

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



**Appeal Decision:** Denied

**Appeal Number:** 2413846

**Decision Date:** 11/1/2024

**Hearing Date:** 10/17/24

**Hearing Officer:** Stanley Kallianidis

**Appellant Representative:**



**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>	PASSR Determination
<b>Decision Date:</b>	11/1/2024	<b>Hearing Date:</b>	10/17/24
<b>MassHealth Rep.:</b>	Jacqueline Fratus, PASSR	<b>Appellant Representative:</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 August 21, 2024, the MassHealth Office of Long-Term Services and Supports determined that the appellant's nursing facility's request for payment was denied because the facility did not make a Preadmission Screening and Resident Review (PASSR) Level II referral to the Department of Developmental Services (DDS) or the Department of Mental Health (DMH) (Exhibit 1). The appellant filed his appeal on September 9, 2024 (Exhibit 2). A PASSR determination is grounds for appeal (130 CMR 610.032).

On September 16, 2024, the Board of Hearings vacated a prior dismissal of the appeal (Exhibit 3). A hearing notice was sent to the parties on September 17, 2024 (Exhibit 4).

### Action Taken by MassHealth

The PASSR Unit denied the appellant's nursing facility payment for the period January 17, 2024-May 23, 2024 due to a failure to submit a properly completed Level I PASSR Screening and Level II Evaluation.

### Issue

Pursuant to 130 CMR 456.408, 130 CMR 456.410 and Nursing Facility Bulletin 169, if the appellant's nursing facility failed to submit a properly completed Level I PASSR Screening and

Level II Evaluation to MassHealth prior to his admission date, may payment to the facility be denied?

## 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 January 17, 2024-May 23, 2024 due to a failure to submit a properly completed Level I PASSR Screening and Level II Evaluation (Exhibit 5).

The PASSR representative testified the appellant was admitted to his nursing home on [REDACTED] [REDACTED] MassHealth requires that all individuals who are seeking admission to a nursing facility receive a Level I PASSR Screening before they are admitted. In this case, however, the facility admitted the appellant without a properly completed Level I Screening and the required Level II Evaluation as there was a suspicion of serious mental illness.

A Level I Screening was first submitted to the PASSR Unit on January 17, 2024, just prior to the appellant's admission. The Level I Screening indicated that the appellant was positive for suspicion of serious mental illness. However, this Screening was not properly completed and was rejected by the PASSR portal. The same thing happened on January 22, 2024. Because these Screenings were rejected, they failed to refer the appellant for a full Level II PASSR Evaluation. Finally, on May 24, 2024, the facility properly completed a PASSR Level I Screening. This was accepted into the PASSR portal and referred the appellant for a Level II Evaluation (Exhibit 5).

The PASSR representative testified further that because the appellant's facility was non-compliant with the PASSR requirements for the period January 17, 2024-May 23, 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, 456.410, and Nursing Facility Bulletin 169.

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 representative agreed to all of the facts set forth by the PASSR representative. Specifically, she indicated that the facility did not dispute that the first two PASSR Level I Screenings, dated January 17, 2024, and January 22, 2024, were not properly completed and that they were rejected by the PASSR portal. She also did not dispute that discharge or transfer of the appellant was not authorized. She requested that an exception to the PASSR regulations be made in this case because at the time these initial two PASSR Level I Screenings were submitted, the reviewer thought they were being done correctly.

## Findings of Fact

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

1. The appellant was admitted to his nursing home on [REDACTED] (Exhibit 5).
2. MassHealth requires that all individuals who are seeking admission to a nursing facility receive a Level I PASSR Screening before they are admitted (Exhibit 5).
3. The facility admitted the appellant without the required Level I Screening PASSR Level I Screenings, as Screenings dated [REDACTED] and January 22, 2024 were not properly completed and were rejected by the PASSR portal (Exhibit 5).
4. The appellant's Level I Screening was not properly provided to the PASSR unit until May 24, 2024 (Exhibit 5).
5. The submission of the May 24, 2024 Level I screening properly referred the appellant for a full Level II PASSR evaluation (Exhibit 5).
6. The PASSR Unit determined that the appellant's facility was non-compliant with the PASSR requirements for the period [REDACTED] and was not eligible to bill MassHealth for this period (Exhibit 5).

## 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] years 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] 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.

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, (III)(1), dated October 2021, a nursing facility may admit an individual who requires a Level II Evaluation or abbreviated Level II Evaluation only after it receives a determination notice and comprehensive evaluation report from the appropriate PASSR authority stating that "A nursing facility is the most appropriate setting to meet the individual's total care needs," or "Nursing facility level of service is needed."

Also, under Nursing Facility Bulletin 169,(V)(5), 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 nursing facility admits an individual whose PASSR Level I Screening Form is incomplete, improperly completed or unsigned."

In the instant case, there is no dispute that the appellant was admitted to the respondent's nursing home on [REDACTED] without the Level I PASSR Screening required under 130 CMR 456.410(A)(1). Also, there is no dispute that a properly completed Level I Screening was not submitted to the PASSR Unit until May 24, 2024. The Level I Screening indicated that the appellant was positive for suspicion of serious mental illness. Only on May 24, 2024 did the submission of the accepted Level I Screening properly refer the appellant for a full Level II PASSR evaluation.

Consequently, the PASSR Unit determined that the appellant's facility was non-compliant with the PASSR requirements for the period [REDACTED] and was not eligible to bill MassHealth for this period.

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:

[REDACTED]

[REDACTED]

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