

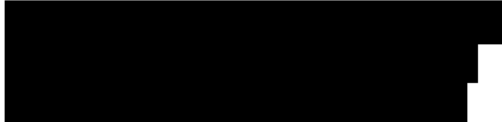
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2409741
Decision Date:	10/7/2024	Hearing Date:	July 30, 2024
Hearing Officer:	Brook Padgett	Record Open:	August 30, 2024

Appellant Representative:




MassHealth Representatives:

Jacqueline Fratus, OLTSS
Rachel Rosenberg, Esq,
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:	10/7/2024	Hearing Date:	July 30, 2024
MassHealth Reps.:	J. Fratus, R. Rosenberg, Esq.	Appellant Rep.:	
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 June 12, 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 20, 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 Level II prescreening evaluation and determination in a timely manner?

Summary of Evidence

MassHealth testified that the appellant was admitted to [REDACTED] 2023, for nursing services. On [REDACTED] 2024, prior to admission, a PASRR Level I (Level I) screening was completed by the hospital which screened the appellant as positive for suspected Serious Mental Illness (SMI) "substance abuse disorder treatment." At the time of the screening the appellant met all the criteria for a 30-day Exempted Hospital Discharge (EHD) so no Level II evaluation was required prior to admission. This meant the nursing facility could admit the appellant for a maximum of 30 calendar days prior to any PASRR Level II Evaluation. MassHealth stated that the Level I screening form states 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 of the Level I form and submit the form to the DMH/Designee by no later than the 25th calendar day after admission." The procedure requires if the appellant's stay was to exceed 30 days, [REDACTED] had to submit an updated Level I Screening form to the DMH PASRR unit no later than [REDACTED] 2023 prior to the expiration of his EHD. MassHealth maintained that [REDACTED] did not submit the required referral to DMH PASSR unit for a full Level II evaluation until February 20, 2024, which was 97 days late. Further, the representative stated the nursing facility Level I screening form submitted on February 20, 2024, was not completed correctly as the form indicated the appellant was negative for suspected SMI. MassHealth argued the Level I Screening form should have been positive for suspicion of SMI and submitted by [REDACTED] 2023. [REDACTED] did not submit the required corrected Level I screening form to the DMH PASRR unit April 10, 2024.

MassHealth explained that under 130 CMR 456.408: Conditions for Payment (A) MassHealth pays for nursing facility services only if 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. Additionally, under 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 the bulletin. Situations that may result in overpayment or sanction action include but are not limited to when: (A) A nursing facility admits an individual whose PASRR Level I Screening Form is incomplete, improperly completed, or unsigned and (B) A facility fails to make a timely referral for a Level II Evaluation or resident review.

MassHealth submitted into evidence Request for Services October 20, 2023 (Exhibit 4); PASRR Referral Level I February 20, 2024 (Exhibit 5); PASRR Referral Level I April 10, 2024 (Exhibit 6); DMH PASSR Level II Denial April 17, 2024 (Exhibit 7); Nursing Facility Bulletin 169 (Exhibit 8);

Hospital CIWA protocol – Medical Notes (Exhibit 9).

██████████ consultant testified that there were many issues with the PASRR screenings submissions when the state transitioned from paper submissions to the portal. The representative stated ██████████ understands it was late with their submission of the proper paperwork and mistakes were made such as indicating the appellant was negative for suspected SMI. The representative stated when the appellant entered the facility he was unable to walk or talk and currently he is sober, walking and talking and looking for an apartment. The representative argued it is evident the appellant has made great progress in his recovery due to the services he received at ██████████ and it would be unfair for the facility to be out of a substantial amount of money due to a paperwork error. The representative maintains that this error is particularly upsetting as it occurred during a time when the facility was being asked by MassHealth to switch from paper submissions to a new online portal system which they were just learning. The representative contends that to penalize the facility for 4-5 months coverage because of a paperwork mistake by a social worker seems unreasonable and there are now procedures in place to make sure this type of error will never happen again.

At the facility's request the record remained open until August 30, 2024, to allow for the submission of additional documentation regarding the timeliness of the PASRR submission. (Exhibit 10).

The appellant submitted within the required time limits verification of the facility Level I Initial Referral dated November 18, 2023. (Exhibit 11).

After a review of the facility's submission MassHealth responded that the DMH PASRR unit was able to access the appellant's Level I submission history and confirm that the initial Level I was created on November 18, 2023; however, MassHealth contends the form remained on the PASRR portal in the Nursing Facilities draft list and was not submitted to MassHealth until February 20, 2024. MassHealth continued to maintain the Level I screening was not submitted within the required time limits and therefore the submission is non-compliant with PASRR time requirements. (Exhibit 12).

Findings of Fact

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

1. The appellant was admitted to ██████████ from ██████████ on ██████████ 2023. (Exhibit 4).
2. No Level II evaluation was required prior to admission. (Exhibit 8 and Testimony).
3. The appellant met all the criteria for a 30-day EHD. (Exhibit 8 and Testimony).

4. The appellant's EHD expired on [REDACTED] 2023, the 25th day after admission. (Exhibit 8 and Testimony).
5. The DMH PASRR Level I submission history indicates Bourne Manor's updated Section G of the Level I form creating a Level II evaluation request on November 18, 2023. (Exhibit 12).
6. The updated PASSR Level I request form remained on the PASRR portal Nursing Facilities draft list and was not submitted until February 20, 2024. (Exhibit 12).
7. The February 20, 2024, updated PASRR Level I screening form indicated the appellant was negative for suspected SMI. (Exhibit 5).
8. On April 10, 2024, Bourne Manor submitted a corrected updated PASRR Level I screening form to the DMH PASRR unit indicating the appellant was positive for SMI. (Exhibit 6).

Analysis and Conclusions of Law

The Level I Screening form states that "[i]f 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."

On [REDACTED] 2023, a PASRR Level I screening was completed prior to admission by [REDACTED] indicating the appellant was positive for suspected SMI. 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 prior to any PASRR Level II evaluation. Since the appellant was admitted on [REDACTED] 2023 [REDACTED] therefore was required to submit an updated Level I Screening form to the PASRR unit no later than November 14, 2023 if they intended to refer the appellant for a full Level II Evaluation. The evidence indicates [REDACTED] did not submit the required updated Level I Screening to DMH/PASSR Unit for a full Level II Evaluation until April 10, 2024.

[REDACTED] acknowledged the Level I submission dated February 20, 2024, was delayed as well as incorrectly filled out when it indicated the appellant was negative for suspected SMI, but they argue this was only due to an error by a social worker and the unfamiliarity with the new portal system. While [REDACTED] maintains this clerical error should not be the reason to deny the facility months of payments for myriad of services the appellant received which have resulted in his tremendous progress; this Hearing Officer does not have the equitable authority to grant the remedy the facility is seeking. The regulations are unambiguous and do not provide an exception for such errors.

The record demonstrates that Bourne Manor was non-compliant with PASRR requirements for

the period of November 14, 2023, through April 09, 2024, as the facility failed to make timely referral for a Level II evaluation as required. MassHealth has correctly deemed the facility ineligible to bill MassHealth for any portion of the non-compliant period pursuant to 130 CMR 456.408(A)(3)¹ and Nursing Facility Bulletin 169.²

This 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.

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

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) The MassHealth agency 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).**

