

# Part 1      Categorical Eligibility

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## 1      Who can get EAEDC?

EAEDC covers five basic categories of persons:

- Disabled persons suffering from **an impairment or combination of impairments** which will last at least 60 days and which substantially reduces the capacity to work;
- Persons caring **for** someone who is disabled;
- **Elders** 65 years of age or older;
- Persons participating in a **Massachusetts Rehabilitation Commission** program.
- Certain children **and their caretakers** who are not eligible for TAFDC because they do not meet the TAFDC relationship requirement.

The rest of Part I describes these categories and the rules which apply to them in more detail. However, just because you meet these categorical requirements does not guarantee your eligibility for benefits. You also need to meet the other eligibility conditions (see **Part 2** of this *Guide*) and financial requirements (see **Part 3** of this *Guide*). Be sure to read through all these parts when evaluating your EAEDC eligibility.

# Eligibility for Persons with Disabilities

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## 2 How disabled do you have to be to receive benefits?

Under the EAEDC rules you are disabled if:

- you have one or more impairments;
- that substantially reduce your ability to support yourself; *and*
- that will last at least 60 days. 106 C.M.R. § 320.200.

This means you cannot perform full-time work of any sort. For example, you may be eligible if you injured your back and cannot lift objects you used to lift when you worked. Or if you are now in too much pain to sit comfortably for long periods of time. Or if you suffer from both depression and asthma which, in combination, substantially limit your ability to work.

The critical test is whether your impairment(s) reduce your ability to support yourself. If physical impairments, do they affect your ability to perform physical maneuvers, including sitting, standing, walking, lifting, etc.? If mental impairments, do they affect mental activities such as concentrating, remembering, getting along with others?

### *Advocacy Reminders:*

- ✓ The EAEDC standard is not as strict as SSI.
- ✓ You do not need to show that you are totally disabled.
- ✓ Even if you can still work part time, you may be eligible as a disabled person.

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## 3 How do you prove you are disabled?

There are two ways to show disability:

**First:** You can prove disability for EAEDC without a medical review if:

- You received a letter from the Social Security Administration approving you for Supplemental Security Income (SSI) or Social Security (SSDI) but you do not have those benefits yet; *or*
- You have received a favorable SSI or SSDI decision from an Administrative Law Judge but are not yet receiving SSI or SSDI. 106 C.M.R. § 320.200(A).

**Second:** You can qualify for EAEDC based on disability by getting your doctor to fill out an EAEDC Medical Report and by you filling out a Disability Supplement. These documents and any other medical records available are then reviewed by UMass Medical, which currently holds the contract with DTA as a Disability Evaluation Service (DES). See **Questions 5-9**.

***Advocacy Reminder:***

- ✓ Once you have submitted your Medical Report and Disability Supplement, you can receive EAEDC benefits while the disability documents are under review at DES. This is called "presumptive eligibility."

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## 4

### What if you have already been approved for SSI or MassHealth Disability?

If you have already been approved to receive SSI or SSDI, you do not need to go through the EAEDC disability determination process and you do not need to submit a medical report. 106 C.M.R. §§ 320.200(A)(2) and (E)(4). Bring in your approval notice, appeal decision from an Administrative Law Judge, or any other document that you have that shows that you have been approved. Once your SSI checks start, your EAEDC case will be closed. See **Question 41** regarding reimbursements from the first retroactive SSI check.

Approval for MassHealth Disability (now called MassHealth Standard) **is not** a basis for **automatic** EAEDC disability. However, if an EAEDC applicant or recipient has MassHealth Disability coverage and there are at least 60 days remaining in the approval period for the disability status, DES should not do a new disability evaluation.

## 5 Who can sign the EAEDC medical report?

To prove disability, you will need a completed medical report form. 106 C.M.R. § 320.200(A)(1). See **Appendix B**. The report must be signed by a "competent medical authority," which includes physicians, psychologists and osteopaths licensed by the state of Massachusetts or connected with the Veterans Administration (VA), Department of Public Health or Department of Mental Health. 106 C.M.R. § 701.600(H). Nurse midwives can certify pregnancy-related incapacity. Nurse practitioners and physician assistants can complete the medical report but a physician ("medical doctor or M.D."), psychologist or osteopath must co-sign it. In this *Guide*, the term "doctor" is intended to include psychologists.

The Department of Transitional Assistance must give every EAEDC applicant under age 65 claiming disability a medical report to bring to a health care provider. If you are treated by more than one provider, you should get each provider to fill out a medical report.

You or your provider can also submit any other documents in addition to the medical report or after the report has been received by DTA. This could include an evaluation by a licensed clinical social worker or any other reports, tests, or evaluations.

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## 6 What are the other rules about the medical report?

The medical report must be based on an examination done within 30 days of the date of the medical report. 106 C.M.R. § 320.200(D). If you have not had a recent medical or psychological exam, you will need to ask your doctor to schedule one.

The report **must be received** by the local DTA office **within 30 days** following the date it is signed. If the report is received by DTA too late, it will be rejected. 106 C.M.R. § 320.200(D).

**Example 1:** Jane Doe was examined by Dr. Smith on June 20. She applies for EAEDC on August 1 and brings back to DTA a medical report dated August 10

by the doctor. DTA will reject the report because Jane's exam was **more than 30 days** before the report was signed.

**Example 2:** Suppose that Jane Doe is examined again on August 10 and the report is signed that day, but the doctor forgets to mail the report until September 15. Because **more than 30 days** have gone by since the signing of the report, DTA will reject it.

In general, you have 22 days to get in all the proofs you need for EAEDC. See **Question 74**. You can ask for extensions of time if you need it. 106 C.M.R. § 702.160(B).

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## 7 How can you pay for medical exams to prove your eligibility?

You do not need to pay for any exams or tests. If you are not already receiving MassHealth, the DTA office should give you a temporary MassHealth card to pay for all the medical examinations and tests you need to have the medical report completed and to establish disability. 106 C.M.R. § 702.125(F). This EAEDC Medical benefit covers physical and psychological evaluations needed to prove disability. 130 C.M.R. § 450.106.

You can also use the EAEDC Medical card for other medical care, such as filling a prescription for medication. See **Question 65** for more information on EAEDC Medical and MassHealth Basic coverage.

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## 8 What is the Disability Supplement and who signs it?

The "Disability Supplement" is a long form which asks detailed questions about your physical and mental health problems and what you can do, as well as your work history, educational level and training. See **Appendix C**. You will be asked to fill out and sign the form when you apply and when your case is being reviewed, unless you have been approved for SSI. DES has staff in some DTA offices that can help you fill this out. Your DTA worker should also offer to help

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you if you need help. 106 C.M.R. § 702.315(B)(1)(b). DTA has translated the Disability Supplement into Spanish if you need it.

The Disability Supplement is the place for you to **fully explain your health problems and limits**. Don't forget to list:

- problems you have speaking, understanding, reading or writing English;
- limits on how far you can walk, sit or stand;
- limits on how much you can lift, bend, reach;
- problems you have paying attention or following directions;
- problems you have shopping for food, cleaning or taking public transportation;
- any other problems you have doing daily activities.

The Disability Evaluation Service will look at all the information you provide, as well as the statements your health care provider has made about your functional abilities to sit, stand, walk, lift and carry items. It is important that you **emphasize and fully explain all of your limitations** on the Disability Supplement.

**Example:** The Disability Supplement asks for information about your daily activities. If you cook for yourself but you can only reheat food that has been prepared by others and must rest after standing for a short while, write this down in the report. If you do your own shopping but can only carry home one small bag at a time, write this down. Otherwise DES will think that you can do more than you really can do.

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## 9 Will anyone help you get all the medical information you need to prove your eligibility?

YES. Ask the DTA worker if you need help. The worker is supposed to:

- Ask whether you have a doctor to fill out the medical report form. If you don't have a doctor, the worker is supposed to schedule an appointment with a doctor if requested by you, 106 C.M.R. § 702.315(B)(1)(a); *and*

- Help you fill out the Disability Supplement, if you want help. 106 C.M.R. § 702.315(B).

**Example:** Tammy Martin suffers from severe headaches and weakness in her limbs but has not been seen by a doctor in years. She applies for EAEDC and is given a medical report form. The intake worker should ask Tammy if she needs a referral to a doctor and, if Tammy wants, make an appointment with a doctor who can evaluate her within the verification time limits.

***Advocacy Reminder:***

- ✓ DTA must provide assistance or other accommodations to people with disabilities. The assistance can include help filling out forms or arranging for medical evaluations required for EAEDC. See **Question 77**.

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## 10 Do you have to wait long for DTA to review your disability information?

Unlike the way the Social Security Administration reviews SSI applications, the local DTA office must initially approve you for EAEDC benefits if the doctor states on the medical report that your disability meets a medical standard *or* affects your capacity to work for *at least 60 days*. 106 C.M.R. § 320.200(F)(1). This means that you get EAEDC benefits even though DES has not received or reviewed the medical report. DES will then review the information to decide if they agree with your doctor and if so, how long the disability will last.

***Advocacy Reminder:***

- ✓ Even if the doctor does not have time or all the information to completely fill out the medical report, you are initially eligible if the doctor has checked one of the two boxes in Section A, Part 1, of the medical report stating you are disabled. Turn in the medical report to the DTA office even if you will need to get additional tests or medical information.

## 11 What is the Disability Evaluation Service (DES)?

The Disability Evaluation Service or DES is a unit of the University of Massachusetts Medical Center in Worcester, Mass. DES decides if your impairment(s) meet the EAEDC disability requirements. DES staff includes doctors, nurses and vocational examiners. However, in our experience, most of the evaluations are done by nurses.

In addition to the EAEDC regulations, DES has Procedural Standards which guide its decision-making process. The Procedural Standards are posted at [www.masslegalservices.org/cat/103](http://www.masslegalservices.org/cat/103).

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## 12 What medical information must DES gather and consider?

Once DES receives a completed medical report, Disability Supplement and any other medical information sent by the local DTA office, DES must:

- Follow up on any missing information before they make a decision to deny your disability. DES must contact your doctor and other health care providers if this missing information is needed to make a decision on your disability. 106 C.M.R. § 320.200(H), § 702.315(B)(2)(a).
- Schedule an evaluation for you by an independent doctor (a "consultative exam") if they decide that there is not enough information in your EAEDC disability file to make a determination. 106 C.M.R. § 702.315(B)(2)(b). You must cooperate with this evaluation unless you have a very good reason not to. Otherwise your benefits can be denied. See DES Procedural Standard 00-3 (May 30, 2000) regarding consultative exams. DES is required to make an effort to contact the treating source before scheduling a consultative exam.

**Example:** John Furman, who is 55 years old, suffers from chronic obstructive pulmonary disease. His doctor said that John meets the EAEDC medical standards, listed the tests she had ordered, and detailed the limitations on John's ability to walk and stand. However, because the doctor didn't include the

laboratory tests, DES must contact the doctor or the laboratory to get these test results. If the medical information sent to DES is not sufficient for DES to decide John is disabled, DES should follow up on any other missing information and schedule a further evaluation if necessary.

***Advocacy Reminders:***

- ✓ DES cannot make an unfavorable disability decision without a complete medical file. DES must consider your entire file before it can make a decision in your case. This includes tests and medical records more than 30 days old if the information is still relevant. If any medical evidence that exists is missing, it is the job of DES to collect this evidence. This may include phoning your doctor to see if the evidence is available, asking that doctor to complete missing tests or send in missing information, or scheduling a consultative exam to be done by another doctor.
- ✓ Under its contract with the state, DES must provide transportation assistance to consultative exams if it is needed. If you need help in order to get to a consultative exam, ask DES to provide you with transportation. DES must also provide an interpreter for the consultative exam if it is needed.
- ✓ If DES has reviewed your case in the past for EAEDC, TAFDC or MassHealth disability purposes, the prior case record should be reviewed to determine whether any of the medical evidence is relevant to the current assessment.
- ✓ DES is obligated under the Americans with Disabilities Act to provide assistance or other accommodations to people with disabilities. See **Question 77**.

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## 13 How does DES evaluate your disability?

DES must decide—based on all of the information about your impairments, age and work experience—if you meet the EAEDC disability requirements because:

- Your disability meets the EAEDC medical standards listed at 106 C.M.R. § 320.210; *or*
- Your disability meets the SSI Listing of Impairments in the federal regulations at 20 C.F.R. § 404 Subpart P, Appendix 1; *or*
- You have an impairment, or combination of impairments, which affects your ability to do basic work activities. The rules vary depending on whether you

have physical or mental impairments, or a combination. There are 5 steps to this process. See **Questions 16-20**.

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## 14 What are the EAEDC "medical standards" and SSI "listings"?

The EAEDC medical standards are lists of 14 categories of impairments, such as musculoskeletal impairments, respiratory impairments and mental impairments. 106 C.M.R. § 320.210. See **Appendix H**. The SSI listings and MassHealth disability standards are similar (but not identical) to the EAEDC medical standards and are located in the federal regulations at 20 C.F.R. § 404, Subpart P, Appendix 1, available at [http://www.ssa.gov/OP\\_Home/cfr20/404/404-ap10.htm](http://www.ssa.gov/OP_Home/cfr20/404/404-ap10.htm).

The standards specify the symptoms, signs and laboratory findings you must have to show that you have one of these listed impairments. The evidence can include laboratory test results, what your doctor has observed, and your description of your symptoms. DES is supposed to evaluate if your impairment or combination of impairments matches or equals either the EAEDC standards or the MassHealth disability/SSI listings.

- If your condition *exactly matches* one of these standards, **you are disabled** under the EAEDC program. DES should stop here and not go through the additional vocational assessment detailed below. 106 C.M.R. §§ 320.200(G)(1) and (2).
- If your impairment is not specifically listed in the medical standards but *equals in* severity any one of the EAEDC or SSI standards, **you are disabled**. 106 C.M.R. §§ 320.200(G)(2) and (3), 320.210(0).
- If the *combination of all of your impairments equals in severity* any one of the DTA or SSI medical standards, **you are disabled** under the EAEDC program. 106 C.M.R. §§ 320.220(G)(4) and 320.210(0)(4).

**Example:** Jane Sanders suffers from Reynaud's disease, a condition which is not listed in the EAEDC medical standards. Because of the disease, her fingers are red and swollen, with bluish areas. She also has rheumatoid arthritis, causing nodules on her fingers. Jane's doctor says she is at risk of circulatory collapse and should not use her hands to work. Although the Reynaud's disease does not meet the listed impairment under musculoskeletal systems in the regulations, Jane's impairments are equivalent in severity and she should be considered disabled.

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# 15 What if your impairments do not meet the EAEDC standards or SSI listings?

If your physical impairments do not meet or equal an EAEDC medical standard or SSI listing, the EAEDC rules require DES to use the following process to decide if you are disabled, see 106 C.M.R. § 320.200(G), § 320.220(C). This is a summary of the five steps. A detailed description of each step is found at **Questions 16-20**.

## Step 1

DES first decides if you have an impairment or combination of impairments that affects your ability to do basic work activities.

**If yes**, and your impairment is physical (or you have both physical and mental impairments), go to Step Two. If you have a mental impairment, go to Step Five. **If no**, you are not disabled.

## Step 2

DES next decides if you can do full-time sedentary (sitting) jobs. If you physically cannot do even sitting jobs, **you are disabled**. 106 C.M.R. § 320.220(C)(1). If DES decides you can do most kinds of sitting jobs, go to Step Three.

## Step 3

DES next decides if you can *only* do full-time sedentary jobs, or if you can *also* do jobs that require lots of standing, walking or lifting.

If you **can only do sitting (sedentary) jobs**, DES looks at a chart called a "Grid" that says whether you will be considered disabled based on your age, education, and work experience. 106 C.M.R. § 320.220(C)(4) and (5). See **Appendix E**.

The Grid decides if you are or are not disabled. If the Grid says you **are disabled**, you are EAEDC eligible. 106 C.M.R. § 320.220(C)(5). If the Grid says you are disabled but DES also decides that **you can do more** than just a sitting job, go to Step Four.

If the Grid says you are **not disabled**, go to Step Five if you also have a mental impairment.

#### Step 4

If you **can do more than sedentary jobs**, even if the Grid says you are disabled, DES does not accept the Grid. DES does a further review to decide if you are disabled based on *other* vocational factors. 106 C.M.R. § 320.220(C)(6).

DES looks to see if you are disabled based on the activity you can do, your age, your education, and whether jobs exist that you could do. If DES decides that you are not disabled based on your physical condition alone, and you also have a mental impairment, go to Step Five.

#### Step 5

If you have a **mental impairment** (or a physical impairment that DES doesn't consider disabling by itself), then DES will look at vocational factors to decide if you are disabled based on the activity you can do, your past work experience, and whether jobs exist that you could do. See **Question 20**.

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## 16 How does DES decide if your condition affects your ability to do basic work activities (Step 1)?

The first step is for DES to determine if you have *any* impairment that affects your ability to do basic work activities. Some impairments have **no** impact on work, such as loss of sight in one eye. "Basic work activities" are activities that you have to do in most jobs like walking, standing, sitting, lifting, understanding and following instructions. DES looks for medical verification to show that there is at least a "nominal" (more than small) effect on your ability to do at least one of these kinds of activities and that your condition will last at least 60 days. 106 C.M.R. § 320.220(A)(1)(c). For example, a broken toe is an impairment, but it generally does not affect your ability to work, whereas a ruptured disc would.

Your ability to do basic work activities is based on the information that your doctor wrote on your medical report, any attached documents and the information you provided on the Disability Supplement. DES can probe further if your doctor's conclusions are not supported by the evidence or are contradicted by other information, such as the information you wrote on your Disability Supplement. 106 C.M.R. § 320.200(H)(3)(b).

**Example:** If your doctor wrote that you could walk for only one hour a day, but you wrote that you went for long walks every day, DES may question your doctor's conclusions.

***Advocacy Reminder:***

- ✓ DES should consider symptoms such as pain and the effects of medication when deciding your functional capacity. For example, if you have severe back pain, this pain may prevent you from sitting for long time periods.

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## 17 How does the "sedentary work" test apply to physical impairments (Step 2)?

The second step for DES is to determine if you are limited to a sitting (sedentary) job or if you can do more. For persons with physical impairments, DES measures your ability to perform basic work activities against a "sedentary work" standard to decide if you are disabled. Sedentary work is a job that involves mostly sitting (up to 6 hours a day). It can also involve some standing or walking (not more than 2 hours a day) and lifting of small items (not more than 10 pounds) like files or small tools. 106 C. M. R. § 320.220(B)(7). There are three possible scenarios:

- **Less than sedentary work:** If you cannot do the full range of sedentary work, DES should find you disabled, no matter your age, education or work history. 106 C.M.R. § 320.220(C)(1)(a).

**Example:** If you can't sit for six hours because you have a bad back, you are disabled. Or if you can only lift less than 10 pounds because of a heart condition, back problem, or even a broken arm that will be immobilized for 60 days or more, you cannot do the full range of sedentary work and you should be found disabled.

- **Full range of sedentary work but not more than that:** If you have a physical impairment that limits your ability to do basic work but you can still do the full range of sedentary work, DES uses the Grid. This is Step 3. See **Question 18**.

If you suffer from physical problems only, and do not have any mental impairments, DES must accept the Grid's conclusion. If the Grid says you are disabled, you should be EAEDC eligible as disabled; if the Grid says you are not disabled, you will be denied EAEDC and no further evaluation is done. 106 C.M.R. § 320.220(C)(4).

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**Example:** Suppose you have a heart condition that limits your activities. DES may conclude that you can still do a sedentary job but not more than that. If so, DES will evaluate you against the Grid to determine if you are disabled.

- **More than sedentary work:** If you have a physical impairment that limits your ability to do basic work activities, and the Grid says you are disabled, but DES decides you can do more than sedentary work, DES is supposed to do an **additional assessment** to decide if there are full-time jobs that you could do. This is Step 4. See **Question 19**.

**Example:** Suppose you are a 60-year-old carpenter who suffers from a neck injury that makes it impossible for you to return to your carpentry work. DES concludes that you can still do other sitting jobs as well as other jobs that involve lifting and bending beyond sedentary work. Even though the Grid might find you disabled, DES will still do an additional assessment of vocational factors to determine whether work exists for you in the regional economy.

### *Advocacy Reminder:*

- ✓ This evaluation applies only to persons with physical impairments. If you have a mental impairment, you get a separate determination. See **Question 20**.

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# 18 What is the Grid and how is it used (Step 3)?

The Grid<sup>1</sup> is a chart in the DTA regulations used to decide whether you are disabled or not disabled for EAEDC. 106 C.M.R. § 320.220(C)(5). The Grid looks at your age, education, and previous work history. The Grid is included as **Appendix E** to this *Guide*.

If you can do just sedentary work (a sitting job) but no more, the Grid will decide if you are disabled. If you can do more than sedentary work and the Grid says you are disabled, DES will do an additional assessment. See **Question 19**. If you can't do sedentary work at all, you are disabled and the Grid is simply not used.

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<sup>1</sup> The Grid uses federal government data which analyze the range of jobs people could perform doing sedentary work. For a full explanation of how a sedentary grid is supposed to work, and for some very helpful background rules, read the Social Security Administration rules at 20 C.F.R. § 404, Subpart P, Appendix II, Sections 3, 200.00 and 201.00. (The SSA rules are not binding on DTA but the SSA explanations can be very helpful in applying the EAEDC grid.)

**Example 1:** Mildred White is 53 years old, never graduated from high school, but has basic reading and writing skills. She worked all of her life in a shoe factory doing unskilled work. She has a problem with her knee that prevents her from walking more than a few blocks at a time and she can not stand for long periods of time. She is able to do sedentary work, but not more than sedentary work. She has no transferable skills. Look up Mildred on the Grid and you will see that the Grid says she is disabled. Below is the relevant section of the Grid.

Age	Education	Previous Work Experience	Decision
50-54	Less than 12th grade	Unskilled or none	Disabled

**Example 2:** John Rossman is 48 years old and did not finish high school but can read at an 8th-grade level. He has worked off and on as an unskilled laborer until he recently hurt his back. John can lift up to 10 pounds at a time, but no more than that. He cannot do manual labor but is physically able to do sedentary work. Look up John on the Grid and you will see that the Grid says he is not disabled. If John were illiterate or unable to communicate in English, he would be "Disabled" on the Grid. Below is the relevant section of the Grid.

Age	Education	Previous Work Experience	Decision
45-49	Less than 12th grade- at least literate	Unskilled or none	Not Disabled

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## 19 If you can do more than sedentary work and the Grid says you are disabled, how does DES assess your disability (Step 4)?

If you are physically able to do more than sedentary work, DES determines whether there is a significant amount of full-time work in the Northeast economy that you could do even with your impairments. 106 C.M.R. § 320.220(C)(6).

In deciding if you are disabled at Step 4, DES is supposed to consider:

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- full-time jobs that exist in the Northeast only (a possible factory job in the South doesn't count);
- your "functional capacity" (what you can do physically and for how long, and what your condition prevents you from doing);
- your age, and how it affects your ability to adjust to changes in the work routine or environment;
- your education, including formal education, training and literacy;
- your ability to read, speak and understand English;
- any work skills you have that you could use in a job (known as "transferable skills"); *and*
- how long since you finished school or training or since you last worked.

DES uses vocational experts to review this information. If there is not a significant amount of work that you can do based on these factors, DES must find you disabled.

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# 20

## What happens if you have a mental impairment?

The EAEDC disability standards call for a separate evaluation of persons with mental impairments alone or in combination with other physical impairments. 106 C.M.R. § 320.220(D).

### The "Mental Disorder" Disability Criteria

The EAEDC "Medical Standards" contain over eight different listings for "mental disorders" that automatically confer disability without a vocational evaluation. 106 C.M.R. § 320.210(L). The regulations list the following categories of mental impairments:

- dementia, with or without delirium;
- schizophrenic, paranoid or other psychotic disorders;
- affective disorders;

- mental retardation and autism;
- anxiety-related disorders;
- psycho-physiological disorders;
- personality disorders;
- substance addition disorders combined with another impairment such as organic mental disorder, depressive syndrome, anxiety disorders, liver damage, gastritis, seizures, etc.

For each of these mental impairments, DES will look for clinical signs, symptoms and/or laboratory test findings and an assessment of the severity of the impairment(s). 106 C.M.R. § 320.210(L). It is critical, both on the Disability Supplement and in the information provided by your doctor, psychologist or other health care provider, that you specify how daily activities, social functioning, and concentration are affected, as well as the effects of any medication you take.

### **Combination of Impairments**

If you do not meet the medical standards but you suffer from both a physical and a mental impairment, DES will first evaluate your condition under the physical impairment rules described above.

If DES concludes you have a physical disability, there is no further evaluation of mental impairments.

If you suffer from a mental impairment and do not have any physical impairments at all, or your physical condition is not disabling by itself, DES must do an assessment of the combination of your impairments and must use an expanded set of factors listed in 106 C. M. R. § 320.220(D). DES does **not** use the Grid where there is a mental impairment. 106 C.M.R. § 320.220(D).

DES is supposed to look at specific vocational factors and functional limitations in determining whether there is significant work in the Northeast economy that you can do. The factors DES looks at include:

- your "functional capacity": what you can do and what your condition prevents you from doing. For example, do you have trouble remembering things, concentrating, working as fast as employers expect, or getting along with co-workers?

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- whether you are taking medication that has side effects limiting your abilities;  
*and*
- your past work experience.

### *Advocacy Reminders:*

- ✓ DES should also consider all of the factors for physical impairments, but the regulations don't say so. If a significant amount of appropriate work does not exist based on your limitations, DES must find you disabled.
- ✓ If you have never been diagnosed with or treated for a mental impairment, you have a right to have a psychological evaluation when you apply and/or DES may schedule a psychological consultative evaluation.
- ✓ DES has issued a number of Procedural Standards that address mental and psychological impairments that may be useful to advocates including DES Standard 01-02 (Psychotic Depression), DES Standard 03-01 (Evaluation of Mental Disorders) and DES Standard 99-05 (Consultative Exams by Psychiatrists and Psychologists).

## Other Disability Rules

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### 21 How often do you have to prove disability?

DES decides how long you are disabled and will tell the local DTA office when to review your case. 106 C.M.R. § 320.200(C). See also DES Procedural Standard 98-03, "Establishing the Disability Review Date" (1/19/2006), and Procedural Standard 98-02, "Establishing Onset Date of Disability" (7/15/1998) regarding the onset date of disability. Advocates report that DES requires reverification as frequently as every 6 months, often more frequently than the length of time your doctor has stated your disability will last on the medical report form.

When it is time to review your disability, DTA will send you

- a notice,
- a medical report for you to bring to your doctor, *and*
- a disability supplement form.

After you bring in the new medical report and disability supplement, DES will go through the same complete review each time—even if your impairments have not changed or have become worse.

***Advocacy Reminder:***

- ✓ If you disagree with the length of time DES has decided you are disabled, you can appeal this decision. See **Question 83**. If you request a fair hearing on this issue or any other issue related to your disability, you have the right to ask the referee to rule on the length of disability according to what your doctor has stated on the medical report.

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### 22 Do you have to apply for SSI?

YES. As a condition of eligibility, you must apply for Supplemental Security Income (SSI) if DTA or DES tells you to. § 106 C.M.R. § 320.200(B). In some cases, DTA can also require you to reapply for SSI benefits even if you have been

denied before or to file an appeal of an SSI denial. DTA may be able to get part of the SSI retroactive check. See **Questions 41-42**.

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## 23 What if the Disability Evaluation Service decides you are not disabled?

First, DES notifies the local office of its decision on a disability evaluation form. You have a right to see a copy of this form and all the other information in the DES file. 106 C.M.R. § 701.330.

Second, if DES decides you are not disabled, you will get two notices:

- The first notice comes from DES and is a very complicated advisory letter telling you why you do not meet the EAEDC disability rules and under what listing your impairments were evaluated. You can bring this notice to your doctor or to an advocate who may be able to contact DES for more information or help you get additional information or tests to prove you are disabled
- The second notice is a notice from DTA which will tell you that your EAEDC benefits are going to stop or be denied because DES finds you are not disabled. You have the right to appeal the notice from DTA. 106 C.M.R. § 702.500. See **Questions 83-84** on appeals and how to keep your benefits while you appeal.

### *Advocacy Reminders:*

- ✓ Under its contract with the state, DES is required to keep disability determination records for each case for at least 7 years. If you want to look back at your disability record, you have the right to ask DES for the full case record.
- ✓ If you appeal the DES decision denying your disability or the DTA notice about denial or termination of your EAEDC, and you have new medical evidence, DES must consider this new evidence and notify DTA if it affects their decision. It is best to fax or mail new evidence before the hearing, but if you run out of time, bring it to the hearing. See **Question 87**.

## Eligibility for Other Individuals

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### **24** Can you qualify for EAEDC as a Mass. Rehabilitation Commission (MRC) participant?

You can get EAEDC if you are actively participating in a rehabilitation program with the Mass. Rehabilitation Commission (MRC). 106 C.M.R. § 320.250(A). The MRC provides training and rehabilitation services to persons who meet the MRC definition of disability and can benefit from MRC services. See 107 C.M.R. § 4.06(1) for rules on MRC eligibility. Participation with MRC starts from the point MRC decides you are an "eligible client" and ends when you start work or are no longer an active participant.

If you want to qualify for EAEDC as an MRC participant, DTA will ask you for a statement from MRC describing the program you will be participating in as well as a copy of the medical reports MRC used to decide you were disabled. 106 C.M.R. § 320.250(B).

#### ***Advocacy Reminder:***

- ✓ Because the MRC's role is to assist persons with disabilities to access the services and training they need to be able to work, MRC often evaluates disability more broadly than EAEDC does. Persons denied disability by DES or Social Security Administration may nevertheless qualify if MRC has accepted them as disabled for vocational rehabilitation services.

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### **25** Can you qualify for EAEDC if you are needed to care for someone in your home?

You can get EAEDC if you are needed to provide constant care in the home for a disabled person (a child, relative or unrelated person) who would otherwise be at risk of institutionalization. 106 C.M.R. § 320.300.

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There are special income and asset rules for persons applying under this category. Even though you may have no legal obligation to support the person you are caring for, the EAEDC rules require you to show that she or he does not have income above \$1,500 per month or assets above \$2,000. 106 C.M.R. § 321.235. None of the income or assets of an SSI recipient are countable. See **Questions 47 and 50**.

When you apply under this category, DTA will ask you for proof of the person's disability and need for care. You do not need to go through the EAEDC disability process; a statement on doctor's letterhead is sufficient. You will also need to bring in proof not only of your income and assets, but also of the income and assets of the person to whom you provide care.

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## 26 Can you qualify for EAEDC if you are 65 years of age or older?

If you are age 65 or older, you can get EAEDC simply on the basis of your age. 106 C.M.R. § 320.100. You will also need to apply for SSI benefits.

Most elders are automatically eligible for SSI benefits once they turn 65. Because the Social Security Administration (SSA) can take many months to process SSI, EAEDC is often provided as a short-term benefit while the SSA acts on the SSI application. However, there are a few circumstances where elders might not get SSI, including where they do not meet the SSI alien status rules (such as elders who are legally present but are not specifically "qualified" aliens). See **Question 38**. In addition, elders and person with disabilities living in rest homes (which are not covered under MassHealth as long-term care facilities) may need EAEDC to cover the costs of the rest home above their income, as well as a personal needs allowance. See **Question 63**.

When you apply for EAEDC on the basis of age you will be asked for proof of your age. If you don't have a birth certificate, school record or other official proof of age, a statement from someone who knows you (a "third party") can be used. 106 C.M.R. § 320.500. A third party statement is a statement from a relative, friend or other person who, in this situation, can provide information about your age.

# Eligibility for Families and Children

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## 27 Which families can get EAEDC?

Children and their caretakers can qualify for EAEDC when they are ineligible for TAFDC because they are not related or only distantly related. The child must be under the age of 18. The caretaker in these situations may be godparents, close friends or neighbors of the family who are providing a home for the child. Both the unrelated caretaker and the child may qualify for EAEDC. 106 C.M.R. § 320.400.

If you are caring for an unrelated minor child, you have the option to get EAEDC benefits just for the child. If you get benefits just for the child, you do not need to be included in the EAEDC grant and your income and assets will not be counted. 106 C.M.R. § 320.400(4). However, all of the siblings and half-siblings of the minor child must be included. You also have the option to be included in the grant, but in that case your income and assets will be considered. See **Question 43** regarding the EAEDC assistance unit rules.

The child is eligible for a full one-person EAEDC grant as long as the child has living expenses, even though you manage the benefits for the child. See **Question 61** regarding living arrangement and **Question 53** regarding "in-kind income."

**Example:** Frannie Welch has been caring for her neighbor's child for the past year. She has legal custody. Frannie has two children of her own and she works part time earning \$800/month. Frannie can get EAEDC for the neighbor's child and is not required to be included in the assistance unit or have her income counted toward that child. Even though she has legal custody, she is not financially liable for the child.

### *Advocacy Reminders:*

- ✓ TAFDC benefits are higher than EAEDC benefits so check to see if you meet the TAFDC relationship requirement. For TAFDC, a minor child must be living with a natural or adoptive parent, an aunt, uncle, cousin, grandparent, sibling, stepparent, step-grandparent or step-sibling or a spouse or former spouse of a listed blood or adoptive relative. 106 C.M.R. §203.585.
- ✓ Unrelated caretakers, as well as related non-parent caretakers, may also be eligible to receive foster care benefits for the children in their care through the

Department of Social Services (DSS). Involving DSS may have disadvantages as well as advantages. See 110 C.M.R. §§ 7.100-7.130.

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## 28 Do you need to get legal guardianship or custody to get EAEDC for an unrelated child?

DTA requires that non-relative adults caring for children have legal guardianship or custody to get EAEDC. 106 C.M.R. § 320.400(1)(c)(4). If you do not have legal guardianship or custody, you must obtain it within six months of when EAEDC begins. The DTA worker must inform you that you have six months to get legal guardianship **or** show good cause why you cannot get legal guardianship. See DTA Field Operations Memo 2000-6 (February 18, 2000).

You can request "good cause" for not pursuing legal guardianship or custody if doing so would place you or the child at risk of serious harm or emotional impairment. You can verify the risk of harm with a written statement in combination with other documents (court, medical, criminal, child protective services, etc.) or with a statement from a knowledgeable third party to verify the good cause. 106 C.M.R. § 320.400(1).

### *Advocacy Reminders:*

- ✓ DTA does not pay for the legal costs of securing legal guardianship or custody. For more information on how to represent yourself in filing for legal guardianship of a minor, see <http://www.masslegalhelp.org/children-and-families/guardianship-of-a-minor>.
- ✓ If you are denied or threatened with denial of EAEDC because of lack of legal guardianship or custody, contact a Legal Services advocate immediately. Some Legal Services offices may be able to assist with temporary guardianship or referrals to private attorneys, as well as represent you in challenging DTA's denial of benefits. Short-term emergency guardianships under G. L. c. 201, § 2G may be an option.
- ✓ If you are not the biological or adoptive parent of a child, you do not have a legal obligation to support the child financially. Even if you have legal guardianship or custody, you are not required to be included in the grant or have your income counted in figuring the EAEDC grant for the child.

## 29 If you are a parent or child who is ineligible for TAFDC because of your immigration status, can you get EAEDC?

If you are a parent or a child who can not get TAFDC because of your immigration status, you may be able to get EAEDC.

You will have to meet one of the eligibility categories for EAEDC (disabled, elderly, caring for a disabled person or Mass. Rehabilitation Commission participant), see **Questions 2 and 24-26**. You will also have to meet the EAEDC immigration status requirements, which are not as strict as the TAFDC rules. See **Question 37**. For example, many legal permanent residents are not eligible for TAFDC during the first five years after coming to the U.S., but there is no "five-year bar" for EAEDC. So immigrants who are ineligible for TAFDC because of the five year bar may be able to qualify for EAEDC.

People who do not meet the TAFDC immigration status rules but *do* meet the EAEDC immigration status rules include legal permanent residents subject to the five-year bar, and people who are Permanently Residing Under Color of Law (PRUCOL) such as asylum applicants and other immigrants with pending status. See **Question 37**.

DTA does not have specific rules for this group of people but has agreed that an adult can qualify for EAEDC if the person meets *both* a category of EAEDC eligibility (such as being disabled) *and* the EAEDC immigrant status rules, but is ineligible for TAFDC due to the TAFDC immigration status requirements.

### ***Advocacy Reminder:***

- ✓ Advocates have also succeeded in appeals to establish EAEDC eligibility for disabled children who have been found ineligible for TAFDC based on the immigration rules but who meet the EAEDC immigration requirements.

## 30 Are there low-income families or children who cannot get EAEDC?

Some low-income children and their families cannot get TAFDC and are also not eligible for EAEDC even though they are needy, including:

- Persons who do not meet the EAEDC alien status rules and are considered "undocumented" or in non-immigrant status. 106 C.M.R. § 320.620(D).
- Pregnant women ineligible for TAFDC who are too early in their pregnancies (TAFDC is available for the last 120 days of a pregnancy). There is no category for pregnancy under EAEDC. However, the pregnant woman may be eligible for EAEDC if she meets the disability rules. Sometimes a pregnancy can be sufficiently disabling to qualify her as disabled.
- Families or individuals who are ineligible for TAFDC because of the TAFDC income or asset rules (like the "lump sum" rules).
- Children living with adult caretakers unable or unwilling to pursue legal guardianship or custody. See **Question 28**.

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## 31 Are there work requirements for caretakers of children?

If you are a caretaker who chooses to be included in the EAEDC grant with the child and you are between the ages of 18 and 59, unless you are exempt (see below), you must register for work with the Division of Career Services and accept and continue any suitable work unless you are doing one of the following:

- working at least 30 hours per week; *or*
- attending school (for at least 20 hours per week); *or*
- participating in full-time job training (attending at least 80% of scheduled hours).

106 C.M.R. § 320.400.

In addition to registering for work, if the youngest child you are caring for is 15 years old or older, you must:

- work at least 20 hours per week; *or*
- do unpaid community service of 30 hours per week; *or*
- attend full-time school (at least 20 hours per week) plus do 16 hours per week of community service; *or*
- attend full-time job training (at least 80% of scheduled hours) plus do 16 hours per week of community service.

106 C.M.R. § 320.420.

You are exempt if you

- qualify as disabled under the EAEDC rules, *or*
- are essential to care for a disabled child or adult relative in the household.

106 C.M.R. § 320.425.

You can claim good cause for not meeting these requirements if a crisis, emergency situation, or other compelling circumstances prevent you from meeting the requirements. 106 C.M.R. § 701.380.

***Advocacy Reminder:***

- ✓ The caretaker can choose not to be included in the grant and will then have no obligation to participate in work registration or work requirements.

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## **32 Can you get EAEDC if you are under 18 and living on your own?**

If you are living on your own and meet one of the EAEDC categories—such as being disabled or an MRC participant—you are eligible for EAEDC despite being under 18. However, if you do not meet one of these categories, the EAEDC rules do not have a category for you just because you are under 18. You need to live with an adult caretaker to be eligible.

## 33 What if you have an outstanding default or arrest warrant?

You are not eligible for EAEDC if you have an outstanding default or arrest warrant. 106 C.M.R. § 701.110(C). A warrant may be issued when you fail to appear in court or when you fail to pay a fine, court costs, restitution, or other monies ordered by the court or by state law such as child support or speeding tickets.

DTA will give you 30 days to show that you have resolved the default or arrest warrant, that it was erroneously issued by the courts, or that you are working on resolving it or have legal representation. If you do not bring in proofs to DTA within 30 days, you will get a notice reducing your EAEDC by the amount for one person. The rest of your family should remain eligible if others are receiving EAEDC with you. You have a right to appeal this reduction.

If you get a notice from DTA or the Bureau of Special Investigations, see **Question 93**, that you have an outstanding default or arrest warrant, or you already know that you have an outstanding default or arrest warrant, you should contact an advocate immediately for advice and possible referral to a lawyer for help.

### *Advocacy Reminder:*

- ✓ Because different courts have different ways of handling warrants, it is a good idea to try to obtain a court-appointed lawyer or a private attorney to help you resolve a warrant.

## **34** What if you have a criminal history or are fleeing prosecution or punishment?

There is no disqualification from EAEDC for past criminal history. However, if you have an outstanding default or arrest warrant, you must clear it up to be eligible. See **Question 33**.

***Advocacy Reminder:***

- ✓ The EAEDC program, unlike TAFDC and food stamps, does not disqualify you because of criminal history.

## Part 1 ■ Categorical Eligibility