

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



**Appeal Decision:** Denied

**Appeal Number:** 2410017

**Decision Date:** 10/21/2024

**Hearing Date:** 08/29/24

**Hearing Officer:** Stanley Kallianidis

**Appellant Representatives:**



**MassHealth Representative:**

Jacqueline Fratus, PASSR



*Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Office of Medicaid  
Board of Hearings  
100 Hancock Street, 6<sup>th</sup> Floor  
Quincy, MA 02171*

## APPEAL DECISION

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	PASSAR Determination
<b>Decision Date:</b>	10/21/2024	<b>Hearing Date:</b>	08/29/24
<b>MassHealth Rep.:</b>	Jacqueline Fratus, PASSR	<b>Appellant Representatives:</b>	[REDACTED]

### 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 May 20, 2024, the Preadmission Screening and Resident Review (PASSR) Unit for the Department of Mental Health (DMH) determined that the appellant did not meet the PASSR requirements for a serious mental illness (Exhibit 1). The appellant filed her appeal on June 26, 2024 (Exhibit 2). A PASSR determination is grounds for appeal (130 CMR 610.032).

On July 8, 2024, the Board of Hearings vacated a prior dismissal of the appeal (Exhibit 2). A hearing notice was sent to the parties on July 30, 2024 (Exhibit 3).

### Action Taken by MassHealth

The PASSR Unit denied the appellant's nursing facility payment for the period November 13, 2023-May 9, 2024 due to a failure to submit an updated Level 1 PASSR screening and a timely Level II PASSR referral.

### Issue

Pursuant to 130 CMR 456.408, 130 CMR 456.410 and Nursing Facility Bulletin 169, did the appellant's nursing facility submit an updated Level 1 PASSR screening to MassHealth no later than the 25<sup>th</sup> calendar day after admission?

## Summary of Evidence

According to the documents and narrative submitted into evidence at the hearing, the PASSR Unit denied the appellant's nursing facility payment for the period November 13, 2023-May 9, 2024 due to a failure to submit a timely Level II PASSR evaluation (Exhibit 4).

The PASSR representative testified on October 19, 2024, prior to the appellant's nursing home admission of the same date, a PASSR Level I Screening was completed and which indicated that the appellant was positive for suspected mental illness. The Level I screening also indicated that the appellant met the criteria for a 30-day exempted hospital discharge under Section C of the PASSR Level I Screening form. No Level II Screening was required if the facility thought the admission was for 30 days or less. However, if the facility thought the appellant's stay would exceed 30 days, Section G of the Level I form was due on the 25th day after admission. The completion of Section G would result in a Level II referral (Exhibit 4).

In this case, the facility was required to submit the updated Level I Screening by November 13, 2024; however, no such screening was provided to the PASSR unit until May 10, 2024, which was late by 179 days. Because the appellant's facility was non-compliant with the PASSR requirements for the period November 13, 2023-May 9, 2024, the facility is not eligible to bill MassHealth for this period in question. The regulations used in this determination were 130 CMR 456.408(A) and Nursing Facility Bulletin 169 Section (V)(5)(B) (Exhibit 4).

The PASSR representative further testified that, in accordance with 130 CMR 456.701, the facility cannot discharge or transfer the appellant due to its PASSR noncompliance.

The facility representatives agreed to all of the facts set forth by the PASSR representative. They also agreed that discharge or transfer of the appellant was not authorized. They requested that an exception to the PASSR regulations be made in this case because at the time of the appellant's PASSR evaluation, there was a turn-over in their staff, and the new staff were unaware of the PASSR requirements. The facility representatives indicated that these issues have since been rectified.

## Findings of Fact

The record shows, and I so find:

1. On October 19, 2024, prior to the appellant's nursing home admission of the same date, a PASSR Level I Screening was completed and which indicated that the appellant was positive for suspected mental illness (Exhibit 4).
2. The Level I screening also indicated that the appellant met the criteria for a 30-day exempted

hospital discharge under Section C (Exhibit 4).

3. Because the facility thought the appellant's stay would exceed 30 days, Section G of the Level I form was due by November 13, 2024, the 25th day after admission (Exhibit 4).
4. The appellant's updated Level I Screening was not provided to the PASSR unit until May 10, 2024 (Exhibit 4).
5. The PASSR Unit determined that the appellant's facility was non-compliant with the PASSR requirements for the period November 13, 2023-May 9, 2024 and was not eligible to bill MassHealth for this period (Exhibit 4).

## **Analysis and Conclusions of Law**

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 [REDACTED] of age or older meet the nursing facility services requirements of 130 CMR 456.409 or the multidisciplinary medical review team coordinated by the Department of Public Health has determined that individuals [REDACTED] 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.

456.410: The Preadmission Screening and Resident Review (PASRR) Process for Intellectual Disability (ID), Developmental Disability (DD), and/or Serious Mental Illness (SMI).

(A) Introduction. Pursuant to 42 U.S.C. 1396r(e)(7) et. seq. and 42 CFR 483.100 et. seq., each individual, regardless of payment source, seeking admission to a nursing facility must be screened before admission to a nursing facility to identify individuals who have or are suspected to have ID, DD, and/or SMI. (B) PASRR Level I Screening.

(1) A Level I screening using the EOHHS PASRR Level I Screening form (Level I Screening Form) must be completed prior to admission for all individuals seeking admission to a nursing facility, regardless of payment source.

(2) The Level I Screening Form must also be completed for resident reviews, upon a significant change in condition, and in any other circumstance required by EOHHS in sub-regulatory guidance. The completed Level I Screening Form must be submitted to the appropriate PASRR authority (DDS or its designee for ID or DD; DMH or its designee for SMI) and be kept in the resident's medical record at the facility.

Pursuant to Nursing Facility Bulletin 169 (V)(5)(B), dated October 2021, MassHealth may assess overpayments or sanctions for any period in which a facility fails to comply with all applicable PASSR rules and requirements. This includes a situation where "A facility fails to make a timely referral for a Level II evaluation or resident review."

In the instant case, on October 19, 2024, prior to the appellant's nursing home admission of the same date, a PASSR Level I Screening was completed and which indicated that the appellant was positive for suspected mental illness.

The Level I screening indicated that the appellant met the criteria for a 30-day exempted hospital discharge under Section C. However, because the facility thought the appellant's stay would exceed 30 days, Section G of the Level I form was due by November 13, 2024, the 25th day after admission.

I have found that there is no dispute over the question of whether or not the appellant's nursing facility failed to submit an updated Level I PASRR evaluation by the November 13, 2024 deadline. Likewise, there is no dispute that the required screening was not submitted until May 10, 2024.

I conclude that, due to the facility's non-compliance with the regulations cited above as well as Nursing Facility Bulletin 169, MassHealth is authorized to deny payment to the appellant's facility for this period in question.

The appeal is therefore denied.

## **Order for the 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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Stanley Kallianidis  
Hearing Officer  
Board of Hearings

cc:



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