Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Denied	**Appeal Number:**	2512171
Decision Date:	12/3/2025	**Hearing Date:**	10/22/2025
Hearing Officer:	Casey Groff, Esq.	**Record Closed:**	10/29/2025

Appearances for Appellant:

[redacted]

Appearances for Respondent / Department of Developmental Services (DDS):
John C. Geentry, Jr., Esq., Legal Counsel;
Diane Pixley, Director of PASRR & Nursing Facility Operations;
Julie Harmon, PASRR Nursing Facility Specialist, Central Office;
Todd Patterson, Human Services Coordinator, Area Supervisor;
Benjamin Coutu, Service Coordinator

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:**	Pre-Admission Screen Resident Review
Decision Date:	12/3/2025	**Hearing Date:**	10/22/2025
Respondent Reps.:	John C. Geentry, Jr., Esq.; Diane Pixley; *et. al.*	**Appellant's Reps.:**	Nephew; Niece
Hearing Location:	Quincy Harbor South (In-Person)	**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

Through a Level II PASRR Determination notice dated 7/24/25, the Department of Developmental Services (DDS) informed Appellant of its determination that he no longer required nursing facility level of care and that his needs could be met in a community-based setting; and, on this basis, his nursing facility eligibility would terminate on 10/21/25. (*See* 130 CMR §§ 610.037, 456.409; Exhibit 1). A timely request for a fair hearing was filed on 8/20/25. (*See* Exh. 2; 610.015(B)(8)). The Board of Hearings (BOH) initially dismissed the request due to lack of a valid signature and insufficient reference to the agency action being challenged. (*See* Exh. 3; 130 CMR 610.035). Upon receipt of the corrected fair hearing request and underlying PASRR determination, BOH vacated the dismissal and scheduled a hearing for 10/22/25. (Exhibit 6). Disputing a PASRR determination constitutes valid grounds for appeal under 130 CMR 610.032(E). At the conclusion of the hearing on 10/22/25, the record remained open through 10/29/25 for Appellant to submit a written response regarding the evidence presented at hearing. (*See* Exhs. 14-15).

Action Taken by Respondent

DDS determined that Appellant was no longer eligible to remain in a nursing facility because he did not require nursing facility level of care and his needs could be met in a community setting.

Issue

Whether DDS correctly determined, in accordance with federal PASRR regulations and statutory requirements, that Appellant no longer required nursing facility level of care and that his needs could be met in a less restrictive community setting.

Summary of Evidence

Department of Developmental Services (DDS), appearing as Respondent, called several witnesses who provided the following testimony: First, the DDS Director of PASRR & Nursing Facility Operations testified that PASRR (Preadmission Screening and Resident Review) is a federally mandated process ensuring that individuals with intellectual disabilities (ID) or developmental disabilities (DD) are properly evaluated prior to admission to a nursing facility and throughout their continued stay. She testified that PASRR derives from federal law at 42 CFR Part 483, Subpart C (§§ 483.104–483.132) (Exh. 12), and disability-integration policy, referencing *Olmstead v. L.C.* (1999), which affirmed the right of individuals with disabilities to receive services in the least restrictive, most integrated setting rather than institutional placement when community supports are appropriate. PASRR applies to all nursing-facility (NF) admissions regardless of payment source. Under the applicable federal regulations, all states must operate a PASRR system, which, the Director explained, involves a two-stage review system involving (1) a level I screening — completed by the nursing facility prior to admission for all applicants to determine whether the person has or may have ID, DD, or serious mental illness (SMI), and (2) a level II evaluation — conducted by DDS for individuals identified at level I as having or suspected of having ID or DD[1] - which occurs at admission, and at least every 90 days for short-term NF residents, or earlier when continued NF stay is requested.

The level II evaluation determines: (1) whether NF level of care is necessary under 42 C.F.R. § 483.132, and (2) whether specialized services are required, meaning supports beyond what a nursing facility ordinarily provides. To qualify for NF level of care (LOC) under the PASRR scoring tool – an instrument developed by the state in accordance with federal requirement – an individual must receive a score of at least eleven (11) under section E (medical need) or a score of at least one (1) in section F (skilled-nursing need). When neither threshold is met, the regulations require a designated reviewer to determine that the individual no longer requires NF-

[1] Individuals who are identified as having, or potentially having SMI are referred to the Department of Mental Health for a Level II screen.

LOC. In such circumstances, federal law does not permit a resident to decline this outcome and remain in the nursing facility based on preference alone, regardless of payer source, as the PASRR finding controls placement eligibility. The Director referenced DDS Official Policy #2023-04 (Nov. 2023) (Exhibit 11), which affirms that the preferred service model for individuals with ID/DD is integrated community-based support. She testified that PASRR's objective is to match services to assessed need, and when an individual's needs can be met safely in the community, DDS is required to recommend community placement as the least-restrictive alternative. (Exh. 11).

Next, the DDS Nursing Facility PASRR Specialist (NF Specialist), testified that she has worked in the long-term-care field for nearly three decades and, in her capacity as NF Specialist, has performed hundreds, if not thousands, of level II PASRR evaluations for individuals referred to DDS. She stated that she is well-versed in the federal and state regulations that govern PASRR requirements and applies screening criteria as part of her regular responsibilities. Prior to her current position, she served as a DDS service coordinator and *Roland* service coordinator where she conducted on-site monitoring of service delivery systems in nursing homes and day programs and arranging community placements. She also sat on the state PASRR tool revision committee, where she helped restructure the scoring criteria and trained hospitals, regional access points, and nursing facility staff in the proper use, scoring, and interpretation of the revised screening tool.

In this case, the NF Specialist testified that she completed four PASRR evaluations for Appellant: two at his prior facility in November 2024 and February 2025, and two at his current facility in April and July 2025. She testified that following the discharge from the first facility, Appellant fell at home, where he was residing with his nephew. He was subsequently admitted to a new nursing facility, via a hospital discharge, in stable condition to receive short term (less than 30-days) rehabilitation. (Testimony; Exh. 10, p. 2). The first level II evaluation at the new facility, where Appellant currently resides, was done in April 2025. Pursuant to the April PASRR, Appellant was receiving physical therapy (PT) and occupational therapy (OT). As these are considered skilled needs, it was determined that Appellant required NF-LOC and was eligible for nursing facility placement pursuant to a 90-day PASRR approval. [2] At the conclusion of the 90-day approval, a subsequent PASRR evaluation was completed on 7/23/25—which is the PASRR screening under appeal.

The NF Specialist testified that, in conducting the 7/23/25 PASRR, she followed the standard evaluation protocol, which includes the collection and review of objective and independent medical documentation, such as nursing-facility assessments, physician orders, clinical summaries, care plans, rehabilitation records, dietary notes, and the Minimum Data Set (MDS).[3] The NF Specialist explained she also spoke with facility staff, such as the admissions social worker,

[2] The Specialist explained that the Appellant's first PASRR screen at the new facility was completed within the permitted 30-day window following admission as permitted under the exempted hospital discharge rules.

[3] The MDS was described as an interdisciplinary assessment completed quarterly to capture functional status, ADL needs, and clinical indicators relevant to PASRR scoring.

to resolve any areas within the documentation that required clarification. The NF Specialist explained that, as for all evaluations, her findings were based not on her subjective opinion, but exclusively on the clinical documentation and PASRR scoring criteria. A copy of the underlying medical records was submitted into evidence as Exhs. 13(A)-13(D).

The NF Specialist testified that, according to the clinical documentation Appellant is over the age of [redacted] and has numerous diagnoses including intellectual disability, hypertension, seizure disorder, history of transient ischemic attack (TIA) and cerebral infarction without residual deficit, type II diabetes, protein calorie malnutrition risk, gait abnormality, generalized muscle weakness, rhabdomyolysis, anxiety disorder, depression, hypoxemia, and a history of falls. (Exhs. 13(A)-13(D)).

The NF Specialist reviewed each section of the July PASRR evaluation (Exh. 13) and described the basis for scores she assigned to sections E (medical need) and F (skilled nursing need):

For section E, Appellant received a total score of 10 - one point below the threshold required to establish NF level of care – based on the following medical need categories:

- Oxygen: 1 point - *Intermittent use only*. Based on physician orders to administer 2L oxygen as needed when Appellant's oxygen saturation reading fell below 92%; indicating that Appellant did not require continuous oxygen requirement. (Exh. 13(C) p. 5).
- Diabetes: 1 point - *Diet-controlled*. Based on diabetes diagnoses and physician order for house consistent carbohydrate (HCC) diet, and no related medications or glucose monitoring, indicating diabetes is managed exclusively through diet. (*Id*. at 2).
- Skin: 1 point - *History of skin breakdown*. Based on care plan indicating that Appellant is at risk for skin breakdown with skin currently intact. (Exh. 13(A) p. 11).
- Seizures**:** 1 point - *Seizures controlled with medication, no seizures within past 30 days*. Based on seizure disorder diagnoses per care plan with no documented seizure activity. (Exh. 13(A), p. 1).
- Seizure Interference: 0 points. No documented seizure activity interfering with daily routine. (*Id*.).
- Bowel Continence**:** 0 points – *Continent*. As reflected in MDS. (Exh. 13(B), p. 24).
- Bladder Continence: 2 points – *Incontinent*. MDS showed frequent bladder incontinence. (*Id*.).
- Nutrition: 2 points - *Nutritional status places health at risk and requires modifications to prevent deterioration of health status*. Based on same information cited for diabetes category, above.
- Swallowing**:** 2 points - *Aspiration precautions and specialized feeding program*. Based on physician order for HCC, as well as orders to cut up food into small pieces and thin liquids and care plan reflecting Appellant's risk for protein calorie malnutrition. (Exh. 13(A), p. 10; Exh. 13(C), p. 2).
- Hospital Admissions: 0 points – *No admissions*. No documented admissions within past 90 days, and this was confirmed by admissions social worker.

For section F, Appellant received a total score of 0, based on the absence of documentation showing he received any of the interventions or therapies that qualify as a skilled-nursing need, including IV therapy, injections, wound treatment, tube feeding, ventilator/respiratory support, active infection management, anticoagulation oversight, or other intensive clinical services. (Exh. 13, p. 12). Additionally, to obtain a skilled-nursing score for "ADL need," there must be a finding that the individual requires *maximum* assistance with *three or* more ADLs — however, daily ADL logs and a the updated MDS reflected that Appellant required minimal assistance for dressing and dining, and moderate assistance for toileting, bathing, and grooming. (*Id.* at 9.) Similarly, a skilled need score for "positioning" requires a finding of maximum dependence, however the documentation showed that Appellant required moderate assistance with positioning. (*Id*. At 10).

Based on the score of 10 in section E and a score of 0 in section F, Appellant did not meet NF-LOC criteria, and continued nursing-facility placement could not be approved. The NF Specialist noted that the reason his score was lower than in prior PASRRs was not because his condition improved, but rather because he was no longer receiving active PT or OT services, which served as the basis for his prior PASRR approval.

On 7/24/25, DDS issued a PASRR Notice of Determination informing Appellant that, based on his level II PASRR evaluation conducted, he neither required a nursing facility level of service nor specialized services, and that his current PASRR approval from 7/23/25 would terminate on 10/21/25 (Exh. 1). According to the notice, because NF care was no longer appropriate, Appellant would have to be discharged from the facility, and he would be contacted by a DDS representative to discuss the PASRR findings and services that could better meet his needs. (*Id*.).

The NF Specialist testified that a discharge-planning meeting was held on 7/29/25 to discuss placement options. The NF Specialist also referenced the DDS Clinical Consultation Request report (Consultation Report),[4] completed by a DDS area office nurse, which provided background information, summarized the 7/29/25 meeting, and provided the nurse's professional opinion of whether Appellant's medical and support needs could be adequately addressed in a community setting. (Exh. 10). According to testimony and the consultative report, the 7/29/25 meeting was attended by Appellant, family members (including his niece, nephew, and granddaughter), DDS staff (PASRR Director, NF Specialist, and the area service coordinator), and nursing facility staff (administrator, nurse practitioner, and social worker). (Exh. 10). At the meeting, DDS presented Appellant with two community-based alternatives, involving: (1) a transition to a DDS residential/group home, or (2) returning to the nephew's home (where he lived prior to admission) with in-home supports and modifications to the house for accessibility purposes. Appellant conveyed his preference to remain in the nursing facility or return to his nephew's home over the group home option.

[4] The NF Specialist testified that the author of the Consultation Report was unavailable to testify at the hearing; however, the report accurately reflects both her clinical findings and placement recommendations.

In the Consultation Report, the area office nurse concluded that, based on the available documentation through 7/24/25, Appellant had reached a new and stable medical baseline; and, while he continued to require assistance with all ADLs, his needs could be fully supported in the community, noting that DDS residential programs provide 24/7 staffing, accessibility support, medication-administration-certified staff, and ongoing nursing consultation. (Exh. 10).

It was also noted, both by DDS representatives and within the Consultation Report, that the diagnosis of a seizure disorder, as reflected in Appellant's 6/19/25 nursing summary, appeared to be an error, as the record contained no documentation of seizure activity or neurology consultation, and was likely based on Appellant's orders for a medication which is primarily used for seizure disorders, but in Appellant's case, is prescribed as a mood stabilizer. (Exh. 10, p. 2). The report also referred to a psychiatric evaluation and consultation completed on 5/9/25 which reviewed Appellant's psychiatric medications and diagnoses, noting that Appellant presented at baseline with no reports of depression or anxiety. (*Id*.).

Next, the DDS Human Service Supervisor and Service Coordinator from the North Central Area Office presented testimony regarding the residential placement offered to Appellant. Specifically, the proposed group home is a single-level duplex, operated through a provider under contract with DDS, where Appellant would reside with three other individuals. The home is subject to Department of Public Health and DDS regulatory oversight, including certification, safety compliance, routine fire drills, and bi-annual license certification reviews by the Office of Quality Enhancement (OQE). The group home staff are CPR-certified, trained to assist with ADLs, and required to follow all physician orders, dietary guidelines, and care plans, including diabetic and aspiration precautions if prescribed. Nursing oversight is available within the program, and staffing includes multiple personnel (approximately 3-4) on-site during daytime hours with at least one overnight staff member continuously on-site.

Appellant was represented at the hearing by his nephew and niece (collectively "representatives"). Through testimony primarily from his nephew ("representative"), Appellant challenged the PASRR determination on grounds that he continues to require NF-LOC. Appellant's representative argued that the July PASRR failed to account for the full extent of Appellant's medical instability, particularly regarding respiratory status, dietary needs, and aspiration risk. According to the representative, Appellant's oxygen saturation frequently drops below 92% due to the way in which he breathes, and although oxygen is ordered "as-needed," it would likely be required continuously if tests were performed more frequently – showing his oxygen is always low. He further testified that even minor illnesses, such as a cold, trigger increased oxygen dependence, and can lead to major fluctuations in stability, which should qualify as a skilled-level need. In addition, the representative testified that Appellant frequently chokes while eating and supervision during meals is essential. A documented choking event in September led to increased diet modifications; Appellant requires a ground moist diet, which he will not adhere to without enforced meal preparation services and staff intervention to keep him

from accepting food from other residents. The representative asserted that these events represent a substantial change in condition from the July evaluation warranting another PASRR as required under federal law. He also testified to Appellant's need for increased ADL assistance since the July PASRR, including help with bowel incontinence. He asserted that the PASRR was based on faulty information, including the fact that Appellant has never had a seizure disorder, yet it was referenced in his record.

The representative strongly objected to the proposed DDS group home placement, asserting that Appellant's HCC-diabetic and texture-modified diet with aspiration precautions would not be followed as reliably or consistently as in the nursing facility, where staff are ServeSafe-certified and nursing supervision is continuously present. In a group home setting, which is less restrictive, all dietary protocols will "go out the window." The representative further expressed concern that the residence is run by the same provider that operated an adult day program Appellant previously attended, during which he received inadequate and inappropriate care resulting in decline, and ultimately prompted the representative to file a complaint with the Attorney General's Office. (Exh. 7). In addition, Appellant's niece asserted that the PASRR evaluation relies too heavily on numerical scoring and does not capture the "human element," including the fact that Appellant has grown to feel safe and loved at nursing facility.

In his post-hearing written submission (Exh. 15), Appellant's representative asserted that the PASRR Level II determination was procedurally deficient under 42 CFR Part 483 for multiple reasons, including the following:

- DDS failed to satisfy the requirement of family involvement in the PASRR process under § 483.128(c), noting that Appellant's family was not contacted prior to the 7/29/25 meeting.
- There was questionable involvement by other parties in conducting the PASRR in violation of § 483.106(e)(1)(iii) which requires that the state maintain control of PASRR determinations and prohibits evaluations by an NF or other affiliated party. Appellant asserted that, although the DDS NF Specialist is the sole signatory on the PASRR, he was directed to the nursing facility to answer his PASRR-related questions. Additionally, the representative asserted that a named aging service access point (ASAP), not DDS, authorized Appellant's NF services through 10/21/25; however, no underlying evaluation for the approval was received, and the ASAP denied any participation in the matter (Exh. 9) in violation of § 483.106(e)(1)(iii) and §483.128(d), which require interdisciplinary cooperation and accurate identification of evaluators.
- The NF Specialist lacked the evaluator qualifications to conduct the screen under § 483.128(a), and, that the Specialist's brief interaction with Appellant, lasting approximately 5 minutes, was insufficient to assess an individual with developmental disability or complex medical needs; nor was the determination made in consultation with a licensed psychologist, which Appellant asserted is required under § 483.136(c).
- The 7/24/25 Determination of Need letter, which concluded that nursing facility care and specialized services were no longer required, failed to identify alternative supports as required under § 483.128(l).

- Appellant's PASRR authorization expired on 10/21/25 without an annual review as required under §483.130(e); and despite being aware of the September choking incident and worsening condition, DDS never initiated a new evaluation in violation of § 483.114(c).

In response, the NF Specialist maintained that Appellant's needs, as described by his representative, would not alter the PASRR scoring or change the eligibility determination. The diet downgrade and aspiration precautions were already factored into the assessment under section E, noting that a modified-texture diet with aspiration risk is scored as a 2 under nutrition, which was the score assigned in the PASRR. Additionally, the NF Specialist agreed that the seizure diagnosis was likely erroneous as noted in the Consultation Report; however, such an error only increased his score, noting that without a seizure diagnosis, the score for seizures would have been 0 instead of 1. With respect to ADLs, the NF Specialist clarified that a score of 3 on the ADL logs provided by the nursing facility does not equate to "maximum assistance" under PASRR scoring methodology, but rather equates to moderate assistance, which is insufficient to meet threshold criteria for skilled nursing placement. There was no information to indicate that Appellant required maximum assistance with at least 3 ADLs, which is the threshold to score under the "ADL need" skilled care category. The NF Specialist further acknowledged awareness of the reported choking incident in September. She explained that this incident, and any other areas of decline, that occurred *after* the 7/24/25 determination may be addressed in a separate process if they amounted to a significant change in condition, but would not alter the outcome of the July PASRR.

Regarding the alleged post-evaluation decline, the PASRR Director explained that federal regulations require nursing facilities to report significant changes in residents with ID/DD, which then trigger a new review. As of the hearing date, DDS had not received any referral from the nursing facility, noting that the referral must be made by the facility, not the family.

Findings of Fact

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

1. Appellant is over the age of [redacted] with diagnoses including intellectual disability, hypertension, seizure disorder, a history of TIA and cerebral infarction without residual deficit, type II diabetes, protein calorie malnutrition risk, gait abnormality, generalized muscle weakness, rhabdomyolysis, anxiety disorder, depression, hypoxemia, and a history of falls. (Testimony; Exhs. 13(A)-13(D)).

2. The DDS NF Specialist completed four PASRR evaluations for Appellant: two at a prior facility in November 2024 and February 2025, and, following a brief discharge period, two at his current facility in April and July 2025. (Testimony).

3. In between the two facility admissions, Appellant was discharged home where he lived with his nephew; however, while home, Appellant sustained a fall, resulting in admission to a new nursing facility for the purpose of receiving short-term rehabilitation services of less than 30 days. (Testimony; Exh. 10, p. 2).

4. The first level II evaluation at the new facility, was performed in April 2025; because Appellant was receiving PT and OT therapy at the time of the evaluation, DDS determined that he had a skilled need and approved a 90-day PASRR for continued NF services. (Testimony).

5. At the conclusion of the 90-day approval, DDS completed a subsequent PASRR evaluation on 7/23/25, which was based upon recent nursing-facility assessments, physician orders, clinical summaries, care plans, rehabilitation records, dietary notes, and the most recent MDS completed on 7/3/25. (Testimony; Exhs. 13; 13(A)-13(D).

6. Under section E of the July PASRR, Appellant received a total score of 10, based on his need, or lack of need, for the following medical categories: (1) Oxygen: 1 point, based on orders to administer 2L oxygen as needed when readings fell below 92%; (2) Diabetes: 1 point, based on management of diabetes through HCC diet alone; (3) Skin: 1 point, based on Appellant's history of skin breakdown with skin currently intact; (4) Seizures: 1 point based on documentation showing seizure diagnosis controlled with medication; (5) Seizure Interference: 0 points as no documented seizure activity; (6) Bowel Continence: 0 per recent MDS; (7) Bladder Continence: 2 points, based on frequent episodes of incontinence per MDS; (8) Nutrition: 2 points – based on health risk due to nutritional status places and required modifications including diet; (9) Swallowing: 2 points – orders for aspiration precautions and specialized feeding program; (10) Hospital Admissions: 0 points – no recent admissions. (Testimony; Exh. 13; 13(A); 13(B); 13(C); 13(D)).

7. For section F, Appellant received a total score of 0, based on the absence of documented skilled nursing interventions as listed in PASRR scoring tool or documentation showing that he required maximum assistance either with positioning or three other ADLs, as well as documentation showing that he completed PT and OT services. (*Id*.).

8. Based on the score of 10 in section E and a score of 0 in section F, Appellant did not meet NF-LOC criteria, and continued nursing-facility placement could not be approved.

9. On 7/24/25, DDS issued a PASRR Notice of Determination informing Appellant that, based on his level II PASRR evaluation, he did not require NF-level services or specialized services, and that his current PASRR approval from 7/23/25 would terminate on 10/21/25; and he would be contacted by DDS to discuss PASRR findings and services to better meet his needs. (Exh. 1).

10. On 7/29/25 a discharge-planning meeting was held and attended by Appellant, his family members; DDS staff including the PASRR Director, NF Specialist, and Service Area Coordinator; and nursing facility staff.

11. At the 7/29/25 meeting, the parties discussed the findings from the 7/24/24 PASRR and DDS proposed community-based options, including: proposed community-based transition, including (1) a transition to a DDS residential/group home, or (2) returning to the nephew's home (where he lived prior to admission) with in-home supports and modifications to the house for accessibility purposes; with Appellant and his family expressing the preference to remain in the nursing facility and opposing the group home placement option. (Testimony; Exh. 10).

12. The proposed residential placement, which is operated by a provider under contract with DDS, provides 24/7 staffing, accessibility support, medication-administration-certified staff, and ongoing nursing consultation; staff are CPR certified, trained to assist with all ADL care, and are required to follow all physician orders, dietary guidelines, and care plans, including diabetic and aspiration precautions if prescribed. (Testimony; Exh. 10).

Analysis and Conclusions of Law

The issue on appeal is whether DDS, as the designated state agency for conducting level II PASRR reviews for individuals with ID/DD, correctly determined that Appellant no longer required nursing facility level of care (NF-LOC or NF-level services), and that his needs could be met in a less-restrictive community setting.

Federal law requires states to operate a PASRR system to determine whether individuals with intellectual or developmental disabilities (ID/DD) require the level of services provided in a nursing facility, and whether those needs may instead be met in a less restrictive setting. This mandate originates from 42 USC 1396r(e)(7) and is implemented through federal regulations at 42 CFR §§ 483.100–138. In Massachusetts, the Department of Developmental Services (DDS) is the designated agency responsible for conducting level II PASRR evaluations and determinations for individuals with ID/DD. *See* 42 CFR 483.106(e)(2). Once a person is identified or suspected to have such a disability, DDS applies the federal PASRR framework to determine whether the individual requires NF-LOC and whether specialized services are required. *See* 42 CFR §§ 483.132(a)(1) and 483.128(a).

In evaluating the need for NF-level services and level of care, the evaluating PASRR authority "must assess whether the individual's total needs can be met in an appropriate community setting." *See* 42 CFR 483.132(a)(1). The review must be based on data, which, at a minimum, evaluates the individual's physical and mental status (e.g., diagnoses, date of onset, medical history, and prognosis.) and functional abilities. *See* 42 CFR §§ 483.132(c), 483.128(f)-(g). Any

resident who does not require NF-level services must be discharged in accordance with § 483.15(b) and planning for community transition must occur. *See* 42 CFR §§ 483.130(m)(6), 483.118(b). PASRR decisions often result in what is referred to as a "community rule-out," meaning that if an available and less restrictive setting can meet the individual's medical needs, continued nursing-facility placement cannot be authorized, regardless of resident or family preference.

As the designated intellectual disability authority for Massachusetts, DDS implements federal PASRR criteria through use of a state-developed PASRR screening and scoring tool.[5] The PASRR tool evaluates the individual's medical and skilled-nursing needs to determine whether a continued NF-LOC is required. Under this framework, an individual must demonstrate either a medical need score of 11 or greater (under section E) or a skilled nursing need score of one or greater (under section F) to meet NF-LOC criteria for PASRR purposes.

In this case, the DDS NF PASRR Specialist concluded that Appellant did not meet the threshold score under either section E or F to warrant continued nursing facility placement. Through its 7/24/25 PASRR determination notice, DDS informed Appellant that, based on its evaluation, his needs could be met in the community, and that nursing facility eligibility would terminate 10/21/25. (Exh. 1). Appellant, through his representative, challenges the PASRR determination, asserting that it failed to reflect the extent of his medical and functional needs and proposed an insufficient community placement.

The issue on appeal is not whether remaining in a nursing facility is subjectively preferable, but whether the PASRR determination was made in accordance with federal PASRR regulations, state authority, and evidentiary requirements. By filing the appeal, the burden rests with Appellant to demonstrate the invalidity of the administrative agency action. *See Andrews v. DMA*, 68 Mass. App. Ct. 228; *Fisch v. Board of Registration in Medicine*, 437 Mass. 128 (2002).

Upon review of the record, including medical documentation, testimony, and applicable regulations, the evidence supports the level II PASRR determination. Under section E (medical need), Appellant received a total medical score of ten (10), which is below the threshold required for continued nursing facility placement. Each scoring category—including oxygen dependence, diabetes, skin condition, seizure disorder, continence, nutritional status, aspiration risk, and hospitalization status—was substantiated by clinical evidence including updated physician orders, nursing summaries, care plans, the July MDS, and ADL logs.

While Appellant's representative presented credible testimony concerning Appellant's choking risk, dietary restrictions, and respiratory status, such factors were already accounted for and therefore would not increase the total PASRR score. For example, Appellant's intermittent

[5] While 42 CFR §§ 483.106 and 483.108 establish the obligation to evaluate individuals with ID/DD for nursing facility services, the federal regulations allow states discretion in how the screening is performed and scored.

oxygen use was assigned one point, accurately reflecting the as-needed physician order rather than a continuous requirement. Similarly, diabetes was scored as one point, as it is managed by diet alone and without medication or glucose monitoring. Appellant received the maximum of two points for bladder incontinence, as substantiated by the MDS and ADL logs. For nutritional risk Appellant received two points, consistent with his HCC-diabetic and modified texture diet. For swallowing, Appellant received two points, reflecting that aspiration precautions and a special feeding program were in place. (Exh. 13). In fact, the only category which the evidence suggests was incorrectly scored was "seizures." The parties agreed that a seizure diagnosis was erroneously added to Appellant's care plan, the result of which increased the total score in Section E by an additional point, which acts in Appellant's favor.

Additionally, the evidence demonstrates that DDS correctly assigned a score of zero under section F, as Appellant's medical record did not reflect that he received any of the identified skilled-nursing interventions, such as tube feeding, IV therapy, active wound care, ventilator support, or anticoagulation management. Additionally, the category of ADL need, as qualifying skilled nursing service, requires that the individual receives maximum assistance in at least three ADLs; however, documentation showed Appellant received only minimal or moderate ADL assistance, including positioning. It is also undisputed that Appellant was no longer receiving PT or OT services as of the July evaluation. Absent evidence showing that Appellant required any of the listed nursing interventions, DDS's scoring for section F was appropriate.

In reviewing the clinical scoring, the underlying medical records, the testimony presented at hearing, and giving due consideration to the specialized expertise of the agency representatives who administer the PASRR program, the totality of evidence supports DDS's determination that Appellant does not meet the federal criteria for NF-level services.

In addition to evidentiary challenges raised, Appellant also contends that the PASRR determination is legally invalid due to alleged procedural errors that occurred during the July evaluation. As discussed below, these challenges do not invalidate the PASRR determination.

First, Appellant claims that the evaluation violated the family involvement requirement outlined in 42 CFR 483.128(c), which mandates PASRR evaluations to include the individual, their legal representative if necessary, and family members when available and authorized. The record indicates that family participation occurred during the 7/29/25 meeting, where the Appellant, three family members, DDS representatives, and facility staff discussed the Appellant's needs, the evaluation findings, and available community placement options. Additionally, the record shows Appellant's nephew/representative has had ongoing communications with DDS through which he has expressed his concerns about the proposed placement. Noting that while there is no explicit mandate that the reviewer conduct pre-evaluation outreach to family members, any potential or hypothetical omission by DDS appears would have been remedied by the subsequent discussions with Appellant's family as described above – which DDS has confirmed do not alter the outcome of its PASRR determination. There is insufficient evidence to establish that DDS

failed to comply with 42 CFR 483.128(c) to the extent that would invalidate the July determination.

Next, Appellant's claim that the PASRR was improperly influenced by the nursing facility or other entity is not substantiated. Section 483.106(e)(1)(iii) of the federal PASRR regulations prohibits the state from delegating PASRR determinations to nursing facilities or any entity with a conflict of interest. The PASRR report lists the DDS NF Specialist as the sole evaluator for the July review. *See* Exh. 13. Appellant notes that, during the PASRR process, DDS suggested that he direct any PASRR-related questions to the facility and that DDS also referenced an evaluation performed by a separate ASAP entity. While the full context of these discussions is unclear, even if accurate, such interactions do not demonstrate that the NF—or any other entity—conducted or improperly influenced the Level II evaluation and PASRR determination.

Appellant's argument that the NF Specialist lacked appropriate credentials is also unsupported. The federal regulations do not mandate any specific licensure requirements for level II PASRR evaluators; instead, they allow states to delegate this responsibility to a qualified professional according to the state's own criteria. In Massachusetts, this responsibility is assigned to trained DDS PASRR specialists. The NF PASRR Specialist who conducted the July evaluation testified to her extensive training and experience in conducting level II screens, her thorough knowledge of the applicable PASRR regulations, and experience with other aspects of the PASRR process. Similarly, Appellant's reliance on § 483.136(c) to argue the evaluation lacked the involvement of a licensed psychologist is misplaced. This provision applies only when diagnosing or interpreting intellectual-functioning measures. Because Appellant's disability status was already established and the PASRR was to assess Appellant's required level of care, § 483.136(c) is not applicable for disputing the validity of the 7/24/25 determination.

Additionally, Appellant argued that the 7/24/25 notice was deficient due to its failure to identify the specific services necessary to address the individual's needs. Federal regulations require that each notice issued by the designated PASRR authority indicate whether NF-level services are required, whether specialized services are needed, the available placement options for the individual, and information regarding the right to appeal. *See* 42 CFR 483.130(i). The requirement to identify "placement options," means that, for individuals *not* requiring NF-level services or specialized services, the state must explain, in its determination notice, the need for facility discharge, and details about how, when, and by whom the resident will be discharged, along with an explanation of appeal rights. *See* 42 CFR 483.130(m)(6). The 7/24/25 determination notice appears to have satisfied all such requirements. *See* Exh. 1.

Finally, Appellant argued that his clinical decline following the July evaluation should have triggered a new PASRR, and that DDS' failure to conduct a re-evaluation violated 42 CFR 483.114(c). While section 483.114(c) requires level II reviews be performed "not less often than annually," nursing facilities are required to initiate a level II referral to DDS when a resident with ID/DD experiences a "significant change" that may impact the individual's existing DDS PASRR

determination status. *See MassHealth Nursing Facility Bulletin 186,* p. 15 (June 2024). Ultimately, the issue of whether a new PASRR review should occur is not relevant to determining the validity of the July evaluation and is beyond the scope of this appeal. Moreover, to the extent any of the Appellant's arguments challenge the legality of the governing federal or state law and regulations, such issues fall outside the hearing officer's decision-making authority under 130 CMR 610.082. This decision must be rendered in accordance with the law and regulations as interpreted by the agency, and challenges to the legality of such law or regulation are subject to judicial review in accordance with 130 CMR 610.092. *See* 130 CMR 610.082.

In consideration of the testimony, documentary evidence, regulations, and arguments presented, the Appellant has not met his burden of showing the 7/24/25 PASRR determination notice was invalid, non-compliant, or unsupported by clinical evidence. The appeal is DENIED.

Order for Respondent

None, other than within 30 days of the date of this hearing decision, prepare and orient Appellant for a safe and orderly discharge to an appropriate community setting.

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.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

Casey Groff, Esq.
Hearing Officer
Board of Hearings

cc: [redacted]

[redacted]

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