

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



**Appeal Decision:** Denied

**Appeal Number:** 2208817

**Decision Date:** 1/19/2023

**Hearing Date:** 01/10/2023

**Hearing Officer:** Radha Tilva

**Appearance for Appellant:**




**Appearance for MassHealth:**

Jackie Fratus, Program Coordinator  
Alicia Scahill, MassHealth Legal  
Rachel Rosenberg, MassHealth Legal  
Meera Ramamoorthy, Deputy Director



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

# APPEAL DECISION

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	LTC – PASRR screening
<b>Decision Date:</b>	1/19/2023	<b>Hearing Date:</b>	01/10/2023
<b>MassHealth's Rep.:</b>	Ms. Ramamoorthy, Ms. Fratus, Ms. Rosenberg, Ms. Scahill	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Chelsea MassHealth Enrollment Center	<b>Aid Pending:</b>	No



## Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

## Jurisdiction

Through a notice dated November 8, 2022, the MassHealth Office of Long-term Services and Supports issued a Denial of a Request for Authorization for MassHealth Payment of Nursing Facility Services to the appellant and to the nursing facility where he resides, Brighton House Rehabilitation and Nursing Center (“nursing facility”), 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 (Exhibit 1). The appellant, through an appeal representative from the nursing facility, filed this appeal in a timely manner on November 29, 2022 (see 130 CMR 610.015(B) and Exhibit 2). Challenging the results of a member’s PASRR determination is valid grounds for appeal (see 130 CMR 610.032(E)).

## Action Taken by MassHealth

MassHealth notified the appellant and the nursing facility where he resides that it would deny payment of nursing facility services for the period of  2022 to  2022 because the nursing facility did not make a timely referral for a level II PASRR screening of the appellant.

## Issue

The appeal issue is whether MassHealth was correct in denying payment of nursing facility services on behalf of the appellant because the facility failed to make a timely referral for a level II PASRR screening of the appellant.

## Summary of Evidence

Four representatives from the EHS Office of Long-Term Services and Supports appeared on behalf of MassHealth and testified telephonically to the following: appellant was admitted to the nursing facility on [REDACTED], 2022 from a hospital. 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. If a level I PASRR evaluation shows that the individual does not have a serious mental illness, the inquiry ends there. If a level I PASRR evaluation reveals that the individual has a serious mental illness, a level II PASRR is completed by the University of Massachusetts Medical School PASRR unit.<sup>1</sup> In appellant's case the level I PASRR evaluation was completed on [REDACTED] 2022, prior to admission by the facility, and was positive for serious mental illness with a 30-day exempted hospital discharge. The level I PASRR exempted hospital discharge expired on [REDACTED] 2022.

Under MassHealth's Nursing Facility Bulletin 169 (dated October 2021), Section IV(1)(A), prior to the expiration of the exempted hospital discharge, the nursing facility is required to make a referral for a full level II evaluation to the DMH PASRR Unit by the 25<sup>th</sup> calendar day after admission, or in this case [REDACTED] 2022. The nursing facility did not submit the required referral to DMH for a level II PASRR evaluation until [REDACTED], 2022. After they received the referral, DMH PASRR completed the level II evaluation and issued a determination notice on October 3, 2022 which found that appellant did meet the criteria for a serious mental illness and remains at the facility.

The nursing facility is non-compliant with PASRR requirements for the period of [REDACTED], 2022 through [REDACTED] 2022 for failure to submit a PASRR level II referral by the due date of April 30, 2022 or the expiration of the exempted hospital discharge date of [REDACTED] 2022. The facility is only seeking payment commencing [REDACTED] 2022, so the relevant time-period of noncompliance is [REDACTED] 2022 through [REDACTED] 2022. Due to their noncompliance the facility is not eligible to bill the MassHealth program for any portion of the non-compliant time-period pursuant to 130 CMR 456.408(A).

Additionally, the facility is not permitted to bill appellant for reimbursement of services for this time period. The payment in full rule under 130 CMR 450.203 states that MassHealth providers must

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<sup>1</sup> On the level I PASRR, the discharging hospital checked a box stating the applicant was screened positive for SMI, however, a level II PASRR evaluation for SMI is not indicated at this time due to 30 day exempted hospital discharge (EHD) (Exhibit 7).

accept as payment in full the amounts paid by MassHealth in accordance with the applicable regulations. Based on this, providers are prohibited from asking for payment from members when payment would have been available from MassHealth, but for their noncompliance. Further, appellant cannot be transferred or discharged from the facility based on the determination of the facility's PASRR non-compliance as none of the permissible reasons for transfer or discharge under 130 CMR 456.701(A) have been met.

The appellant was represented at hearing by two social workers, the administrator, and another representative from the nursing facility. The nursing home administrator testified a social worker did reach out by phone to DMH on [REDACTED] 2022 to tell them that appellant was staying past his 30 days. The administrator did acknowledge that this was not proper procedure. The social worker left the facility right after the time period and no one at the nursing facility was aware that the level II screening was due. When the facility became aware that the screening was overdue on [REDACTED], 2022 they immediately sent over the screening form the next day. The nursing facility acknowledged that the form was not submitted in a timely manner, but was looking for the hearing officer/MassHealth to make an exception and allow coverage for the lapsed period.

## Findings of Fact

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

1. Appellant was admitted to the nursing facility on [REDACTED] 2022 from a hospital.
2. 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.
3. The level I PASRR evaluation was completed on [REDACTED] 2022, prior to admission by the facility, and was positive for serious mental illness with a 30-day exempted hospital discharge.
4. The level I PASRR exempted hospital discharge expired on [REDACTED] 2022.
5. If a level I PASRR evaluation reveals that the individual has a serious mental illness the nursing facility is required to make a referral for a full level II evaluation to the DMH PASRR Unit by the 25<sup>th</sup> calendar day after admission.
6. The nursing facility contacted DMH by phone on [REDACTED] 2022 to tell them that appellant was staying past his 30 days.
7. The social worker who made contact with DMH left the facility.
8. On [REDACTED] 2022 the facility realized that a referral for the level II screen was never sent to DMH which prompted them to send it the next day.

9. MassHealth determined that the facility is non-compliant with PASSR requirements for the period of April 30, 2022 through August 28, 2022 for failure to submit a PASSR level II referral.
10. The nursing facility is seeking payment from MassHealth from June 1, 2022.

## 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)).

MassHealth regulation, 130 CMR 456.408, "Conditions for Payment," states in relevant part:

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

- (1) The MassHealth agency or its agent has determined that individuals aged 22 and older meet the nursing-facility services requirements of 130 CMR 456.409 or that the medical review team coordinated by the Department of Public Health has determined that individuals aged 21 or younger meet the criteria of 130 CMR 519.006(A)(4).
- (2) The MassHealth agency or its agent has determined that community care is either not available or not appropriate to meet the individual's needs.
- (3) The requirements for preadmission screening at 130 CMR 456.410 have been met.**

(Emphasis added)

MassHealth regulation 130 CMR 456.410, in turn, 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 of 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.

(Emphasis added)

Here, the discharging acute care hospital conducted a level I PASRR screen of the appellant prior to his admission to the nursing facility. The level I PASRR was positive for serious mental illness. On the level I PASRR, the discharging hospital checked a box stating the applicant was screened positive for SMI, however, a level II PASRR evaluation for SMI is not indicated at this time due to 30 day exempted hospital discharge (EHD). While this does preclude the nursing facility from having to submit a level II PASRR screen to DMH immediately, this does not mean that the nursing facility is indefinitely exempt from having to request the referral.

In connection with the MassHealth PASRR regulations, MassHealth has enacted subregulatory guidance via Nursing Facility Bulletin 169 (October, 2021), which is a publicly available document viewable on MassHealth's website. This bulletin contains standards, policies, and procedures to be followed by a nursing facility when conducting PASRR screens, in addition to those requirements imposed by the regulations. The nursing facility bulletin outlines that when an individual is admitted under the EHD, when the nursing facility determines that the individual's stay is likely to exceed the EHD's permitted duration, the nursing facility must submit an updated PASRR Level I Screening Form and, if referring the DMH PASRR unit, must also submit a completed DMH-approved cover sheet to make a referral for a full level II evaluation to the appropriate PASRR authority. For an EHD, the bulletin details, that referral has to be made by the 25<sup>th</sup> calendar day after admission. It is undisputed by the nursing facility that a level II PASRR was due to DMH by May 5, 2022 and that the facility failed to provide the appropriate notice until August 29, 2022, months after the due date.

Pursuant to the Fair Hearing Rules at 130 CMR 610.082, "Basis of Fair Hearing Decisions," a hearing officer's decision must be rendered in accordance with the law; and specifically, at 130 CMR 610.082(C)(3):

The hearing officer must give due consideration to Policy Memoranda and any other MassHealth agency representations and materials containing legal rules, standards, policies, procedures, or interpretations as a source of guidance in applying a law or regulation.

Under these circumstances, MassHealth was correct pursuant to 130 CMR 456.408(A)(3) to deny payment to the nursing facility for services it provided to the appellant from [REDACTED] 2022 to [REDACTED], 2022.

The appellant may not be billed personally for these services.

For these reasons, the appeal is DENIED.

## Order for MassHealth

None.

## Notification of Your Right to Appeal to Court

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

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Radha Tilva  
Hearing Officer  
Board of Hearings

cc:

[REDACTED]

Respondent Representative: Jacqueline Fratus, EOHHS-OLTSS, Program Coordinator of Institutional Programs, One Ashburton Place, 5<sup>th</sup> Floor, Boston, MA 02108

