

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2178106
Decision Date:	02/02/2022	Hearing Date:	12/02/2021
Hearing Officer:	Paul C. Moore	Record Closed:	01/25/2022

Appearance for Appellant:
Pro se (by telephone)

Appearances for DMH/MassHealth:
Linda Phillips, R.N., Senior Manager for Appeals and Regulatory Compliance, U.Mass. Medical School; Stephanie Barstow, Massachusetts Department of Mental Health, Associate Director of PASRR unit; Efrain Talavera, PASRR clinical coordinator (all by telephone; Mr. Talavera observing only)



*The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, Quincy, Massachusetts 02171*

APPEAL DECISION

Appeal Decision:	Denied	Issue:	PASRR; Serious Mental Illness
Decision Date:	02/02/2022	Hearing Date:	12/02/2021
MassHealth Reps.:	Ms. Phillips et al.	Appellant Rep.:	Pro se
Hearing Location:	Board of Hearings (remote)		

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 August 23, 2021, the Preadmission Screening and Resident Review (PASRR) unit of the Massachusetts Department of Mental Health (DMH) determined, via a Level II PASRR evaluation, that the appellant has a serious mental illness, that a nursing facility is an appropriate setting to meet her needs, and that she does not require specialized services (Exh. 1). The appellant filed an appeal with the Board of Hearings (BOH) in a timely manner on October 24, 2021, challenging the finding that she has a serious mental illness (*see*, 130 CMR 610.015(B) and Exh. 2).¹ The findings of a PASRR determination may be appealed to the BOH (130 CMR 610.032(E)).

At the close of the appeal hearing, the hearing officer left the record of the appeal open until January 18, 2022 for the appellant to review the MassHealth exhibit, which she stated that she had not received prior to the hearing, and for her to file comments in writing on the same. The hearing officer also left the record open for MassHealth to respond to any comments from the appellant by January 25, 2022. The hearing officer did not receive any comments from the appellant by January

¹ MassHealth Eligibility Operations Memo 20-09, “MassHealth Response to Coronavirus Disease 2019 (COVID-19),” issued April 7, 2020, states in relevant part: “In response to the current Coronavirus Disease 2019 (COVID-19) national emergency, MassHealth is implementing the following protocols to support the public health efforts to expedite medical care and maintain care for both new MassHealth applicants and existing members. Regarding Fair Hearings during the COVID-19 outbreak national emergency, and through the end of the month in which such national emergency period ends: All appeal hearings will be telephonic; and **Individuals will have up to 120 days, instead of the standard 30 days, to request a fair hearing for member eligibility-related concerns.**”

18, 2022.

Action Taken by Department of Mental Health

DMH's PASRR unit, via a Level II PASRR evaluation, determined the appellant has a serious mental illness, that a nursing facility is an appropriate setting to meet her needs, and that she does not require specialized services.

Issue

The appeal issue is whether the DMH PASRR unit was correct, pursuant to 130 CMR 456.408 and 130 CMR 456.410, in determining that the appellant has a serious mental illness.

Summary of Evidence

A representative from the University of Massachusetts Medical School ("MassHealth representative") and a representative from the Commonwealth's Department of Mental Health ("DMH representative") both testified by telephone. According to the MassHealth representative, PASRR is a federal requirement to help ensure that individuals are not placed in a Medicaid-certified nursing facility for long-term care unless it is the least restrictive setting possible. PASRR requires that all applicants to a Medicaid-certified nursing facility be screened; the initial screening is a Level I assessment, for serious mental illness and/or intellectual and developmental disabilities, or related conditions. Individuals who screen positive for serious mental illness or intellectual disability/developmental disability must also undergo Level II PASRR evaluation (Testimony, Exh. 5).

According to the MassHealth representative, the purpose of a Level II PASRR evaluation for individuals suspected of having a serious mental illness are: (1) to confirm or disconfirm the result of the Level I screening (whether the person has serious mental illness as defined for PASRR purposes); (2) if a person is confirmed to have a serious mental illness, to determine whether the individual requires a nursing facility placement or if the individual requires specialized services (inpatient psychiatric treatment); and (3) if a nursing facility placement is appropriate, to make specific recommendations for rehabilitative services to be provided in the nursing facility under the nursing facility's ordinary per diem reimbursement rate (*Id.*).

The MassHealth representative testified that for PASRR purposes, an individual is considered to have a serious mental illness if: (1) the individual has a diagnosis of a major mental illness such as schizophrenia, bipolar disorder, major depression, panic disorder, obsessive compulsive disorder or any other disorder which could lead to a chronic disability which is not a primary diagnosis of dementia; and (2) the mental disorder results in functional limitations in major life activities within the preceding 3-6 months that would be appropriate for the individual's developmental stage; and (3) the individual in the past two years has experienced (a) more than one episode of psychiatric hospitalization; or (b) a significant disruption to his/her situation due

to the mental disorder, requiring support services, residential treatment or intervention by housing or law authorities (*Id.*).

In the instant case, a level I PASRR screen of the appellant was conducted on August 3, 2021 by a social worker at Southeast Rehabilitation nursing facility, which was positive for serious mental illness (Exh. 4B, pp. 1-7). Subsequently, a level II PASRR screening concluded that the appellant has a serious mental illness, as defined in PASRR regulations, but also determined that she does not require specialized services, and that her needs can be met in the nursing facility (Exh. 1).

According to the MassHealth representative, the appellant is over age 65, and resides in a nursing facility. She has medical diagnoses including atrial fibrillation, congestive heart failure, hyperlipidemia, gait impairment, bipolar disorder, and adjustment disorder. The MassHealth representative stated that an in-person PASRR Level II evaluation was completed on August 23, 2021 at Southeast Rehabilitation (“nursing facility”) in [REDACTED] where the appellant resides. She stated that the PASRR reviewer attempted to meet in person with the appellant during this evaluation, but the appellant declined to meet with the reviewer. According to a review of the appellant’s medical records at the nursing facility, the appellant has a significant past psychiatric history, including inpatient psychiatric admissions in 2010, 2011, 2018, 2019, 2020 and most recently, from July 29, 2021 through August 3, 2021. On July 10, 2021, the appellant was sent out involuntarily from the nursing facility under G.L. c. 123, section 12 to [REDACTED] after the appellant reportedly threw hot coffee at an employee of the nursing facility (Exh. 4B, pp. 58-59).² The PASRR reviewer documented in the Level II PASRR screening that the appellant had a history of failing to comply with the smoking policy at the nursing facility, care non-compliance, and verbal altercations with staff there.³ Following an inpatient stay at [REDACTED] [REDACTED] from July 29, 2021 through August 3, 2021, the appellant returned to the nursing facility with a new diagnosis of adjustment disorder, but with no changes to her psychiatric medications (Testimony, Exh. 4).

According to the MassHealth representative, the PASRR evaluator documented that the appellant previously underwent a PASRR evaluation in January 2019 following her eviction from her apartment in [REDACTED]. At her apartment complex, neighbors had complained about her erratic behaviors such as banging on the ceiling and walls (Exh. 4, pp. 38-39). She had apparently received services through the [REDACTED] and Elder Services, but despite these

² M.G.L. c. 123, section 12(a) states: “Any physician who is licensed pursuant to section 2 of chapter 112 or qualified psychiatric nurse mental health clinical specialist authorized to practice as such under regulations promulgated pursuant to the provisions of section 80B of said chapter 112 or a qualified psychologist licensed pursuant to sections 118 to 129, inclusive, of said chapter 112, or a licensed independent clinical social worker licensed pursuant to sections 130 to 137, inclusive, of chapter 112 who, after examining a person, has reason to believe that failure to hospitalize such person would create a likelihood of serious harm by reason of mental illness may restrain or authorize the restraint of such person and apply for the hospitalization of such person for a 3-day period at a public facility or at a private facility authorized for such purposes by the department.”

³ The PASRR reviewer who conducted the level II PASRR screen of the appellant did not testify at the hearing.

⁴ This prior PASRR screening was evidently conducted by [REDACTED], according to the MassHealth representative.

community services, the appellant was evicted and admitted to a skilled nursing facility in January, 2019 (Testimony, Exh. 4, pp. 38-39).

Following her most recent inpatient stay at Brockton, there have been no further documented episodes of non-compliance with care or with the smoking policy at the nursing facility, according to the MassHealth representative. The appellant is followed by psychiatric services in place at the nursing facility. Thus, the Level II PASRR evaluator determined that although the appellant has a serious mental illness, she does not require inpatient hospital psychiatric services, and her needs may be met at the nursing facility. A written notice to this effect was issued to the appellant on August 23, 2021 (Testimony, Exh. 1, Exh. 4, p. 39).

The DMH representative testified that a copy of a Level I PASRR screening is retained by a screener (which may be a nursing facility or a hospital) and by DMH, and a copy of a Level II PASRR screening is retained by DMH and by the subject of the screen (the appellant in this case). The DMH representative testified that the appellant does not have a guardian or conservator in place, and therefore she would, in the ordinary course, receive a copy of the Level II PASRR screening (Testimony).

The appellant testified on her own behalf by telephone. She testified that she had not received the notice of hearing issued by the BOH, nor did she receive a copy of the MassHealth exhibit.⁵ She indicated that her mail is not always timely delivered to her at the facility. She testified that she has never had a consultation with a psychiatrist. She testified that she would like copies of the medical records containing the dates of her purported inpatient psychiatric admissions. She explained that she believes the reason the nursing facility sent her out involuntarily under M.G.L. c. 123, section 12 in July, 2021 is due to a conflict with a particular nurse at the facility. She asserted that this nurse wants her to take Seroquel, an antipsychotic, which the appellant asserted is contraindicated in the elderly, and can cause death. She denied that she threw coffee at an employee; instead, she states that a nurse threw her against the wall, and her coffee spilled. The appellant testified that she did not decline to meet with the PASRR evaluator when she presented to the facility in August, 2021, but that she was on a long-distance call at the time the evaluator appeared (Testimony).

The appellant testified that the facility will not allow her to see her cardiac surgeon on [REDACTED] where she used to live. She has atherosclerotic heart disease. She stated that she is independent in carrying out her activities of daily living. When she lived on [REDACTED], she moved out of her apartment voluntarily; she contested that she was evicted. She moved in with a girlfriend. She then suffered a transient ischemic attack (TIA), and was hospitalized in approximately July, 2020. Her girlfriend was selling her house, and the appellant had nowhere to go. At [REDACTED] Hospital, she was told she had a diagnosis of bipolar disorder by a psychiatrist. This diagnosis allowed her to extend her stay at the hospital, but she does not agree that the diagnosis is correct (Testimony).

⁵ The MassHealth representative testified that she received a notice from the United States Postal Service that someone at the facility had signed that she received the MassHealth exhibit on behalf of the appellant. However, the MassHealth representative agreed to send another copy of the hearing exhibit to the appellant.

She testified that the nursing facility where she resides is owned by Athena Health, which was sued by the Massachusetts Attorney General. She states that she is healthy, and does not need to reside there. The facility just wants her money (Testimony).

She testified that she met with another psychiatrist, Dr. Tabroff, more recently at Good Samaritan Medical Center, and he informed her that any problems she is experiencing are caused by the nursing facility (Testimony).

The appellant stated that she has not asked for a copy of her medical record at the nursing facility, nor did she report alleged patient abuse to anyone at the facility, nor to anyone at the Massachusetts Department of Public Health.

At the close of the hearing, the hearing officer agreed to leave the record of this appeal open until January 3, 2022 for the appellant to send him a letter informing him that she had received a second copy of the MassHealth exhibit, and also agreed to extend the record-open period until January 18, 2022 for the appellant to send a second letter to him stating why she disagreed with the Level II PASRR determination that she has a serious mental illness, including any documents that would support her position (Exh. 5).⁶ The hearing officer also agreed to extend the record-open period for one additional week, or until January 25, 2022, for the MassHealth representative to file a written response to the appellant's second letter (*Id.*).

On or about December 27, 2021, the hearing officer received a copy of a handwritten letter from the appellant, which was copied to the MassHealth representative (Exh. 6). The letter states in relevant part:

This letter is to inform both you and [the MassHealth representative] that I did receive your MassHealth exhibit. . . . I did write to you after reading it, stating there are several things I noticed that are false. And I did request an in-person meeting with you or your staff to clear these matters up. It appears most if not all the information you have is second, third hand and people appear to have an agenda (*sic*). So please let me know as soon as possible when that can be done. Please note that I am requesting a copy of your file and all other information you used to make your initial decisions and where you got the information. . . .

(*Id.*).⁷

On January 13, 2022, the hearing officer sent correspondence to the appellant, copied to the MassHealth representative, stating in pertinent part:

⁶ Both of her letters were to be copied to the MassHealth representative, and the hearing officer provided the MassHealth's representative's address to the appellant.

⁷ In a post-script to her letter, the appellant wrote: "You should be aware that [the nursing facility] has petitioned the court for a guardianship with *Rogers* orders to drug me with Seroquel – this drug causes stroke and death in the elderly according to FDA black box warning and I take 2 medicines to prevent stroke. It's retaliation for speaking up. Your report is part of their case" (Exh. 6).

It appears that you may be requesting a ‘meeting’ to discuss this case. The hearing held by telephone on December 2, 2021 was the opportunity for you to question the PASRR findings. No additional meeting or hearing is scheduled.

Your deadline to respond to the findings in the MassHealth exhibit. . . remains January 18, 2022.

(Exh. 7)

No additional correspondence was received from the appellant.

Findings of Fact

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

1. For all new nursing facility residents, a PASRR evaluation is required under federal law prior to an individual being admitted to a nursing facility, in order to determine if the individual has a serious mental illness and if so, whether the individual needs specialized services not available in the nursing facility (Testimony, Exh. 4).
2. If a level I PASRR evaluation shows that the individual does not have a serious mental illness, the inquiry ends there (*Id.*).
3. If the level I PASRR evaluation reveals that the individual has a serious mental illness, a level II PASRR is completed, which is more detailed, and which will also recommend the setting in which the individual’s needs may best be met, such as in a nursing facility; in an inpatient psychiatric hospital; or in the community (*Id.*).
4. DMH implements the PASRR regulations in Massachusetts, and regulations define “serious mental illness” as one meeting all of the following criteria: (1) a major mental illness or disorder, such as schizophrenic, paranoid, mood, panic or other severe anxiety disorder; somatoform disorder; personality disorder, other psychotic disorder; or another mental disorder that may lead to a chronic disability; (2) the individual has experienced, in the last two years: (a) more than one instance of psychiatric treatment more intensive than outpatient care or (b) an episode of significant disruption of to the normal living situation for which supportive services were required to maintain functioning at home or in a residential treatment environment, or which resulted in intervention by housing or law enforcement officials; (3) the individual has a level of disability that has resulted in functional limitations in major life activities within the past six months that would be appropriate for the individual’s developmental stage; and (4) the individual does not have a co-occurring diagnosis of Alzheimer’s disease or dementia and/or related disorder that is both the primary diagnosis and so severe/advanced that the individual would be unable to benefit from treatment (Testimony, Exh. 4A, pp. 10-11).

5. The appellant is over the age of 65, and resides in a nursing facility (Testimony, Exh. 4).
6. A level I PASRR screening of the appellant was conducted on August 3, 2021 by a social worker at [REDACTED] Rehabilitation nursing facility, which was positive for serious mental illness (Exh. 4B, pp. 1-7).
7. Subsequently, a level II PASRR screening concluded that the appellant has a serious mental illness, as defined in PASRR regulations, but also determined that she did not require specialized services, and that her needs could be met in the nursing facility (Exh. 1).
8. A written notice to this effect was sent to the appellant on August 23, 2021 (Exh. 1).
9. The appellant filed a timely appeal of the PASRR findings with the BOH on October 24, 2021 (Exh. 2).
10. The PASRR evaluator who conducted the Level II PASRR screening of the appellant conducted an in-person review of the appellant's medical record at the nursing facility on August 23, 2021 (Testimony, Exh. 4).
11. The PASRR evaluator attempted to meet in-person with the appellant at the facility on August 23, 2021, but the appellant declined to meet with her (Testimony).
12. According to a review of the appellant's medical records at the nursing facility, the appellant has a significant past psychiatric history, including inpatient psychiatric admissions in 2010, 2011, 2018, 2019, 2020 and most recently, from July 29, 2021 through August 3, 2021 at [REDACTED] (Testimony, Exh. 4).
13. On July 10, 2021, the appellant was sent out involuntarily from the nursing facility under G.L. c. 123, section 12 to [REDACTED], after the appellant reportedly threw hot coffee at an employee of the nursing facility (*Id.*).
14. The appellant denied throwing hot coffee on any nursing facility employee, and stated the nursing home employee threw her against a wall (Testimony).
15. The appellant had a history of failing to comply with the smoking policy at the nursing facility, care non-compliance, and verbal altercations with staff there (Testimony, Exh. 4B, pp. 58-59).
16. The appellant's medical diagnoses include congestive heart failure, type 2 diabetes, atrial fibrillation, hyperlipidemia, gait impairment, and atherosclerotic heart disease (Testimony, Exh. 4).
17. The appellant was hospitalized at [REDACTED] Hospital in 2019 or 2020, where a psychiatrist diagnosed her with bipolar disorder (Testimony).

18. After an inpatient stay at Brockton Hospital from July 29, 2021 through August 3, 2021, the appellant was diagnosed with adjustment disorder and was returned to the nursing facility with no changes in her psychiatric medications (Testimony, Exh. 4).
19. Since her return to the nursing facility, the appellant has had no further altercations with staff, and has complied with rules related to smoking and care (Testimony, Exh. 4B, p. 59).
20. The appellant is followed by psychiatric services at the nursing facility (Testimony, Exh. 4B, p. 59).
21. There is no evidence that the appellant has a diagnosis of dementia or Alzheimer's disease.
22. The appellant testified that the nursing facility has tried to administer the anti-psychotic medication Seroquel to her, but she refuses to take this medication as it is contraindicated in the elderly (Testimony).
23. The hearing record was left open as a courtesy to the appellant to allow her to review the MassHealth hearing exhibit, which she had not received prior the December 2, 2021 appeal hearing (Exh. 5).
24. The appellant, in writing, acknowledged receiving a copy of the MassHealth hearing exhibit following the hearing, but she did not file any response to the information contained in the exhibit, nor did she submit any documentation for the record rebutting that she suffers from a serious mental illness (Exh. 6).

Analysis and Conclusions of Law

The appellant bears the burden of demonstrating that the agency's action is invalid or incorrect (Merisme v. Board of Appeals of Motor Vehicle Liability Policies and Bonds, 27 Mass. App. Ct. 470, 474 (1989)).

130 Code of Massachusetts Regulations (CMR) 456.410 states the following:

(A) The Omnibus Budget Reconciliation Act of 1987 (OBRA 87) established a requirement that individuals be screened before admission to a nursing facility to determine if the individual has a major mental illness, mental retardation, or developmental disabilities. The federal requirements are contained in 42 U.S.C. 139r(e)(7). The Division of Medical Assistance implements this requirement under the terms of 130 CMR 456.410.

(B) The nursing facility must complete a Preadmission Screening Level I form for all admissions. The completed form must be kept in the resident's medical record. If it is determined that the individual has a major mental illness, mental retardation, or a

developmental disability, then the Department of Mental Health or its agent or the Department of Mental Retardation or its agent, as appropriate, must perform Level II screening, unless one of the conditions in 130 CMR 456.410(C) applies.

(C) A Level II referral and screening is not required when:

- (1) the individual is to be admitted to the nursing facility directly from a hospital provided that the placement is expected to last for 30 days or less;
- (2) a physician has certified that the individual has a terminal illness and the prognosis is six months or less;
- (3) the individual is comatose or functioning at brain-stem level;
- (4) the individual has a mental illness and one of the following primary diagnoses:
 - (a) Alzheimer's disease or other dementia documented by a neurological examination;
 - (b) severe and debilitating Parkinson's disease;
 - (c) severe and debilitating Huntington's disease;
 - (d) severe and debilitating amyotrophic lateral sclerosis;
 - (e) severe and debilitating congestive heart failure; or
 - (f) severe and debilitating chronic obstructive pulmonary disease.

(D) To admit individuals requiring a Level II review, the nursing facility must receive documentation from the Massachusetts Department of Mental Health, the Department of Mental Retardation, or both, as appropriate, certifying that the individual is eligible for admission to the nursing facility and whether or not the individual needs specialized services. The nursing facility must keep such documentation in the resident's record at the facility. A determination by the Massachusetts Department of Mental Health or the Department of Mental Retardation that admission to the facility is not appropriate supersedes the authorization for services by the Division or its agent.

42 Code of Federal Regulations (CFR) Subpart C, "Preadmission Screening and Annual Review of Mentally Ill and Mentally Retarded Individuals," states the following with regard to screening of all individuals who wish to reside in Medicaid-certified skilled nursing facilities:

(a) This subpart applies to the screening or reviewing of all individuals with mental illness or intellectual disability who apply to or reside in Medicaid certified NFs regardless of the source of payment for the NF services, and regardless of the individual's or resident's known diagnoses.

(b) *Definitions.* As used in this subpart -

(1) An individual is considered to have a serious mental illness (MI) if the individual meets the following requirements on diagnosis, level of impairment and duration of illness:

(i) *Diagnosis.* The individual has a major mental disorder diagnosable under the Diagnostic and Statistical Manual of Mental Disorders, 3rd edition, revised in 1987.

Incorporation of the 1987 edition of the Diagnostic and Statistical Manual of Mental Disorders, 3rd edition, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 that govern the use of incorporation by reference.

This mental disorder is -

(A) A schizophrenic, mood, paranoid, panic or other severe anxiety disorder; somatoform disorder; personality disorder; other psychotic disorder; or another mental disorder that may lead to a chronic disability; but

(B) Not a primary diagnosis of dementia, including Alzheimer's disease or a related disorder, or a non-primary diagnosis of dementia unless the primary diagnosis is a major mental disorder as defined in paragraph (b)(1)(i)(A) of this section.

(ii) *Level of impairment.* The disorder results in functional limitations in major life activities within the past 3 to 6 months that would be appropriate for the individual's developmental stage. An individual typically has at least one of the following characteristics on a continuing or intermittent basis:

(A) *Interpersonal functioning.* The individual has serious difficulty interacting appropriately and communicating effectively with other persons, has a possible history of altercations, evictions, firing, fear of strangers, avoidance of interpersonal relationships and social isolation;

(B) *Concentration, persistence, and pace.* The individual has serious difficulty in sustaining focused attention for a long enough period to permit the completion of tasks commonly found in work settings or in work-like structured activities occurring in school or home settings, manifests difficulties in concentration, inability to complete simple tasks within an established time period, makes frequent errors, or requires assistance in the completion of these tasks; and

(C) *Adaptation to change.* The individual has serious difficulty in adapting to typical changes in circumstances associated with work, school, family, or social interaction, manifests agitation, exacerbated signs and symptoms associated with the illness, or withdrawal from the situation, or requires intervention by the mental health or judicial system.

(iii) *Recent treatment.* The treatment history indicates that the individual has experienced at least one of the following:

(A) Psychiatric treatment more intensive than outpatient care more than once in the past 2 years (e.g., partial hospitalization or inpatient hospitalization); or

(B) Within the last 2 years, due to the mental disorder, experienced an episode of significant disruption to the normal living situation, for which supportive services were required to maintain functioning at home, or in a residential treatment environment, or which resulted in intervention by housing or law enforcement officials.

(2) An individual is considered to have dementia if he or she has a primary diagnosis of dementia, as described in the Diagnostic and Statistical Manual of Mental Disorders, 3rd edition, revised in 1987, or a non-primary diagnosis of dementia unless the primary diagnosis is a major mental disorder as defined in paragraph (b)(1)(i)(A) of this section.

(3) An individual is considered to have intellectual disability (ID) if he or she has -

(i) A level of retardation (mild, moderate, severe or profound) described in the American Association on Intellectual Disability's Manual on Classification in Intellectual Disability (1983). Incorporation by reference of the 1983 edition of the American Association on Intellectual Disability's Manual on Classification in

Intellectual Disability was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 that govern the use of incorporations by reference; or

(ii) A related condition as defined by § 435.1010 of this chapter.

42 CFR § 483.102 (emphasis added) (internal footnotes omitted)

MassHealth, on behalf of DMH, has implemented the above federal regulations by issuing guidance contained in Nursing Facility Bulletin 169 (October, 2021). The Nursing Facility Bulletin, consistent with the above-cited federal regulations, defines “Level I screen” as:

A preliminary screening of all nursing facility applicants, regardless of payor source, conducted prior to their admission to a nursing facility. A Level I screen identifies whether an applicant for admission to a nursing facility has, or may have, Intellectual Disability, Developmental Disability, and/or Serious Mental Illness (i.e., a positive Level I screening). . . If the individual has a positive Level I screening, the screener must refer the individual to the appropriate PASRR authority for a Level II evaluation or Abbreviated Level II Evaluation, as applicable, unless the individual satisfies all the criteria for the Exempted Hospital Discharge.

Next, MassHealth Nursing Facility Bulletin 169 defines Serious Mental Illness as follows:

An individual is considered to have SMI for the purpose of PASRR if he or she:

1. Has a major mental illness or disorder, such as schizophrenic, paranoid, mood, panic, or other severe anxiety disorder; somatoform disorder; personality disorder; or other psychotic disorder; or another mental disorder that may lead to a chronic disability; and
2. Due to the mental illness or disorder, has experienced, within the past two years: (1) more than one instance of psychiatric treatment more intensive than outpatient care or (2) and episode of significant disruption to the normal living situation, for which supportive services were required to maintain functioning at home, or in a residential treatment environment, or which resulted in intervention by housing or law enforcement officials; and
3. Due to the mental illness or disorder, has a level of disability that has resulted in functional limitations in major life activities that would be appropriate for the individual’s developmental stage within the past six months. An individual typically has challenges in at least one of the following characteristics on a continuing or intermittent basis: interpersonal functioning; concentration, persistence, and pace; or adaptation to change; and
4. Does not have a co-occurring diagnosis of dementia or Alzheimer’s disease and/or related disorder (ADRD) that is both advanced and primary over the mental health diagnosis (i.e., meets the criteria for advanced dementia exclusion (ADE)).

The federal PASRR regulations defining serious mental illness, 42 CFR § 483.102(b)(1), to the extent that they may conflict in whole or in part with the definitions contained in MassHealth

Nursing Facility Bulletin 169, are controlling.

Here, the appellant challenges the portion of the level II PASRR determination concluding that she has a serious mental illness. This finding followed a level I PASRR screening that was positive for serious mental illness. The Level II PASRR screening was premised on a review of the appellant's medical records at the nursing facility; an attempt by the level II PASRR evaluator to meet face-to-face with the appellant was unsuccessful.

The criteria for SMI are met in this case. The appellant carries diagnoses of bipolar disorder and adjustment disorder. She testified that she does not agree with these diagnoses, but she submitted no documentation to rebut these diagnoses, despite a lengthy record-open period in which she could have done so.

Further, the appellant had at least two instances of psychiatric treatment more intensive than outpatient care in the last two years, including a Section 12 involuntary commitment to Brockton Hospital in mid-July, 2021, followed by a four-day inpatient psychiatric stay at Brockton Hospital at the end of July/early August, 2021. It was here that she received a diagnosis of adjustment disorder.

In approximately 2019 or 2020, the appellant acknowledged being hospitalized at Cape Cod Hospital, where she also had a psychiatric evaluation.

Further, the appellant has exhibited a level of impairment resulting in functional limitations in major life activities within the past 3 to 6 months that would be appropriate for her developmental stage. She has experienced difficulty in interpersonal functioning with staff at the facility, including an apparent physical altercation with a staff member.

Finally, there is no evidence, at this time, that the appellant has a diagnosis of dementia or Alzheimer's disease.

The PASRR finding that the appellant has a SMI was correct.

For these reasons, the appeal must be DENIED.

Order for DMH/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.

Paul C. Moore
Hearing Officer
Board of Hearings

cc: Linda Phillips, R.N., Senior Manager of Appeals and Regulatory Compliance, Disability and Community Services, University of Massachusetts Medical School, 333 South Street, Shrewsbury, MA 01545

