

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Approved

Appeal Number: 2204217

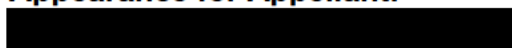
Decision Date: 8/31/2022

Hearing Date: 07/21/2022

Hearing Officer: Patricia Mullen

Record Open to: 08/12/2022

Appearance for Appellant:




Appearances for MassHealth:

Meera Ramamoorthy, Institutional Program Manager, OLTSS; Jacqueline Fratus, Institutional Program Manager, OLTSS; Atty. Alicia Scahill, Asst. General Counsel



*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:	Approved	Issue:	PASRR
Decision Date:	8/31/2022	Hearing Date:	07/21/2022
MassHealth's Reps.:	Meera Ramamoorthy, Institutional Program Manager, OLTSS; Jacqueline Fratus, Institutional Program Manager, OLTSS; Atty. Alicia Scahill, Asst. General Counsel	Appellant's Rep.:	
Hearing Location:	Quincy Harbor South		

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 March 25, 2022, MassHealth denied the appellant's nursing facility's request for payment because the nursing facility did not make a referral to the Department of Developmental Services (DDS) or the Department of Mental Health (DMH) for a Level II Preadmission Screening/Resident Review (PASRR) evaluation and determination pursuant to 130 CMR 456.410. (see 130 CMR 456.408; 456.410 and Exhibit 1). The appellant filed this appeal in a timely manner on June 1, 2022¹ and authorized the social worker from the nursing facility to

¹ In MassHealth Eligibility Operations Memo (EOM) 20-09 dated April 7, 2020, MassHealth states the following:

- Regarding Fair Hearings during the COVID-19 outbreak national emergency, and through the end of 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.

represent him at the hearing. (see 130 CMR 610.015(B) and Exhibit 2). Denial of payment for nursing facility services is valid grounds for appeal (see 130 CMR 610.032; 456.412(B)).

Action Taken by MassHealth

MassHealth denied the nursing facility's request for authorization for payment of the appellant's nursing facility services for a specific period of time.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 456.410, in determining that MassHealth would not cover the appellant's nursing facility services because the nursing facility did not make a referral to DDS or DMH for a Level II PASRR evaluation and determination.

Summary of Evidence

The appellant was represented telephonically at the hearing by a social worker from the nursing facility. MassHealth was represented telephonically at the hearing by Assistant General Counsel from MassHealth Legal and by two Institutional Program Managers from MassHealth's Office of Long Term Services and Supports (OLTSS), Ms. Ramamoorthy (hereinafter "MassHealth representative 1") and Ms. Fratus (hereinafter "MassHealth representative 2"). MassHealth representative 1 stated that the appellant was admitted to the nursing facility from the hospital on [REDACTED] and the nursing facility requested a MassHealth start date of October 18, 2021. MassHealth representative 1 stated that the appellant was otherwise eligible for MassHealth coverage for his nursing facility stay on [REDACTED], however MassHealth coverage did not begin until the correct Level I PASRR was submitted on November 5, 2021. In a document submitted for the hearing, MassHealth noted that based on 130 CMR 450.203, the nursing facility is prohibited from asking for payment from the appellant when payment would have been available by MassHealth but for the nursing facility's non-compliance with the PASRR regulations. (Exhibit 11). MassHealth representative 1 stated that the nursing facility completed a Level I PASRR on October 4, 2021, but noted on the PASRR that the appellant was negative for serious mental illness (SMI) and therefore the facility did not refer the appellant for a Level II screening. MassHealth pointed out that the nursing facility did not indicate an Exempted Hospital Discharge on the October 4, 2021 Level I PASRR form. (Exhibit 11). MassHealth representative 1 stated that the appellant had an admission to a psychiatric hospital in February, 2021 and thus the nursing facility should have listed the appellant as positive for SMI and referred him to DMH for a Level II PASRR screening.

Both the MassHealth representative and the appellant's representative submitted the Level I PASRR screening dated October 4, 2021, which had been completed by the nursing facility's previous social worker. (Exhibit 10, p. 1). The nursing facility completed Sections A, B, and F on the form. (Exhibit 10, pp. 1-5). In Section B, under question 6, of the Level I PASRR, the nursing facility

noted that the appellant has a documented diagnosis of a mental illness or disorder (MI/D), specifically mood (i.e. bipolar disorder, major depression). (Exhibit 10, p. 2). In Section B, under question 6, the nursing facility noted that in the past 2 years, the appellant was not known to have required one of the treatments or interventions listed that was or may be due to mental illness or disorder. (Exhibit 10, p. 3). The treatments/interventions listed included “one or more inpatient psychiatric hospitalizations”. (Exhibit 10, p. 3). The nursing facility also answered “no” to Question 7 in Section B of the Level I form regarding limitations in major life activities in at least one of three listed areas. (Exhibit 10, p. 3). Question 8 of Section B of the Level I PASRR states that if the nursing facility did not answer “yes” to questions 6 or 7, the box marked “Negative SMI screen” should be checked off and a Level II PASRR evaluation is not indicated due to no diagnosis or suspicion of SMI. (Exhibit 10, p. 3). The nursing facility checked off the box marked “Negative SMI screen”. (Exhibit 10, p. 3). The Level I PASRR notes that the next step is to complete Section F of the form, file the form in the applicant’s medical record, and admit the applicant. (Exhibit 10, p. 3). The nursing facility completed Section F and the previous social worker signed the form on October 4, 2021. (Exhibit 10, p. 5).

Excerpts from Social Services Progress Notes from the appellant’s nursing facility record note that the previous social worker looked over documentation for the appellant on November 4, 2021 and determined he did not need a Level II PASRR; the next day, the previous social worker noted a correction and wrote that the original Level I PASRR was incorrect and she reached out to the UMass PASRR unit; the UMass PASRR unit requested that a new Level I PASRR be completed and faxed, which the previous social worker did on November 5, 2021. (Exhibit 10, pp. 6, 13).

In the November 5, 2021 Level I PASRR, the nursing facility answered “yes” to Question 6, Section B and checked off that the appellant had one or more inpatient psychiatric hospitalizations. (Exhibit 10, p. 9). In Question 8, Section B, the nursing facility checked off that the appellant had a positive SMI screen. (Exhibit 10, p. 9). In Section C of the November 5, 2021 Level I PASRR, the nursing facility noted that that the appellant was being admitted to the nursing facility directly from an acute hospital after receiving inpatient acute medical care; was in need of nursing facility services to treat the same medical condition treated in the acute hospital; was not a current risk to self or others, and behavioral symptoms, if present were stable; and was expected to stay in a nursing facility for less than 30 calendar days as certified by the hospital’s attending or discharging physician. (Exhibit 10, p. 9). Because all the boxes in Question 9 of Section C were checked off, and because the appellant screened positive for SMI, the Level I PASRR form directed the nursing facility to Question 10, Option B. (Exhibit 10, p. 9). The nursing facility checked off the box at Option B which states, “[a]pplicant screened positive for SMI only, however Level II PASRR Evaluation for SMI is not indicated at this time due to Exempted Hospital Discharge (maximum 30 calendar days)”. (Exhibit 10, p. 10). Option B states further that if “the nursing facility determines that the resident’s stay will exceed the 30 day exemption period, the nursing facility must complete Section G in this form and submit the Level I form to the DMH/Designee by no later than the 25th calendar day from admission.” (Exhibit 10, p. 10). Option B instructs the nursing facility to complete contact information for the certifying physician, complete Section F, file the form in the individual’s medical record and admit; the nursing facility has 48 hours to notify DMH/Designee of the nursing facility to which the individual was admitted and submit the completed Level I PASRR form. (Exhibit 10, p. 10). The nursing facility did not complete the contact information in Option B.

(Exhibit 10, p. 10). MassHealth noted that the nursing facility indicated Exempted Hospital Discharge on the corrected Level I PASRR after the appellant has been residing in the nursing facility for 30 days. (Exhibit 11). In Section G of the November 5, 2021 Level I PASRR, the nursing facility noted that the appellant would not be discharged before the expiration of the Exempted Hospital Discharge and requested a Level II PASRR Evaluation from DMR/Designee. (Exhibit 10, p. 11). The November 5, 2021 Level I PASRR was signed by the nursing facility's previous social worker on November 5, 2021. (Exhibit 10, p. 11).

The UMass PASRR unit contacted the previous social worker on November 5, 2021 and noted that the November 5, 2021 Level I PASRR was not an Expiration of Exempted Hospital Discharge, but rather a Resident Review and a clinician from the unit would be reaching out to the nursing facility to set up a review. (Exhibit 10, p. 13). On November 8, 2021, a member of the UMass Level II PASRR unit contacted the previous social worker to set up a screening for the appellant, however the nursing facility was not allowing visitors in to the facility and the social worker replied that she would fax and/or email any information the PASRR unit needed. (Exhibit 10, p. 13). On November 11, 2021, the UMass Level II PASRR unit informed the previous social worker that because the appellant went into the hospital for medical reasons (prior to this admission) and not due to his bipolar diagnosis, his PASRR that had been done prior is current and they did not need to have a Level II done. (Exhibit 10, p. 13).

MassHealth noted that the nursing facility was non-compliant with PASRR requirements/regulations for the period October 18, 2021 through November 4, 2021 for failure to complete the Level I PASRR appropriately and is not eligible to bill MassHealth, or the appellant, for reimbursement of services for this time period. (Exhibit 11). By notice dated March 25, 2022, MassHealth denied the nursing facility's request for payment because the nursing facility did not make a referral to DMH for a Level II PASRR evaluation and determination as required by 130 CMR 456.410 for the period starting October 18, 2021. (Exhibit 1). The March 25, 2022 MassHealth notice states, "[s]pecifically, MassHealth requires as a condition of payment for nursing facility services that nursing facilities refer individuals with a diagnosis of mental illness, intellectual disability, and/or developmental disability to DDS or DMH for completion of a Level II PASRR." (Exhibit 1). MassHealth representative 1 noted that MassHealth is paying the nursing facility for the appellant's admission beginning [REDACTED]. The March 25, 2022 MassHealth notice states that, as a condition of payment for nursing facility services, MassHealth requires that nursing facilities refer individuals with a diagnosis of mental illness, intellectual disability, and/or developmental disability to DDS or DMH for completion of a Level II PASRR. (Exhibit 1). The notice states further that nursing facility records indicate that the appellant has a diagnosis of mental illness, intellectual disability, and/or developmental disability, and the nursing facility did not make a referral to DDS or DMH for a Level II PASRR. (Exhibit 1). MassHealth representative 2 stated that once the nursing facility submitted the corrected PASRR Level I dated November 5, 2021 for referral for a Level II screening, indicating that the appellant had SMI, it was in compliance with the PASRR regulations so the nursing facility was eligible for payment as of November 5, 2021. MassHealth's attorney noted that if a nursing facility makes a mistake on a PASRR Level I screening, any subsequent corrections do not go retroactive, thus reimbursement for nursing facility services began as of November 5, 2021 and no earlier. MassHealth representative 1 added that even though the UMass PASRR unit determined the appellant did not require a Level II

evaluation, the nursing facility's October 5, 2021 Level I PASRR was still non-compliant with regulations and neither the corrected Level I nor the PASRR unit's determination changes that.

MassHealth representative 2 stated that the appellant was screened for clinical eligibility for MassHealth on December 15, 2021 by an Aging Services Access Point (ASAP) nurse. MassHealth representative 2 noted that the ASAP nurse reviewed the appellant's nursing facility record which included the Level I PASRR dated November 5, 2021 and asked the nursing facility to see the PASRR from the date of admission. MassHealth representative 2 stated that after review of the October 4, 2021 Level I PASRR, the ASAP nurse reported to MassHealth that SMI should have been indicated as positive on the October 5, 2021 Level I PASRR and a referral for a Level II evaluation should have been made at that time. MassHealth representative 2 stated that because the October 4, 2021 Level I PASRR was incorrect, the nursing facility was non-compliant and remained non-compliant until submission of the November 5, 2021 corrected Level I PASRR.

MassHealth representative 1 stated that the appellant's hospital discharge summary speaks to an inpatient psych admission and thus the nursing facility should have checked off "Positive SMI screen" on the October 5, 2021 Level I PASRR form. (Exhibit 10, p. 14). The hospital discharge summary states that the appellant lives with family and was admitted to the hospital on [REDACTED] for encephalopathy and accidental removal of suprapubic tube. (Exhibit 10, p. 14). The discharging physician noted that "per review of psych note 2/2021, patient did have significant behavior disturbance/cognitive impairment at that time. There is likely underlying dementia versus mood disorder. See psych note 2/23/2021 for further details." (Exhibit 10, p. 14). No notes dated 2/23/2021 were included with the packet submitted to the nursing facility by the hospital. (Exhibit 14, pp. 14-20). During the hospital course, the appellant's suprapubic tube was replaced in the emergency room, and he was treated for a urinary tract infection. (Exhibit 10, pp. 14, 19). The appellant was discharged to a nursing facility on [REDACTED] for short term rehabilitation to rebuild his strength. (Exhibit 10, p. 19).

The appellant's representative pointed out that, based on the November, 2021 social services notes, the UMass PASRR unit made no mention of the appellant's psychiatric admission as a reason for requiring a Level II PASRR referral and screening. (Exhibit 10, p. 13). The appellant's representative noted further that the March 25, 2022 MassHealth notice makes no mention of the inpatient psychiatric hospital admission as the reason for denial of payment and this is the first she is hearing of this as the reason for denial of payment. The appellant's representative stated that the nursing facility relies on the hospital documentation in completing the Level I PASRR, and there was no information regarding a psychiatric inpatient admission in the pre-admission paperwork sent to the nursing facility by the hospital. The appellant's representative stated that the October 4, 2021 Level I PASRR was completed in good faith based on the information the nursing facility had at the time of the appellant's admission. The appellant's representative stated that the nursing facility had a 42 page record from the hospital at the time of the October 4, 2021 Level I PASRR and the nursing facility used this documentation in completing the Level I PASRR. The appellant's representative noted further that the hospital discharge summary, on which MassHealth is basing the denial, does not mention an inpatient psychiatric admission. The appellant's representative stated that an ASAP nurse conducted a clinical review of the appellant on or after October 18, 2021, under the appellant's Tufts health insurance plan. The appellant's representative stated that she did not

know why the nursing facility's previous social worker completed the November 5, 2021 Level I PASRR.

The record was left open until July 28, 2022 to give MassHealth the opportunity to review the documentation submitted by the nursing facility and respond as to whether it changes the March 25, 2022 determination. (Exhibits 12, 13). By email dated July 28, 2022, MassHealth representative 1 wrote that MassHealth reviewed the pre-admission documentation submitted by the nursing facility and referred to the Discharge Summary's Hospital Course & Plan beginning on page 28 of the documentation. (Exhibit 13, pp. 29- 30). The Hospital Course & Plan note lists the appellant's diagnoses, hospital course, plan and other information. (Exhibit 13, pp 29-30). In a section entitled "Neurogenic bladder status post chronic suprapubic tube" it states "Patient sent to the hospital for reports of encephalopathy. Daughter reports some possible acute changes from baseline, though mainly notes a more persistent mood/behavior lability which is something he underwent geri/psych hospitalization for in February." (Exhibit 14; exhibit 13, p. 30). The note goes on to state that the appellant was alert and oriented to some things, referred to his urine cultures, chest x-ray, and treatments. (Exhibit 13, p. 30). MassHealth representative 1 wrote that the nursing facility had documented information that the appellant underwent a geri-psych hospitalization in February, 2021 and therefore MassHealth maintains its position that the initial Level I PASRR should have been positive and the facility's non-compliance between October 18, 2021 and November 4, 2021 must stand. (Exhibit 14).

By email dated July 29, 2022, the hearing officer asked a number of questions to both parties and reopened the record for responses. (Exhibit 15). By email dated July 29, 2022, the appellant's representative confirmed that the packet sent to MassHealth for post hearing review was the documentation that the nursing facility received from the hospital at the time of admission, and further confirmed that the appellant's nursing facility admission was expected to last less than 30 days. (Exhibit 16). The appellant's representative noted further that the appellant had a diagnosis of unspecified dementia without behavioral disturbance. (Exhibit 16). The appellant's representative clarified that the ASAP nurse who performed the clinical evaluation on or after October 18, 2021 was from Old Colony Elder Services and she did the clinical evaluation for MassHealth. (Exhibit 16).

By email dated August 4, 2022, MassHealth representative 1 stated that the hospital note regarding the appellant's daughter's comment about the geri-psych hospitalization was sufficient documentation for the nursing facility to have noted "one or more inpatient psychiatric hospitalizations" on the October 4, 2021 Level I PASRR. (Exhibit 17). MassHealth representative also responded that a Level I PASRR needs to be completed prior to admission pursuant to 42 CFR 483.106(a), (b), 130 CMR 456.410(B), and the MassHealth Nursing Facility Bulletin 169 and therefore the corrected November 5, 2021 could not be accepted by MassHealth for retroactive coverage; November 5, 2021 was the earliest possible date the nursing facility could receive payment from MassHealth for services provided. (Exhibit 17; 42 CFR 483.122(b)). MassHealth representative 1 wrote that the UMass PASRR unit acts as DMH's agent for PASRR evaluations and the unit determined that a Level II evaluation did not need to be done based on additional information that the geri-psych inpatient admission was due to a medical condition rather than the appellant's mental health conditions. (Exhibit 17). MassHealth representative 1 noted further that

Level I PASRR screenings are intended to be overinclusive and the medical documentation at the time of admission included information that the appellant had a recent geri-psych admission and therefore the appellant should have been screened positive on the Level I PASRR screening prior to admission. (Exhibit 17).

By email dated August 5, 2022, the hearing officer extended the record open period to August 12, 2022 and requested a copy of the SC-1 or other documentation with regard to the appellant's anticipated length of stay at the time of the nursing facility admission. (Exhibit 18). The hearing officer asked MassHealth what documentation MassHealth would need to support that the appellant's nursing facility placement was expected to last for 30 days or less. (Exhibit 18).

By email dated August 15, 2022, MassHealth representative 1 responded that MassHealth would expect to see that the Level I PASRR was positive for SMI and that Option B under Question 10 was selected for Exempted Hospital Discharge; MassHealth representative 1 noted that the Level 1 PASRR should also include the certifying practitioner's name, certification date, date the form was submitted to the DMH PASRR office, and the date of admission/anticipated admission. (Exhibit 19).

Findings of Fact

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

1. The appellant was admitted to the nursing facility from the hospital on [REDACTED] and the nursing facility requested a MassHealth start date of October 18, 2021; the appellant was otherwise eligible for MassHealth coverage for his nursing facility stay on [REDACTED]
2. By notice dated March 25, 2022, MassHealth denied the nursing facility's request for authorization for MassHealth payment of nursing facility services because the nursing facility did not make a referral to DDS or DMH for a Level II PASRR evaluation and determination.
3. The March 25, 2022 MassHealth notice states, "[s]pecifically, MassHealth requires as a condition of payment for nursing facility services that nursing facilities refer individuals with a diagnosis of mental illness, intellectual disability, and/or developmental disability to DDS or DMH for completion of a Level II PASRR."
4. MassHealth denied payment to the nursing for services for the period October 18, 2021 to November 4, 2021.
5. The nursing facility's previous social worker completed a Level I PASRR on October 4, 2021.
6. The nursing facility completed sections A, B, and F on October 4, 2021 Level I PASRR; in section B, question 5, the nursing facility noted that the appellant has a documented diagnosis of a mental illness or disorder (MI/D), specifically mood (i.e. bipolar disorder, major depression).

7. In section B, question 6, the nursing facility noted that in the past 2 years, the appellant was not known to have required one of the treatments or interventions listed that was or may be due to mental illness or disorder; the treatments/interventions listed included “one or more inpatient psychiatric hospitalizations”.
8. The nursing facility answered “no” to Question 7 in Section B regarding limitations in major life activities in at least one of three listed areas.
9. Question 8 of Section B of the Level I PASRR states that if the nursing facility did not answer “yes” to questions 6 or 7, the box marked “Negative SMI screen” should be checked off and a Level II PASRR evaluation is not indicated due to no diagnosis or suspicion of SMI; the nursing facility checked off the box marked “Negative SMI screen”.
10. The Level I PASRR notes that the next step is to complete Section F of the form, file the form in the applicant’s medical record, and admit the applicant; the nursing facility completed Section F and the previous social worker signed the form on October 4, 2021.
11. Around October 18, 2021, an ASAP nurse from Old Colony Elder Services performed the clinical evaluation of the appellant for MassHealth.
12. The nursing facility’s previous social worker looked over PASRR documentation for the appellant on November 4, 2021 and determined he did not need a Level II PASRR
13. The nursing facility’s previous social worker reached out to the UMass PASRR unit on November 5, 2021; the UMass PASRR unit requested that a new Level I PASRR be completed and faxed, which the previous social worker did on November 5, 2021.
14. In the November 5, 2021 Level I PASRR, the nursing facility answered “yes” to Question 6, Section B and checked off that the appellant had one or more inpatient psychiatric hospitalizations; in Question 8, Section B, the nursing facility checked off that the appellant had a positive SMI screen.
15. In Section C of the November 5, 2021 Level I PASRR, the nursing facility noted that that the appellant was being admitted to the nursing facility directly from an acute hospital after receiving inpatient acute medical care; was in need of nursing facility services to treat the same medical condition treated in the acute hospital; was not a current risk to self or others, and behavioral symptoms, if present were stable; and was expected to stay in a nursing facility for less than 30 calendar days as certified by the hospital’s attending or discharging physician.
16. Because all the boxes in Question 9 of Section C were checked off, and because the appellant screened positive for SMI, the Level I PASRR form directed the nursing facility to Question 10, Option B.
17. The nursing facility checked off the box at Option B which states, “[a]pplicant screened

positive for SMI only, however Level II PASRR Evaluation for SMI is not indicated at this time due to Exempted Hospital Discharge (maximum 30 calendar days)”.

18. Option B states further that if “the nursing facility determines that the resident’s stay will exceed the 30 day exemption period, the nursing facility must complete Section G in this form and submit the Level I form to the DMH/Designee by no later than the 25th calendar day from admission.”; Option B instructs the nursing facility to complete contact information for the certifying physician, complete Section F, file the form in the individual’s medical record and admit; the nursing facility has 48 hours to notify DMH/Designee of the nursing facility to which the individual was admitted and submit the completed Level I PASRR form; the nursing facility did not complete the contact information in Option B.
19. In Section G of the November 5, 2021 Level I PASRR, the nursing facility noted that the appellant would not be discharged before the expiration of the Exempted Hospital Discharge and requested a Level II PASRR Evaluation from DMR/Designee; the November 5, 2021 Level I PASRR was signed by the nursing facility’s previous social worker on November 5, 2021.
20. The UMass PASRR unit contacted the previous social worker on November 5, 2021 and noted that the November 5, 2021 Level I PASRR was not an Expiration of Exempted Hospital Discharge, but rather a Resident Review and a clinician from the unit would be reaching out to the nursing facility to set up a review.
21. On November 8, 2021, a member of the UMass Level II PASRR unit contacted the previous social worker to set up a screening for the appellant, however the nursing facility was not allowing visitors in to the facility and the social worker replied that she would fax and/or email any information the PASRR unit needed.
22. On November 11, 2021, the UMass Level II PASRR unit informed the previous social worker that because the appellant went into the hospital for medical reasons (prior to this admission) and not due to his bipolar diagnosis, his PASRR that had been done prior is current and they did not need to have a Level II done.
23. On December 15, 2021, the appellant was again screened by an ASAP nurse for clinical eligibility for MassHealth.
24. The ASAP nurse reviewed the appellant’s nursing facility record and reported to MassHealth that SMI should have been indicated as positive on the October 5, 2021 Level I PASRR and a referral for a Level II evaluation should have been made at that time.
25. The appellant’s hospital discharge summary was included in the 42 page pre-admission documentation sent to the nursing facility from the hospital.
26. The appellant’s hospital discharge summary on page 28 of the documentation states that the appellant lives with family and was admitted to the hospital on October 3, 2021 for

encephalopathy and accidental removal of suprapubic tube; the discharging physician noted that “per review of psych note 2/2021, patient did have significant behavior disturbance/cognitive impairment at that time. There is likely underlying dementia versus mood disorder. See psych note 2/23/2021 for further details.”; no notes dated 2/23/2021 were included with pre-admission documentation.

27. During the hospital course, the appellant’s suprapubic tube was replaced in the emergency room, and he was treated for a urinary tract infection.
28. The appellant was discharged to a nursing facility on [REDACTED] for short term rehabilitation to rebuild his strength.
29. The Hospital Discharge Summary section entitled Hospital Course & Plan lists the appellant’s diagnoses, hospital course, plan and other information; on page 29 of the documentation, in a section entitled “Neurogenic bladder status post chronic suprapubic tube” it states “Patient sent to the hospital for reports of encephalopathy. Daughter reports some possible acute changes from baseline, though mainly notes a more persistent mood/behavior lability which is something he underwent geri/psych hospitalization for in February.”; the note goes on to state that the appellant was alert and oriented to some things, referred to his urine cultures, chest x-ray, and treatments.
30. MassHealth’s PASRR unit determined that the appellant’s [REDACTED] hospital admission was due to a medical condition rather than the appellant’s mental health conditions.

Analysis and Conclusions of Law

Conditions for Payment

(A) The MassHealth agency pays for nursing-facility services if all of the following conditions are met...

(3) The requirements for preadmission screening at 130 CMR 456.410 have been met.

(130 CMR 456.408(A)(3)).

Screening for Mental Illness and Mental Retardation

(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. 1396r(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 of 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.

(130 CMR 456.410(A)-(D)).

The appellant's Level I PASRR dated October 4, 2021 was accurate. On November 11, 2021, the UMass Level II PASRR unit informed the previous social worker that because the appellant's February, 2021 hospitalization was for medical reasons and not due to his bipolar diagnosis, the PASRR that had been done prior to November 5, 2021 was current and the nursing facility did not need to have a Level II done. Accordingly, the nursing facility was correct when it indicated no SMI on the October 4, 2021 PASRR. It appears MassHealth's determination in this case began when an ASAP nurse raised concerns during a December 15, 2021 clinical evaluation. No testimony or documentation was submitted by the ASAP nurse and all information with regard to the ASAP nurse's concerns was provided secondhand by the MassHealth representatives. A clinical evaluation was done earlier by an ASAP nurse, on or about October 18, 2021, and no such concerns were raised at that time. Further, the December 15, 2021 ASAP nurse should have known at that time that MassHealth's PASRR unit had determined on [REDACTED] that the appellant's [REDACTED] hospital admission was for medical reasons and was not an inpatient psychiatric hospitalization, and thus the nursing facility correctly indicated no SMI on the October 4, 2021 Level I PASRR.

It should be noted that MassHealth's notice dated March 25, 2021, states that "MassHealth

requires as a condition of payment for nursing facility services that nursing facilities refer individuals with a diagnosis of mental illness...to DDS or DMH for completion of a Level II PASRR.” (Exhibit 1). The notice goes on to state that “[w]hile nursing facility records indicate that you have a diagnosis of mental illness..., records further indicate that the facility did not make a referral to...DMH for a Level II PASRR.” (Exhibit 1). The regulations require a finding of *major mental illness*, or serious mental illness as noted on the Level I PASRR. (130 CMR 456.410(B), exhibit 3, p. 5). The MassHealth notice appears to state that simply a diagnosis of mental illness, which in the appellant’s case is a mood disorder, requires a referral to DMH for a Level II PASRR is required. That is not the case as major or serious mental illness screen is required.

MassHealth argues that the nursing facility should have indicated SMI on the October 4, 2021 Level I PASRR based on the appellant’s daughter’s comment to a physician that the appellant had a psych admission in [REDACTED]. The appellant’s daughter’s comment appears in a section entitled “Neurogenic bladder status post chronic suprapubic tube”, more than halfway through the 42 page hospital documentation sent to the nursing facility. The appellant’s daughter reported some possible acute changes from baseline, and noted a more persistent mood/behavior lability “which is something he underwent geri/psych hospitalization for in February.” The same note goes on to speak to the appellant’s orientations, urine cultures, chest x-ray, and treatments. The hospital did not report that the appellant had an inpatient psychiatric hospitalizations in the 2 year period prior to nursing facility admission. I do not believe that the appellant’s daughter’s comment about a hospitalization in February, without even indicating the year, is medical evidence that the appellant had an inpatient psychiatric hospitalization. The appellant’s admitting hospital did not indicate that the appellant had an inpatient psychiatric hospitalization in the previous 2 year period. In fact, MassHealth’s PASRR unit determined that the appellant’s [REDACTED] admission was for medical reasons, and not an inpatient psychiatric hospitalization.

Further, a Level II referral and screening is not required when 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. (130 CMR 456.410(C)(1)). The discharge physician noted in the hospital documentation that the appellant was being discharged for short term rehabilitation. On the Level I PASRR dated November 5, 2021, the nursing facility indicated that the appellant’s admission was anticipated to be less than 30 days. No SC-1 or screening was submitted to support this however, if the appellant’s expected length of stay at the time of his nursing facility admission was less than 30 days, then a Level II screening by DMH was not required, even if it was determined that the appellant had SMI. Specifically, the regulation states that a Level II referral and screening is not required when 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. (130 CMR 456.410(C)(1)).

For the above reasons, I determine that MassHealth was incorrect when it denied the nursing facility’s request for payment for services provided for the period October 18, 2021 to November 4, 2021. The appeal is approved.

Order for MassHealth

Rescind the notice dated March 25, 2022 and approve the nursing facility's request for payment for nursing facility services beginning October 18, 2021.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

Patricia Mullen
Hearing Officer
Board of Hearings

cc: Appellant Rep.: [REDACTED]

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