

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2410798
Decision Date:	10/10/2024	Hearing Date:	9/10/2024
Hearing Officer:	Cynthia Kopka		

Appearances for Appellant:



Appearances for MassHealth:

Jacqueline Fratus, Senior Manager of
Institutional Programs, OLTSS
Rachel Rosenberg, Esq., Assistant General
Counsel, EOHHS



*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

Appeal Decision:	Denied	Issue:	Preadmission Screening and Resident Review (PASRR)
Decision Date:	10/10/2024	Hearing Date:	9/10/2024
MassHealth's Reps.:	Jacqueline Fratus, Rachel Rosenberg	Appellant's Reps.:	[REDACTED]
Hearing Location:	Quincy (remote)	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

By notice dated June 12, 2024, MassHealth's Office of Long Term Services and Supports (OLTSS) notified Appellant that MassHealth issued a denial of the request for authorization of payment submitted by [REDACTED] ("the facility") for Appellant's nursing facility services from March 8, 2024 through March 20, 2024 on the basis that the 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. Appellant's estate's personal representative filed this appeal in a timely manner on July 9, 2024, and designated representatives from the nursing facility to appear at hearing. Exhibit 2, 130 CMR 610.015(B). Challenging the denial of assistance is a valid basis for appeal.

Action Taken by MassHealth

MassHealth denied the nursing facility's request for authorization of payment of Appellant's nursing facility services.

Issue

The appeal issue is whether MassHealth was correct in denying payment of nursing facility services on behalf of Appellant.

Summary of Evidence

MassHealth was represented at hearing by a representative of OLTSS and a MassHealth assistant general counsel. Appellant's estate designated a social worker and business office manager from the facility to appear at hearing. Records in support of the appeal were submitted, Exhibit 4. A summary of testimony and documentary evidence follows.

Appellant admitted to the nursing facility from an assisted living facility on [REDACTED], for nursing facility services. The nursing facility did not complete a PASRR Level I screening prior to Appellant's admission. On March 21, 2024, the facility submitted the required PASRR Level I Screening to the DMH PASRR Unit. Exhibit 4. The screening indicated that Appellant was negative for suspicion for Serious Mental Illness (SMI). *Id.* at 5. The form also indicated that Appellant was negative for intellectual disability (ID) and developmental disability (DD). *Id.* at 2.

MassHealth's Nursing Facility Bulletin 169 requires a nursing facility to ensure that all individuals who are seeking admission to the facility, regardless of payor source, receive a Level I Screening before they are admitted to a nursing facility. Citing 130 CMR 456.408, the MassHealth representative testified that MassHealth will deny payment to a nursing facility for MassHealth members for failing to follow applicable PASRR rules and sub-regulatory guidance as set forth in 130 CMR 456.410. MassHealth argued that the facility was noncompliant with PASRR requirements for the period of [REDACTED], through March 20, 2024, for failing to ensure that the required PASRR Level I Screening was completed for Appellant prior to his admission to the facility. Due to their noncompliance, the facility is not eligible to bill the MassHealth program for any portion of the non-compliant period pursuant to 130 CMR 456.408(A). Additionally, citing 130 CMR 450.203 and 130 CMR 456.701(A), the facility is not permitted to bill Appellant for services for this time period or discharge/transfer him based on the determination of the facility's PASRR non-compliance.

Appellant's representatives confirmed that Appellant was admitted on [REDACTED] from the assisted living facility. The social worker testified that it was his oversight that Appellant was admitted without a PASRR screening. Once he realized the mistake, he entered a PASRR Level I screening portal. The representative wanted to mention that upon admission, Appellant immediately began receiving hospice services. Appellant's representatives asked for consideration of the fact that Appellant's PASRR was negative, so the completion of the PASRR screening did not affect the services available to Appellant. Appellant did not require any additional PASRR services or mental health services. Appellant privately paid the facility for one day because he was over the

asset limit. Appellant passed away on March 21, 2024. The facility seeks payment for March 9, 2024 through March 20, 2024.

The MassHealth representative argued that the facility is not entitled to payment for room and board because Appellant was not coded to the facility. The hospice service will be compensated but is not permitted to “pass-through” the room and board charge to the facility for the period of noncompliance.

Findings of Fact

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

1. Appellant was admitted to the facility on [REDACTED]. Exhibit 4.
2. On March 21, 2024, a social worker at the facility completed a PASRR Level I Screening for Appellant and submitted it to the DMH PASRR Unit. Exhibit 4.
3. The screening indicated that Appellant was negative for suspicion of ID, DD, and SMI. *Id.* at 2, 5.
4. On June 12, 2024, MassHealth notified Appellant that it denied the facility’s request for payment Appellant’s nursing facility services from [REDACTED]. Exhibit 1.
5. Appellant’s estate’s personal representative filed this appeal in a timely manner on July 9, 2024. Exhibit 2.

Analysis and Conclusions of Law

MassHealth’s requirements for nursing facility services are found in 130 CMR 456. “All nursing facilities participating in MassHealth must comply with the regulations governing MassHealth including, but not limited to, 130 CMR 456.000 and 130 CMR 450.000: *Administrative and Billing Regulations.*” 130 CMR 456.401.

MassHealth will pay 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.**

130 CMR 456.408(A) (emphasis added).

The PASRR process is a federally-mandated program that applies to all individuals seeking admission to, and residents of, Medicaid-certified skilled nursing facilities. 130 CMR 610.004. Its purpose is to screen such individuals for mental illness, intellectual disabilities, or developmental disabilities to ensure that their needs are properly met. *Id.* The federal requirements for PASRR are codified at 42 CFR §§ 483.100-138 and 42 U.S.C. § 1396(e)(7). MassHealth has adopted those requirements as required by 42 CFR § 483.104 within 130 CMR 456.410 and Nursing Facility Bulletin 169 (October 2021) ("Bulletin 169").

The PASRR process comprises of two stages: the Level I Screening, and the Level II Evaluation and Resident Review. 130 CMR 456.410. The purpose of the Level I Screening is to determine whether an individual set to be admitted into a Medicaid-certified nursing facility "has or is suspected of having" an intellectual disability (ID), a developmental disability (DD), or serious mental illness (SMI) as defined at 42 CFR § 483.102. "[E]ach individual, regardless of payment source, seeking admission to a nursing facility must be screened before admission to a nursing facility." 130 CMR 456.410(A). **"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." 130 CMR 456.410(B)(1) (emphasis added). If the Level I screening indicates that the individual has or is suspected of having ID, DD, or SMI, the screener must make a referral for a Level II Evaluation and Resident Review. 130 CMR 456.410(C).

Here, the undisputed facts show that the facility admitted Appellant on [REDACTED] without a Level I PASRR screening. The facility did not submit the Level I screening until March 21, 2024. The Level I screening was negative for ID, DD, and SMI, and therefore a Level II screening was not required. However, under 130 CMR 456.408(A)(3), the facility may not bill MassHealth for the period of [REDACTED], the period it was out of compliance. Although the June 12, 2024, notice listed the incorrect level of screening (i.e., level II PASRR screening) MassHealth's denial of payment to the facility for the period of noncompliance based on failure to complete the Level I screening was correct.

Accordingly, 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.

Cynthia Kopka
Hearing Officer
Board of Hearings

cc:

Respondent Representative: Jacqueline Fratus, Manager of Institutional Programs, MassHealth - OLTSS, One Ashburton Place, 5th Floor, Boston, MA 02108, Respondent Representative: Rachel Rosenberg, Assistant General Counsel, EOHHS, One Ashburton Place, 3rd Floor, Boston, MA 02108