

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:

[REDACTED]

Appeal Decision:	Denied	Appeal Number:	2208922
Decision Date:	5/11/2023	Hearing Date:	03/01/2023
Hearing Officer:	Rebecca Brochstein	Record Closed:	03/22/2023

Appearances for Appellant:

[REDACTED]

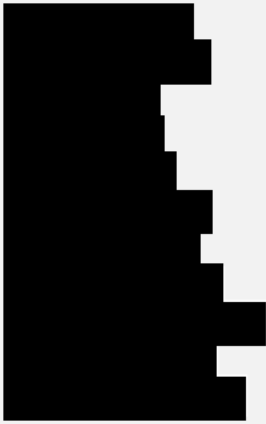
Appearances for DDS:

Diane Pixley, DDS Director of PASRR
Mike Bradley, DDS NF Specialist
Ashley Manolakis, Esq.
Tim Cahill, DDS Asst. Commissioner for Ops.



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

APPEAL DECISION

Appeal Decision:	Denied	Issue:	PASRR Screening
Decision Date:	5/11/2023	Hearing Date:	03/01/2023
DDS Reps.:	Diane Pixley Mike Bradley Ashley Manolakis Tim Cahill	Appellant Reps.:	
Hearing Location:	Board of Hearings (Remote)		

Authority

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

Jurisdiction

By a notice dated November 29, 2022, the Department of Developmental Services (DDS) notified the appellant that it had conducted a Level II Pre-Admission Screening and Resident Review (PASRR) and determined that she did not require nursing facility level of services (Exhibit 1). The appellant filed a timely appeal on December 2, 2022 (Exhibit 2). On that date, the Board of Hearings dismissed the appeal for failure to provide a copy of the notice; the Board later received the notice and vacated the dismissal (Exhibit 3). Hearings were scheduled for January 9, 2023, and then January 31, 2023, but each was rescheduled at the appellant's request (Exhibits 4-6). On March 1, 2023, the hearing was conducted via videoconference (Exhibit 7). After hearing, the record was held open for DDS to submit a legal brief (Exhibit 9). A determination regarding eligibility for nursing facility services is a valid basis for appeal (130 CMR 610.032).

Action Taken by DDS

The Department of Developmental Services (DDS) conducted a Level II Pre-Admission Screening and Resident Review (PASRR) evaluation and determined that the appellant does not require nursing facility services.

Issue

The issue is whether there is any error in DDS's Level II PASRR determination.

Summary of Evidence

The Department of Developmental Services (DDS) was represented at the hearing by its Director of PASRR & Nursing Facility Operations, the Southeast Region's Nursing Facility Specialist, the Assistant Commissioner for Operations, and an Assistant General Counsel. The attorney stated that the appellant, who is in her early 60s, has an intellectual disability and has been a DDS client since 1994. She previously resided in a group home in the community, and went to a nursing facility for rehab services after a toe amputation. On November 29, 2022, as part of a Pre-Admission Screening and Resident Review (PASRR), DDS determined that the appellant no longer requires nursing home level of care.

The DDS Director of PASRR & Nursing Facility Operations offered the following background on the PASRR screening process: Federal law mandates assessments of individuals in nursing facilities, both at the time of admission and at certain intervals thereafter, to determine if they require nursing home care as well as specialized services for certain disabilities. The Level I screening, which is completed by the nursing facility, identifies individuals with a primary diagnosis of serious mental illness, intellectual disability, or developmental disability. If the facility finds the individual has one of these conditions, a state agency (such as DDS) completes the Level II screening to determine if the individual requires nursing facility level services and, if so, whether specialized services are needed.

The DDS Director of PASRR & Nursing Facility Operations testified that the Level II screening tool includes several sections and is scored numerically. She explained that the screening is intended to capture a snapshot view of the individual, independent of prior PASRR screens. To qualify for nursing facility services, the individual must have a score of at least 11 in the medical section or at least one in the skilled nursing section; if the score does not reach either of these thresholds, the agency determines that the member does not need nursing facility services. In these cases, the individual is provided an additional 30 days of care while preparations are made for a safe and orderly discharge to the community.

The DDS Southeast Region Nursing Facility Specialist testified that he completed the Level II PASRR screening for the appellant, who has a diagnosed intellectual disability. He indicated that he has a great deal of experience completing PASRR screens, estimating that he has done an average of 160 per year for the past 21 years. He added that the appellant has had several nursing

home admissions over the years and that he has done all seven of her PASRR screens. He testified that this was a short-term admission for treatment of cellulitis and a toe amputation. The first PASSR was completed at the 30-day mark, at which time the appellant was approved for an additional 90 days in the facility. At end of that period, on November 29, 2022, DDS completed the current screening and determined that she no longer met the criteria for nursing facility care. The DDS screener testified that the Level II screen looks specifically at Sections E and F of the PASRR tool, which consider the individual's medical and skilled needs, respectively. He stated that to complete the assessment, he consulted the appellant's physician orders and the client record, and also interviewed the appellant and the unit head at the facility. He testified that in Section E, the appellant received the following scores:

Oxygen: 0 (no need)

Diabetes: 1 (diet controlled)

Skin: 2 (skin breakdown in last 90 days)

Seizures: 1 (controlled with medication, no seizures in past 30 days)

Seizures: 0 (does not interfere with daily routine)

Continence – bowel: 0 (continent)

Continence – bladder: 0 (continent)

Nutrition: 2 (nutrition status places health at risk and requires modifications to prevent deterioration of health status)¹

Swallowing: 0 (no aspiration precautions)

Hospital admissions: 0 (no admissions in past 90 days)

(Exhibit 1 at 9-10)

In Section F, the screener determined that the appellant required none of the identified skilled nursing interventions and therefore gave her a score of zero. See Exhibit 1 at 11. He noted that the appellant was previously living in a DDS residence with nursing support, and that the proposed discharge location is the same setting.

The appellant appeared at the hearing with her aunt, an attorney, and several representatives from the nursing facility. The attorney argued that DDS did not properly complete the Level II

¹ The DDS screener indicated that he inadvertently left the question on nutrition blank, but that he gave the appellant a score of two for this category and accounted for that figure in the total. See Exhibit 1 at 10.

evaluation because the screener failed to record a score for the question on nutrition in Section E. In addition, the attorney pointed out that the screener did not check “None” in the part of Section F that asks if the individual has certain “other” skilled nursing needs.² On this basis, the attorney argued, the PASRR Level II screen is invalid and must be redone. He noted that it has been more than 90 days since the screening, and that the appellant has had some clinical changes to her condition that could impact the outcome.³

In response, the DDS attorney argued that even if the appellant had been given the highest possible score on the nutrition question (six points), her total score in Section E still would not have reached the threshold score of eleven. She argued that the screening was done in accordance with the law and the omissions that the appellant identifies are nothing more than clerical errors. She emphasized that the screener appeared at the hearing to offer testimony as to the actual scores. In addition, the attorney denied that recent changes to the appellant’s clinical condition would impact the PASRR screening at issue, as the evaluation only considers the individual’s condition at that moment in time.

The record was held open for the DDS attorney to file a post-hearing brief; the appellant’s attorney declined the opportunity to file a brief of his own. In her brief, the DDS attorney offered a detailed overview of the history and administration of the PASRR program, and reiterated the arguments she offered at hearing. See Exhibit 9.

Findings of Fact

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

1. The appellant, who is in her early 60s, was admitted to a nursing facility for rehab services.
2. The appellant has a diagnosed intellectual disability and has been a client of the Department of Developmental Services since 1994.
3. On November 29, 2022, DDS completed a Level II Pre-Admission Screening and Resident Review (PASRR) to evaluate whether she still requires nursing facility services, and, if so, if specialized services are needed.
4. To qualify for nursing facility services, an individual must score at least 11 in the medical section of the screening (Section E), or at least one in the skilled nursing section (Section F).
5. The DDS screener consulted the physician orders and the client record, and interviewed the

² This section displayed a list of skilled nursing needs with adjacent check-boxes, in addition to a box labeled “None.” The screener did not check off any of the nursing needs – indicating that none was applicable to the appellant – but did not also check the box marked “None.”

³ The appellant testified briefly that she suffers from incontinence every day and occasionally at night.

appellant and the unit head of the facility.

6. In Section E, the appellant had a total score of six.
7. In Section F, the appellant had a score of zero.
8. On November 29, 2022, DDS notified the appellant that based on her Level II PASRR evaluation, it had determined that nursing facility level of service is not needed.
9. On December 2, 2022, the appellant filed a timely appeal with the Board of Hearings.

Analysis and Conclusions of Law

Under 130 CMR 456.408(A), MassHealth 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.

The requirements for preadmission screening are set forth at 130 CMR 456.410. That regulation provides as follows:

- (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.

At issue in this case is DDS's determination, as the result of a Level II PASRR screening, that the appellant no longer requires nursing facility services. The parties agree that to qualify for nursing facility services, an individual must have a score of at least 11 on Section E, the medical section of the evaluation tool, or a score of at least one on Section F, which looks at skilled nursing needs. The DDS PASRR screener scored the appellant at six and zero on these sections, respectively—plainly below the threshold scores needed to qualify. On this basis, DDS properly determined that the appellant no longer qualifies for nursing home services.

The appellant's attorney contends that the Level II screening should nevertheless be deemed invalid and redone because of certain errors the screener made in completing the worksheet. Specifically, he points to the screener's failure to (1) record his score of two in the category of nutrition in Section E; and, (2) in Section F, to check the box for "None" to indicate the individual has no "other" skilled nursing needs.⁴ These are exceedingly minor oversights that have no bearing on the substance of the Level II determination. Notably, the appellant's representatives have not

⁴ As noted earlier, the screener did not check off any of the skilled nursing tasks that were listed, which itself signified that none was applicable.

challenged the screener's substantive findings, even in the areas where they allege procedural error.⁵ To address any uncertainty, moreover, DDS made the screener available to testify and confirm his actual scoring in these categories. The appellant has not persuasively demonstrated that she has been prejudiced by these slight errors, or that the Level II screening was otherwise not conducted in accordance with the law.

For these reasons, this appeal is denied.

Order for DDS

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.

Rebecca Brochstein
Hearing Officer
Board of Hearings

cc: Diane Pixley
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⁵ The appellant testified that she has recurring issues with incontinence, but did not offer any supporting records or other corroborating evidence. Further, even if the screener had given the maximum number of points for both bladder and bowel incontinence (two points each), the total score for Section E would still not reach the threshold of 11.