

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:

[REDACTED]

Appeal Decision:	Denied	Appeal Number:	2409026
Decision Date:	09/27/2024	Hearing Date:	September 03, 2024
Hearing Officer:	Brook Padgett		

Appellant Representative:

[REDACTED]

MassHealth Representatives:

Jacqueline Fratus, OLTSS
Rachel Rosenberg, Assistant General Counsel



***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:	Nursing Facility PASRR 130 CMR 456.408
Decision Date:	09/27/2024	Hearing Date:	September 03, 2024
MassHealth Reps.:	J. Fratus, R. Rosenberg	Appellant Rep.:	[REDACTED]
Hearing Location:	Facility (Telephonic)	Aid Pending:	No

Authority

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

Jurisdiction

The appellant received a notice dated May 17, 2024, stating: The facility's request for authorization for MassHealth payment of nursing facility services is denied because the facility didn't make a referral to the Department of Developmental Services (DSS) or the Department of Mental Health (DMH) for a Level II Preadmission Screening/Resident Review (PASRR) evaluation and determination. 130 CMR 456.410; 130 CMR 456.408. (Exhibit 1). The appellant filed this appeal timely on June 07, 2024. (130 CMR 610.015(B); Exhibit 2). MassHealth's failure to authorize payment is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the nursing facility payment.

Issue

Did MassHealth correctly deny the appellant coverage of nursing facility services because of the failure to submit a PASRR prescreening evaluation and determination in a timely manner?

Summary of Evidence

The MassHealth representative testified the appellant was admitted to [REDACTED] ([REDACTED] /facility) from [REDACTED] on [REDACTED], 2023, requesting nursing services. On September 01, 2023, prior to admission by [REDACTED], a PASRR Level I Screening was submitted by the facility indicating the appellant was positive for suspected Serious Mental Illness (SMI). The Level I Screening additionally indicated the appellant met the criteria for a 30-day Categorical Determination (CD) under Section E, which allowed [REDACTED] to admit the appellant for a maximum of 30 days. The representative stated the Level I Screening form states "If the nursing facility determines that the resident's stay will exceed the 30-day period, the nursing facility must complete Section G of this form and submit the Level I form to DMH/Designee by no later than the 25th calendar day after admission."

MassHealth argues [REDACTED] was required to submit an updated Level I Screening form to the DMH/PASRR unit no later than September 29, 2023 to refer the appellant for a full Level II Evaluation prior to the expiration of his CD. [REDACTED] did not submit the required updated Level I Screening to DMH/PASSR Unit for a full Level II Evaluation until March 1, 2024, which was 154 days past the due date. As a result MassHealth found [REDACTED] non-compliant with PASRR requirements for the period of September 29, 2023, through February 29, 2024 and therefore the facility is ineligible for payment for any portion of the non-compliant period (130 CMR 456.408(A)) (*See also* Nursing Facility Bulletin 169 Section (V)(5)(B)). MassHealth submitted into evidence Nursing Facility Bulletin 169 (Exhibit 4); Level I Referral dated September 01, 2023 (Exhibit 5); DMH Level II Referral Determination Notice dated September 02, 2023 with a Date of Determination Expiration of November 02, 2023 (Exhibit 6); and Level I Referral dated March 01, 2024 (Exhibit 7).

The appellant's representatives testified that [REDACTED] faxed to the DMH/PASSR unit Section G of the Level I form in September, October and November 2023. The representative stated the facility was unaware MassHealth did not receive the PASRR until they were notified in March 2024. [REDACTED] argued at the time of the gap in coverage MassHealth was moving to the portal and there were problems with the roll out and uploading information. The representative stated although MassHealth did not receive the form timely the appellant met the medical criteria for coverage and the facility provided care for the appellant during the period of time in question (September 29, 2023, through February 29, 2024).

Although the facility maintained they sent the requested information to MassHealth within the 30 day time period they testified they could not produce any documentation to verify the information was faxed to DMH/PASRR in September, October or November 2023.

MassHealth responded that they could find no verification of a fax or an attempted fax from the facility during September, October or November 2023.

Findings of Fact

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

1. On September 01, 2023, prior to admission by [REDACTED], a PASRR Level I Screening was completed and submitted to DMH/PASSR unit indicating the appellant was positive for suspected SMI. (Exhibit 5).
2. The Level I Screening dated September 01, 2023, submitted to DMH PASSR unit indicated the appellant met the criteria for a 30-day Categorical Determination under Section E, allowing [REDACTED] to admit the appellant for a maximum of 30 days. (Exhibit 5).
3. On September 04, 2023, the appellant was admitted to the nursing facility following a transfer from [REDACTED]. (Exhibit 4).
4. If the nursing facility determines that a resident's stay will exceed the 30-day period, the nursing facility must complete Section G of the Level I form and submit to DMH/Designee by no later than the 25th calendar day after admission. (Exhibit 4).
5. On March 01, 2024, [REDACTED] submitted the required updated Level I Screening on the appellant's behalf to DMH/PASSR Unit for a full Level II Evaluation. (Exhibit 7).

Analysis and Conclusions of Law

The appellant was admitted to [REDACTED] on [REDACTED], 2023 after submitting a PASRR Level I screening to DMH/PASSR unit on September 01, 2024. The Level I Screening indicated the appellant met the criteria under Section E which allowed the appellant to be admitted to [REDACTED] for a maximum of 30 days. The Level I Screening form states that if the nursing facility determines that the resident's stay will exceed the 30-day period, the nursing facility must complete Section G of the Level I form and submit the form to DMH/Designee no later than the 25th calendar day after admission. Based on this regulation [REDACTED] was required to submit an updated Level I Screening form on behalf of the appellant to the PASRR unit no later than September 29, 2023 if they intended to request a full Level II Evaluation.

Although [REDACTED] argued they faxed the required information to DMH/PASRR on a number of occasions beginning in September 2023, there is no evidence substantiating that claim. Based on the evidence presented [REDACTED] did not submit the required updated Level I Screening form to the PASRR unit until March 01, 2024.

The record demonstrates that [REDACTED] was non-compliant with PASRR requirements for

the period September 29, 2023, through February 29, 2024, as they failed to make timely referral for a Level II evaluation as required by the regulations pursuant to 130 CMR 456.408(A)(3)¹ and Nursing Facility Bulletin 169.²

MassHealth has correctly deemed [REDACTED] ineligible to bill MassHealth for any portion of the non-compliant period and this appeal is DENIED.

Order for MassHealth

None.

¹ 130 CMR 456.408: Conditions for Payment (A) The MassHealth agency pays for nursing facility services if all of the following conditions are met.(1) The MassHealth agency or its designee has determined that individuals 22 years of age or older meet the nursing facility services requirements of 130 CMR 456.409 or the multi-disciplinary medical review team coordinated by the Department of Public Health has determined that individuals 21 years of age or younger meet the criteria of 130 CMR 519.006(A): *Eligibility Requirements*. (2) MassHealth or its designee has determined that community care is either not available or not appropriate to meet the individual's needs. **(3) The requirements for the pre-admission screening and resident review (PASRR) process in 130 CMR 456.410 and as required by sub-regulatory guidance have been met. Failure to follow applicable PASRR rules will result in denial of MassHealth payments to the nursing facility for MassHealth members during the period of noncompliance pursuant to 42 CFR 483.122. (Emphasis added).**

² Nursing Facility Bulletin 169, Section V(5), MassHealth may assess overpayments or sanctions, pursuant to 130 CMR 450.235 through 130 CMR 450.240 for any period in which a facility fails to comply with all applicable PASRR rules and requirements, including the requirements of this bulletin. Situations that may result in overpayment or sanction action include, but are not limited to, the following instances: **(B) A facility fails to make a timely referral for a Level II Evaluation or resident review. (Emphasis added).**

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.

Brook Padgett
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Jacqueline Fratus, Manager of Institutional Programs, MassHealth - OLTSS, One Ashburton Place, 5th Floor, Boston, MA 02108

[REDACTED]