

Medicaid Disability Determinations - NYS Forms & Procedures (with updated forms Dec. 2021)

The Medicaid program has long had a procedure for determining disability for individuals who have not yet been determined disabled by the Social Security Administration.[1] This procedure is needed in order to approve pooled trusts for people age 65+ and also for other reasons described here. The forms often change - always check here for updates!

This process is administered by the NYS DOH **Medicaid Disability Review Unit (MDRU)**, also called the **State Disability Review Unit (SDRU)**.

- Telephone: **1-866-330-0591**
- E-mail: SDRU@health.ny.gov
- Website: https://www.health.ny.gov/health_care/medicaid/reference/mdm/

In June 2022, HRA issued a Medicaid Alert that announced a change. Instead of submitting the documents listed below to the local Medicaid program (HRA in NYC), you instead submit only a signed **DISABILITY DETERMINATION REQUEST (FORM MAP-3177)** (download in many languages - links here) which HRA or your DSS then forwards to the MDRU. the MDRU will then request all of the disability documents described in this article. When you submit the a Pooled Trust to NYC HRA, follow the suggestions in this article.

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A. Why would Medicaid need to make a determination of disability?

- **Medicaid recipients of any age who are completing a Medicaid renewal/recertification and whose Medicaid eligibility is based upon a disability, and the recipient has either never been found disabled (so need an initial disability determination) or were previously found disabled but their Disability Review Certificate (DOH 5144) is set to expire so they are undergoing a Continuing Disability Review (CDR).** HRA will include a Disability

Determination Request (MAP 3177) in the renewal/recertification packet. The Medicaid recipient should fill this form out and submit it with the renewal/recertification packet. Then, the recipient will receive a packet from the State Disability Review Unit, asking for more information (explained further, below). For more information about Medicaid renewals/recertifications, see our article: Medicaid Renewals/Recertifications in NYC- Resume March 2023 - Now can file online!

- **Medicaid recipients between ages 21 and 65 who do not have Medicare, whose income is above the MAGI Medicaid limits** under the Affordable Care Act - If they are determined disabled, they can qualify for Medicaid with a spend-down. A determination of disability for these individuals, who are often pursuing appeals of denials of Social Security or SSI disability benefits, helps both the individual but the state, by drawing down federal funding. If a Medicaid recipient would not be eligible for Medicaid unless they are determined to have a disability, their Medicaid must be continued while a determination of disability is made, if they allege a disabling condition.[13]
 - ◆ Working people under 65 who are determined disabled can qualify for the Medicaid Buy-In for Working People with Disabilities (MBI-WPD), which has higher income limits than regular Medicaid. They may need a Medicaid disability determination if they have not yet been approved for Social Security Disability or SSI.
- **A disability determination is needed to approve a Supplemental Needs Trust or pooled trust** to shelter excess income or resources, no matter the age of the consumer.[2]
- **An exemption from the transfer penalty applies if a person seeking nursing home Medicaid transferred assets to a child who is disabled, even if the child is an adult.** For example, Mrs. Jones is 95 years old and is entering a nursing home. She transfers assets to her 70-year-old daughter. If her daughter is determined disabled using the procedure described below, there is no transfer penalty.
- Medicaid may sometimes place a lien on a home of an institutionalized person, or file a claim for recovery against an estate of a deceased recipient. Exceptions to these claims apply if a child of the recipient is disabled. If the SSA has not made a determination of disability (which they would not normally do for a child age 65+), then Medicaid will make this determination.

B. What forms must be completed and submitted to have disability determined?

These forms were revised in December 2021, in August 2021 - see HRA MICSA ALERT and earlier in June 2012 by NYS DOH GIS 12MA027 - Medical Evidence Gathering for Disability Determinations - Adult Cases [3]

1. **NEW FORM Dec. 2021 -- DOH-5143 (08/2018) has replaced the DSS-486T as the Medical Statement of Disability, which is completed and signed by the treating**

physician or nurse practitioner, describing diagnoses, symptoms, functional limitations, and medical history. See Dec. 20, 2021 HRA Medicaid Alert. Note that while this is part of the initial disability determination process, this form is not needed for Medicaid recipients who were previously found disabled and are now renewing their disability certification as part of their Medicaid recertification/renewal.

1. The DOH-5143 may be signed by a nurse practitioner instead of an MD, and the signing provider need not be enrolled as a Medicaid provider. (Email from DOH SMDU dated 2/8/2022 on file with EFLRP. Request at eflrp@nylag.org)
2. The old 486T form consisted of numerous attachments that elicited information about the different body systems, such as a musculoskeletal or cardiac impairments. Those former attachments, while burdensome, were helpful to show the criteria for "meeting the listings"-- Step Three in the sequential evaluation process described below. While no longer required, you might find some of these attachments helpful as a guide for the physician to provide information about particular conditions. Click here for the old 486T.
2. **One year of clinical medical records** must be included in addition to the 486T form. See January 2013 Medicaid Alert. People who are renewing their disability certification as part of their Medicaid renewal/recertification will not see an explicit request for one year of medical records, but we recommend they provide these records regardless.
3. **NEW AUGUST 2021 - DOH-5139 - Disability Questionnaire** (Rev. 1/2021). This form replaces the DSS-1151 form. See HRA Alert 8/12/2021). This form can be filled out and signed by the consumer, a social worker or family member.
4. **DOH-5140 - Disability Questionnaire Continuation Sheet** (Rev. 04/15).
5. **HIPPA - NEW August 2021 - Must submit TWO different HIPPA forms:**
 1. OCA Official Form 960 - NY State HIPAA - Submit one signed copy authorizing HRA/DSS to discuss the case with the submitter of the trust paperwork. People who are renewing their disability certification as part of their Medicaid renewal/recertification will not see an explicit request for this form, but we recommend they provide it regardless.
 2. DOH-5173 (4/2016) - **NEW in 8/2021 for pooled trusts, and NEW in 2023 for all people submitting Medicaid renewal/recertification packets** - The August 2021 HRA Medicaid Alert does not say how many to submit but suggested that consumer complete and sign one for each medical provider, and sign 3 blank copies as well. The Alert also doesn't give a link to download the form but it is at <https://www.health.ny.gov/forms/doh-5173.pdf>.
6. MAP-751E: Authorization to Release Medical Information. People who are renewing their disability certification as part of their Medicaid renewal/recertification will not see an explicit request for this form, but we recommend they provide it regardless.
7. If the Medicaid recipient is a child, please fill out DOH-5153 (05/16). Description of Child's Activities as well.

C. How is disability determined?

In determining whether an applicant is disabled, the Medicaid program uses the same standards used by the Social Security Administration to determine eligibility for SSI and SSDI. The New York State Dep't of Health Medicaid Disability Manual[4] describes the seven-step "sequential evaluation" process for initial determinations for adults, and the five-step "sequential evaluation" process for initial determinations for children from birth to 18 years old.[5] The State has expressly acknowledged that various steps of this process must be slightly modified for people over age 65, and especially those over age 72, pursuant to Social Security Administration Ruling SSR 03-3p, *Evaluation of Disability and Blindness in Initial Claims for Individuals Aged 65 or Older* [hereinafter SSR 03-3p].[6]

Note that adults who were previously determined disabled, and are now undergoing a Continuing Disability Review, follow an eight-step "sequential evaluation" process. Children who were previously determined disabled, and are now undergoing a Continuing Disability Review, follow a three-step "sequential evaluation" process. Both processes are described in the New York State Dep't of Health Medicaid Disability Manual.

D. A short summary of the sequential evaluation process for initial determinations for adults.

1. *Is the allegedly disabled individual working, that is performing "substantial gainful activity" [SGA] as defined in Social Security regulations?* If the individual's gross earnings do not average \$1180/month (2018 amount - check for [updates here](#)), she is not performing SGA. Continue to the next step.[7]
2. *Does the individual have any severe medically determinable impairment?* If so, continue to the next step. On this factor, SSR 03-3p is helpful. It provides that "If an individual aged 72 or older has a medically determinable impairment, that impairment will be considered to be 'severe.'" Moreover, the ruling requires consideration of any impairments the individual has, including those that are often found in older individuals.
3. *Does the impairment satisfy the durational requirement?* If so, continue to the next step.
4. *Does the impairment meet or equal the medical "Listing" of impairments?* If so, the individual is disabled. The listings are criteria for clinical and laboratory signs and symptoms of impairments of the various body systems that, if met, indicate an impairment so severe that the individual is found disabled without considering their age, education, or work experience.[8] Advocates should review the listings applicable to the disabled adult child's impairments, and work with the physician to document the criteria. The DSS-486 form attachments track the listings. If the listings are not met, continue to the next step.
5. *Does individual retain the Residual Functional Capacity [RFC] to perform past relevant work?* This step asks whether the individual can perform their last actual job.

Social Security regulations define "relevant" work as work performed within the last 15 years. If the individual last worked more than 15 years ago, then continue to the next step. If the individual did work in the last 15 years, then the ability to meet the physical, exertional and mental demands of the relevant past work - heavy, medium, or sedentary - is assessed. If the individual lacks the RFC to return to past work, go to the next step.

6. *Does the individual meet one of the special medical-vocational work profiles that are deemed to indicate that the individual cannot work?* If the answer is yes, the individual is disabled. If the answer is no, go to the next step.

- ◆ There are three medical-vocational work profiles that apply to adults of all ages seeking to prove disability.^[9]

1. If the individual has no more than a marginal education (6th grade or less) and work experience of 35 years or more during which s/he did only arduous unskilled physical labor, or
2. If the individual is at least 55 years old, has no more than a limited education (11th grade or less), and has no past relevant work experience, or
3. If the individual is age 60 or older, has no more than a limited education, has a lifetime commitment (30 years or more) to a field of work that is unskilled, or is skilled or semi-skilled but with no transferable skills,

- ◆ SSR 03-3p establishes an additional medical-vocational profile that applies to people age 72 and over. If the individual is age 72 or over, any medically determinable impairments are deemed to be severe. If she is limited to "sedentary" or "light" work, has no transferable skills from any past relevant work done in the last 15 years, and is not a high school graduate, she is disabled.^[10]

7. *If no special profile is met, does the individual retain the Residual Functional Capacity [RFC] to perform other work?* The Medical-Vocational Guidelines, known as "the grid," are used to determine whether the individual can work, based on his or her ability to perform medium, light or sedentary work, level of education, and skill level.^[11] If the result on the "grid" is unfavorable, non-exertional impairments such as allergies, environmental restrictions, and mental and sensory impairments must be considered.^[12] If the answer is no, the individual is disabled.

E. A short summary of the sequential evaluation process for initial determinations for children.

1. *Is the child engaging in SGA?* If no, continue to the next step.
2. *Does the child have a severe impairment that will satisfy durational requirements?* If yes, continue to the next step.
3. *Does the impairment meet a listing?* If yes, the child is disabled. If no, continue to the next step.
4. *Does the impairment medically equal a listing?* If yes, the child is disabled. If no, continue to the next step.

5. *Does the impairment functionally equal a listing?* If yes, the child is disabled. If no, the child is not disabled.

[1] DOH GIS 08 MA/004; DOH GIS 06 MA/005

[2] NYS DOH 05 INF-01, Pooled Trusts and Disability Determinations for Individuals 65 Years of Age and Over, Apr. 19, 2005, posted at http://www.health.state.ny.us/health_care/medicaid/publications/docs/inf/05inf-01.pdf

[3] This GIS directive [DOH GIS 12MA027](#) and its 5 attachments, which include the new 486T, 1151, and 1151.1 forms, along with transmittal forms to be used by the local districts, can be found in the [NYS DOH Library of Official Documents - 2012 GIS Messages](#)

[4] New York State Dep't of Health Medicaid Disability Manual, posted at http://www.health.state.ny.us/health_care/medicaid/reference/mdm/index.htm. Also see the Online SSA Handbook, http://www.ssa.gov/OP_Home/handbook/handbook.06/handbook-toc06.html. There are also numerous legal treatises and manuals by the various legal publishing companies on Social Security Disability advocacy. _

[5] http://www.health.state.ny.us/health_care/medicaid/reference/mdm/mdm-officialpolicy.pdf at pp. 14 et seq. for adults, and pp. 66 et seq. for children.

[6] http://www.ssa.gov/OP_Home/rulings/di/01/SSR2003-03-di-01.html, cited in NYS DOH 05 INF-01, *supra*.

[7] http://www.health.state.ny.us/health_care/medicaid/reference/mdm/mdm-officialpolicy.pdf p. 41

[8] The Listings are codified in the NYS Disability Manual at http://www.health.state.ny.us/health_care/medicaid/reference/mdm/mdm-app1and2.pdf.

[9] http://www.health.state.ny.us/health_care/medicaid/reference/mdm/mdm-officialpolicy.pdf at pp. 15-16.

[10] Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like files and ledgers. http://www.ssa.gov/OP_Home/cfr20/404/404-1567.htm. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. http://www.ssa.gov/OP_Home/cfr20/404/404-1567.htm.

[11] NYS Disability Manual, Appendix 3 http://www.health.state.ny.us/health_care/medicaid/reference/mdm/mdm-app3.pdf page 6.

[12] *Id.*, NYS Disability Manual Appendix 3, pp. 2-3

[13] 12MA004 - Continue Medicaid Pending a Disability Determination (NYS GIS 12-MA-004, February 2012)

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