement and continued to Step 4.

For the rest of the review, Steps 4 and 5, both a residual functional capacity (RFC) assessment, along with the vocational assessment are determined. The RFC is the most an applicant can still do, despite his or her limitations. An applicant’s RFC is based on all relevant evidence in the case record and there are federal regulations that address how DES determines RFC. (Exhibit 8, pp. 24-26, 31). The appellant’s physical RFC was completed by [REDACTED] on July 7, 2025, which indicates that the appellant can perform light work activity with consideration of:

- postural limitation for occasionally climbing (ladders, scaffolding, etc.); and
- environmental limitation to hazards (machinery, heights, etc.) related to his low back pain and agility. (Exhibit 8, pp. 68-70).

In completing the appellant’s physical RFC, [REDACTED] noted the following: “the [appellant]

complains of lower back pain. He attributes this pain due to lifting heavy boxes. The appellant denies [experiencing] any radicular pain [when] working. He does not take any medications. Currently, he does not need any device for ambulation. There is minimum tenderness in the lumbar area. He has good range of motion, including flexion and extension. There is no evidence of focal motor neuro deficit." (Exhibit 8, p. 70).

The appellant's mental RFC was completed by [REDACTED] on May 28, 2025, which indicated that the appellant can perform basic, unskilled work activity with consideration of moderate limitations in his ability to maintain attention and concentration to sustain employment. (Exhibit 8, pp. 71-72). In completing the appellant's mental RFC, [REDACTED] noted the following:

[The appellant] is an adult male in his [REDACTED] and speaks Spanish. He reports suffering from depression and anxiety and loss of interest and feeling worthless. He also reports issues with back pain. He currently works as a snow shoveler, and he works part-time for [REDACTED]. He reports being under psychiatric care in the past and apparently saw a therapist and a psychiatrist. He does not see a psychiatric provider at the present time, and he is not taking any psychotropic medications. He denied any paranoia, but he finds it hard to trust people. He also tends to be impulsive and used to argue, throw and break things, and he got into trouble when he was younger. He denied any neurovegetative signs of depression. He has a 12<sup>th</sup> grade education and was in an alternative school during high school. He was cooperative and pleasant, was able to follow the conversation, appeared a little anxious but not overly so, with no evidence of psychotic thought process. He was diagnosed with generalized anxiety and depressive disorder. After reviewing all the records, the appellant reports issues with anxiety and depression but he does not report any neurovegetative signs and has been able to hold a job. He does not seem to be actively looking for psychiatric help and appears to manage his symptoms without medication. At this time, he may have moderate limitations with attention and concentration while having increased anxiety. (Exhibit 8, p. 72).

The DES reviewer completed a vocational assessment using the educational and work history reported on the appellant's Supplement and the physical and mental RFCs. (Exhibit 8, pp. 27-28; 71-72).

Step 4: Does the claimant retain the capacity to perform any Past Relevant Work (PRW)?

The DES representative explained that the DES reviewer listed "No" for this question. The appellant's current employment as a snow remover/shoveler is not considered SGA due to the limited hours reported and seasonal nature of his work. His past work history includes employment as a furniture workshop assistant, warehouse associate and cashier/drive through attendant; all positions held were part-time (ranging from 15 hours to 25 hours per week). Thus, DES concluded that the appellant's previous part-time job positions were not listed at a pay rate

that would equate to SGA. (Exhibit 8, p. 55). The DES reviewer concluded that the appellant has no reported SGA work history which can be evaluated, and the review process proceeded to Step 5.

Step 5: 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 DES representative explained that the DES reviewer listed "Yes" for this question, citing 3 unskilled jobs available within both the regional and national economy. (Exhibit 8, pp. 29-35). The DES reviewer referenced the Occupational Employment Quarterly (OEQ) and quoted 3 jobs:

4720 – Cashiers;  
5510 – Couriers and Messengers; and  
5860 – Office Clerks, General.

DES included sample job descriptions for the 3 quoted jobs listed above. (Exhibit 8, pp. 73-75). DES determined that the appellant was not disabled at Step 5, using Code 231. (Exhibit 8, p. 60). The 5-step evaluation process concluded with a final review and endorsement of the disability decision by Physician Advisors (PAs) [REDACTED] on July 7, 2025. (Exhibit 8, pp. 57, 76). DES mailed a disability determination denial letter to the appellant and transmitted the decision to MassHealth on July 8, 2025. (Exhibit 1, Exhibit 8, pp. 45, 77).

The DES representative testified that, in summary, the appellant does not meet the high threshold of adult SSA disability listings. Additionally, the appellant's RFC shows he can perform light work activity in the competitive labor market. Further, there are, within the regional/national economy, a sizable number of jobs (in one or more occupations) having requirements which he can perform based on his physical and mental capabilities, and his vocational qualifications. DES concluded that the appellant is not clinically eligible for SSA Title XVI level benefits and determined that he is not disabled.

The DES representative noted that the appellant indicated on his request for a fair hearing (which he submitted in August 2025) that he was diagnosed with colitis. She explained that the appellant did not report this diagnosis as an impairment on his Adult Disability Supplement that he submitted and signed on March 12, 2025. She stated that there is no objective documentation of this condition, diagnosis, treatment, or indication of any impact on current functioning within the appellant's available medical records that DES received. Additionally, the appellant did not report any concerns about colitis at the Medical CE on July 2, 2025.

The appellant appeared at the hearing and confirmed that he is presently employed, earning approximately \$400 per week. He testified that in terms of his disability status, he was recently diagnosed with colitis (after he submitted his Adult Disability Supplement in March 2025 and after he attended the medical CE in July). The DES representative stated that if the appellant's recent colitis diagnosis or symptoms significantly impact his ability to work and will continue to do so for

12 months, then he can opt to re-apply to DES by submitting an updated MassHealth Adult Disability Supplement, including all new and recent treatment sources, releases, and clinical documentation (i.e. specialist evaluations/consultations, recent diagnostic testing, imaging reports and laboratory reports). The appellant asked if he were to re-apply whether DES would require him to attend additional CEs; the DES representative explained that if the appellant's recent diagnosis or symptoms are significantly impacting his ability to work then he may not need to attend another Medical CE because presumably, he would have received documentation from his treating provider that he could submit to DES. The appellant stated that he has documentation showing his upcoming medical appointments; the DES representative suggested that he re-submit all paperwork to DES if he chooses to re-apply. She added that because the appellant's documentation shows upcoming appointments, he should wait to re-apply to DES until after his medical appointments take place.

## Findings of Fact

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

1. The appellant is a male in his [REDACTED] with diagnoses including low back pain/spasms daily; depression with complaints of decreased interest, worthlessness, and irritability; and anxiety with nervous feeling and trouble concentrating.
2. The appellant had been found disabled in the past when he was a child (in [REDACTED]).
3. On March 31, 2025, the appellant submitted MassHealth Disability Supplement to DES listing the following health problems: low back pain/spasms daily, depression with complaints of decreased interest, worthlessness, and irritability, and anxiety with nervous feeling and trouble concentrating.
4. DES requested and received the appellant's medical records which spanned from July 2024 through March 2025; the DES reviewer determined the records received were insufficient to fully evaluate the appellant's current complaints.
5. On April 15, 2025, DES contacted the appellant to ascertain whether he had any other treatment providers or if he had received care within the past 12 months at any other facilities. The appellant confirmed that he had not and agreed to attend CEs for DES to obtain the necessary objective documentation so DES could complete his disability review.
6. The DES reviewer elected to first pursue the appellant's mental health complaints and a Psych CE was scheduled to take place via Zoom on May 1, 2025. The appellant failed to attend due to technical issues; DES received authorization to reschedule the CE which took place on May 15, 2025.

7. On May 27, 2025, DES received the appellant's signed Psych CE report. The DES reviewer determined that the appellant's mental health impairments met the SSII severity level and duration requirement.
8. On May 28, 2025, DES obtained the appellant's mental RFC. DES determined that the appellant did not meet the SSI listings solely on his mental health complaints and ordered a Medical CE to take place on July 2, 2025.
9. On July 3, 2025, DES received confirmation of the appellant's attendance at the Medical CE and a completed report. DES determined that it had received sufficient objective clinical documentation to evaluate all claims and initiated the 5-step disability review process. DES evaluated whether the appellant has a disability using a 5-step sequential evaluation process, as described within the SSA regulations at Title XX of the Code of Federal Regulations, or CFR, Chapter III, § 416.
10. At Step 1, which explores whether the applicant engaged in SGA, DES explained that this step is waived for MassHealth purposes.
11. At Step 2, DES determined that the appellant has a severe impairment.
12. At Step 3, DES determined that the appellant does not meet listings 1:15 -disorders of the skeletal spine resulting in a compromise of a nerve root; 12:04 – depressive, bipolar and related disorders, 12:06 – anxiety and obsessive-compulsive disorders, and 12:11 – Neurodevelopmental disorders because it found that there is no clinical evidence submitted to support a finding that the appellant's impairment(s) meet any of these listings or is medically equal to any of these listings and meets the listing level duration requirement.
13. The appellant's physical RFC indicates that he denied any radicular pain, he does not take any medication, he does not presently need any device for ambulation, he has good range of motion including flexion and extension, and there is no evidence of focal motor neuro deficit.
14. The appellant's mental RFC indicates that he does not presently see a psychiatric provider and is not taking any psychotropic medications. His mental RFC further indicates that he denies paranoia, but finds it hard to trust people, He denies any neurovegetative signs of depression. He was cooperative and pleasant upon examination. He does not appear to be actively looking for psychiatric help and appears to be managing his symptoms without medication. He appears to have, at this time, moderate limitations with attention and concentration while having increased anxiety.
15. At Step 4, DES determined that the appellant is unable to perform past relevant work because his past seasonal and part time work is not considered SGA due to the limited hours

reported, the seasonal nature of work reported, and because none of his work history was listed at a pay rate that would equate to SGA.

16. At Step 5, DES determined that the appellant has the ability to perform light work activity in the competitive labor market, considering his RFCs, age, education, and work experience citing 3 unskilled jobs available in the national and regional economy.

## **Analysis and Conclusions of Law**

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

Individuals who meet the Social Security Administration's definition of disability may establish eligibility for MassHealth Standard, in accordance with 130 CMR 505.002(E). Pursuant to Title XX, § 416.905, the Social Security Administration defines disability as: the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death, or which has lasted or can be expected to last for a continuous process of not less than 12 months.

Title XX of the Social Security Act establishes standards and the five-step sequential evaluation process. If a determination of disability can be made at any step, the evaluation process stops at that point. Step 1 considers whether an applicant is engaged in substantial gainful activity. This step is waived in MassHealth cases. Thus, the review proceeds to Step 2.

Step 2 determines whether a claimant has a medically determinable impairment (MDI) or a combination of MDIs that is both severe and meets the duration requirement. To be determined severe, a medically determinable impairment means that said impairment is expected to result in death, or which has lasted or is expected to last for a continuous process of not less than 12 months at that severity.

In the present case, the appellant was reviewed for disability due to a history of low back pain/spasms daily, depression with complaints of decreased interest, worthlessness, and irritability, and anxiety with nervous feeling and trouble concentrating. DES determined that the appellant's impairments have lasted or expected to last 12 months. I find that the evidence supports this determination. Accordingly, the appellant's impairments meet Step 2, and the review process proceeds to Step 3.

Step 3 requires the reviewer to determine whether the claimant has an impairment(s) that meets an adult SSA listing or is medically equal to a listing and meets the listing level duration requirement. The pertinent adult listings are set forth in the federal *Listing of Impairments* that

can be found at 20 CFR Ch. III, Pt. 404, Subpart P, App. 1. As noted by DES, 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. Here, DES reviewed the appellant's diagnoses and determined that his impairments do not meet the high threshold of adult SSA listings and the listing level duration requirement. I find that the evidence supports this determination. The record reflects that the criteria set forth in listing 1:15-Disorders of the Skeletal Spine resulting in Compromise of a Nerve Root include:

- Neuro-anatomic distribution of pain, paresthesia, or muscle-fatigue consistent with compromise of the affected nerve root; **and**
- Radicular distribution of neurological signs present during physical examination or on a diagnostic test, and evidenced by muscle weakness and signs of nerve root irritation, tension, or compression consistent with compromise of the affected nerve root and sensory changes evidenced by decreased sensation or sensory nerve deficit or decreased deep tendon reflexes; **and**
- Findings on imaging consistent with compromise of a nerve root(s) in the cervical or lumbosacral spine; **and**
- Impairment-related physical limitation of musculoskeletal functioning that has lasted or is expected to last for a continuous period of at least 12 months and medical documentation of: a medical need for a walker, bilateral canes or bilateral crutches or a wheeled and seated mobility device involving the use of both hands, or an inability to use one upper extremity independently for work-related activities.

Here, DES included this listing due to the appellant's reported back pain and looked to see if certain nerves and parts of his spinal column. As noted by DES, the appellant's medical records do not include any of the following: a documented medical need or an inability to ambulate, any deficits in his neurological system, in his gait, or in his strength. Further, the appellant's physical RFC indicates that: the appellant denied having any radicular pain when working; he does not take any medications; he does not need any device for ambulation; he has good range of motion, including flexion and extension; and there is no evidence of focal motor neuro deficit. (Exhibit 8, p. 70).

With respect to listing 12:04 – Depressive, Bipolar and Related Disorders, the record reflects that the criteria set forth therein includes medical documentation of:

- Depressive disorder, characterized by five or more of the following:
  - a. Depressed mood;
  - b. Diminished interest in almost all activities;
  - c. Appetite disturbance with change in weight;
  - d. Sleep disturbance;
  - e. Observable psychomotor agitation or retardation;

- f. Decreased energy;
- g. Feelings of guilt or worthlessness;
- h. Difficulty concentrating or thinking, or
- i. Thoughts of death or suicide; **or**
- Bipolar disorder, characterized by three or more of the following:
  - a. Pressured speech;
  - b. Flight of ideas;
  - c. Inflated self-esteem;
  - d. Decreased need for sleep;
  - e. Distractibility;
  - f. Involvement of activities that have a high probability of painful consequences that are not recognized;
  - g. Increase in goal-directed activity or psychomotor agitation; **and**
- Extreme limitation of one, or marked limitation of two, of the following areas of mental functioning:
  1. Understand, remember, or apply information.
  2. Interact with others.
  3. Concentrate, persist, or maintain pace.
  4. Adapt or manage oneself, or
- Medically documented history of the existence of the disorder over, a period of at least 2 years, **and** there is evidence of both:
  1. Medical treatment, mental health therapy, psychosocial support(s), or a highly structured setting(s) that is ongoing and that diminishes the symptoms and signs of your mental disorder; and
  2. Marginal adjustment, that is, you have minimal capacity to adapt to changes in your environment or to demands that are not already part of your daily life.

As noted by DES, because the appellant's CE indicates that he was pleasant, cooperative, appropriate, alert and orientated, and because his medical records do not include any documentation of the above criteria, DES determined that he does not meet this listing. Further, the appellant's mental RFC indicates that he does not presently see a psychiatric provider, he does not appear to be actively looking for psychiatric help and appears to be managing symptoms without medication. (Exhibit 8, p. 70). Finally, as noted by DES, while the appellant may have moderate limitations with attention and concentration; extreme limitation must be present to meet this listing.

As to listing 12:06 – Anxiety and Obsessive-Compulsive Disorders, the criteria set forth in this listing includes:

- Medical documentation of the requirements of paragraph 1, 2, or 3:
  1. Anxiety disorder, characterized by three or more of the following:
    - a. Restlessness;
    - b. Easily fatigued;

- c. Difficulty concentrating;
  - d. Irritability;
  - e. Muscle tension; or
  - f. Sleep disturbance
2. Panic disorder or agoraphobia, characterized by one or both:
    - a. Panic attacks followed by a persistent concern or worry about additional panic attacks or their consequences; or
    - b. Disproportionate fear or anxiety about at least two different situations (for example, using public transportation, being in a crowd, being in a line, being outside your home, being in open spaces).
  3. Obsessive-compulsive disorder, characterized by one or both:
    - a. Involuntary, time-consuming preoccupation with intrusive, unwanted thoughts; or;
    - b. Repetitive behaviors aimed at reducing anxiety; **and**
- Extreme limitation of one, or marked limitation of two, of the following areas of mental functioning:
    1. Understand, remember, or apply information.
    2. Interact with others.
    3. Concentrate, persist, or maintain pace.
    4. Adapt or manage oneself, **or**
  - Medically documented history of the existence of the disorder over, a period of **at least 2 years**, and there is evidence of **both**:
    1. Medical treatment, mental health therapy, psychosocial support(s), or a highly structured setting(s) that is ongoing and that diminishes the symptoms and signs of your mental disorder; **and**
    2. Marginal adjustment, that is, you have minimal capacity to adapt to changes in your environment or to demands that are not already part of your daily life.

As noted by DES, the appellant's medical records do not indicate that the appellant meets this listing. The appellant's mental RFC indicates that he denies paranoia (though he has a hard time trusting people). (Exhibit 8, p. 70). As further noted by DES, while the appellant may have moderate limitations, extreme limitations must be present to meet this listing.

Lastly, the criteria set forth in listing 12:11 – Neurodevelopmental Disorders, includes:

- Medical documentation of the requirements of paragraphs **1, 2, or 3**:
  1. One or both of the following:
    - a. Frequent distractibility, difficulty sustaining attention, and difficulty organizing tasks; **or**
    - b. Hyperactive and impulsive behavior (for example, difficulty remaining seated, talking excessively, difficulty waiting, appearing restless, or behaving as if being "driven by a motor").
  2. Significant difficulties learning and using academic skills; **or**

3. Recurrent motor movement or vocalization, **and**
- Extreme limitation of one, or marked limitation of two, of the following areas of mental functioning:
    1. Understand, remember, or apply information.
    2. Interact with others.
    3. Concentrate, persist, or maintain pace.
    4. Adapt or manage oneself.

As noted by DES, the appellant's medical records do not indicate that the appellant meets this listing. As further noted by DES, while the appellant may have moderate limitations, to meet this listing his limitations must be extreme. The review process proceeds to Step 4.

Step 4 requires the reviewer to determine whether the claimant retains the capacity to perform any past relevant work. Here, DES determined that the appellant did not report any past SGA because his previous part-time job positions were not listed at a pay rate that would equate to such. Thus, DES determined that the appellant meets Step 4. I find this determination is accurate. Accordingly, the appellant does not retain the capacity to perform any past relevant work, and the review process proceeds to Step 5.

Step 5 requires the reviewer to determine whether the claimant has the ability to make an adjustment to any other work, considering the claimant's RFCs, age, education, and work experience. DES determined that the appellant's RFC shows he can perform light work activity in the competitive labor market within the national and regional economy. There are a significant number of jobs in one or more occupations that have requirements which the appellant can meet, based on his physical and/or mental abilities and his vocational qualifications. The appellant did not dispute this determination. As DES noted, the reviewer referenced the OEQ and quoted 3 jobs, namely:

4720 – Cashiers;  
5510 – Couriers and Messengers; and  
5860 – Office Clerks, General.

The record indicates that the appellant has previously engaged in part-time and seasonal employment, and he testified credibly that he is currently working. The appellant's recent change in his medical diagnoses, which include a colitis diagnosis, is noted. However, as noted by DES, the appellant can submit another adult disability supplement to DES if this diagnosis or symptoms significantly impact his ability to work and will continue to do so for 12 continuous months, to meet the severity and duration disability requirements, including medical documentation evidencing such. While the appellant testified credibly, his testimony is insufficient to meet his burden here. Thus, I find that DES was correct in determining that the appellant is not disabled.

This appeal is denied.<sup>1</sup>

## 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.

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Kimberly Scanlon  
Hearing Officer  
Board of Hearings

cc

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

Disability Evaluation Services Unit

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<sup>1</sup> This denial does not preclude the appellant from contacting the MassHealth Enrollment Center, Customer Service at 1-800-841-2900 to ascertain whether he qualifies for any other assistance; as discussed at the hearing. Additionally, this denial does not preclude the appellant from submitting another adult disability supplement to DES, as discussed at the hearing as well.