

Agency Head to adopt, reject, or modify the Initial Decision within 45 days of the agency's receipt.

This matter arises from the Division of Aging Services' (DoAS) May 15, 2025, denial of clinical eligibility under N.J.A.C. 10:166. (R-5). On May 15, 2025, a New Jersey Choice Assessment was conducted by registered nurse, Christine Palma, R.N., at the facility where Petitioner resided. ID at 3. As a result, OCCO determined that Petitioner was ineligible for nursing home level of care finding that Petitioner was not cognitively impaired or dependent on physical assistance with three or more Activities of Daily Living (ADL). (R-5). The Initial Decision upheld the denial as the Administrative Law Judge (ALJ) found that Petitioner had not established, by a preponderance of the evidence, that Petitioner satisfied the clinical criteria for Medicaid. ID at 7.

In order to receive Long-Term Care Services, Petitioner had to be found clinically eligible. The mechanism for determining clinical eligibility is a pre-admission screening (PAS) that is completed by "professional staff designated by the Department, based on a comprehensive needs assessment which demonstrates that the recipient requires, at a minimum, the basic [nursing facility] NF services described in N.J.A.C. 8:85-2.2." N.J.A.C. 10:166-2.1(a). See also, N.J.S.A. 30:4D-17.10, et seq.

Individuals found clinically eligible "may have unstable medical, emotional/behavioral and psychosocial conditions that require ongoing nursing assessment, intervention and/or referrals to other disciplines for evaluation and appropriate treatment. Typically, adult NF residents have severely impaired cognitive and related problems with memory deficits and problem solving. These deficits severely compromise personal safety and, therefore, require a structured therapeutic environment. NF residents are dependent in several activities of daily living (bathing, dressing, toilet use, transfer, locomotion, bed mobility, and eating)." N.J.A.C. 10:166-2.1.

Further, pursuant to NJ FamilyCare Comprehensive Demonstration, Section 1115 adult (ages twenty-one and older) individuals must be clinically eligible for MLTSS services when the individuals' standardized assessment demonstrates that the individuals satisfied any one or more of the following three criteria:

a. The individuals:

- i. Requires limited assistance or greater with three or more activities of daily living;
- ii. Exhibits problems with short-term memory and is minimally impaired or greater with decision making abilities and requires supervision or greater with three or more activities of daily living;
- iii. Is minimally impaired or greater with decision making and, in making himself or herself understood, is often understood or greater and requires supervision or greater with three or more activities of daily living.¹

Here, Petitioner's diagnoses include fibromyalgia, chronic obstructive pulmonary disease, major depressive disorder, emphysema, osteoporosis, low back pain, diverticulitis, unspecified abdominal pain, hyperlipidemia, anxiety disorder, hypertension, and rheumatoid polyneuropathy with rheumatoid arthritis of unspecified site. ID at 3. The nursing assessment noted that Petitioner performed all ADLs independently including eating, bathing, personal hygiene, dressing upper/lower body, transfers, toileting and locomotion, despite the use of a wheelchair as needed. (R-6). Petitioner was also alert and oriented to person, place, time, and situation. Ibid. He recalled who his nurse was and was able to correctly state his name, date of birth, and social security number. ID at 3. It was determined that his memory was impaired as evidenced by his ability to only recall two out of three unrelated objects. Ibid.

During the fair hearing, Petitioner asserted that NF level of care is required

¹ New Jersey FamilyCare Comprehensive Demonstration Approval Period: April 1, 2023 through June 30, 2028.

because of his problems with short term memory and supervision with three or more ADLs. ID at 4. Petitioner had two witnesses at the fair hearing. Social Worker Loretta Locilento and Dr. Dushant Patel both testified that Petitioner is unable to survive on his own. Ibid. Petitioner also testified that he can perform his ADLs slowly without hands-on assistance. ID at 5.

In the Initial Decision the ALJ found that the Certified Nursing Assistant who worked at the nursing facility stated that Petitioner was independent with his ADLs. ID at 3. Additionally, a Licensed Practical Nurse who was often assigned to Petitioner stated that he was intact and had safe decision-making ability and that he was independent with his care. ID at 3-4. The ALJ further stated that the assessment confirms that Petitioner had some impairment with short-term memory, but that the parties disagreed on whether his decision-making abilities are intact. ID at 5. Dr. Patel and Ms. Locilento testified that Petitioner's decision-making abilities were impaired because he exhibits difficulty making decisions on his own, such as managing his social security, Medicaid, and other issues. However, Nurse Palma's observations, medical records, and interviews of direct care providers indicated that Petitioner's decision making is both intact and safe. Ibid. The ALJ concluded that neither Ms. Palma's assessment nor the facility's MDS report and treatment records support Petitioner's clinical eligibility for NF services, as Petitioner required no physical assistance or had severe cognitive deficits that impacted his decision making. ID at 7. Petitioner's assessment reported that while his memory may be impaired, his decision making was both intact and safe and he was able to be understood and understand others. Ibid. Therefore, the Initial Decision upheld OCCO's determination that Petitioner is not entitled to NF services because a preponderance of evidence does not exist that Petitioner met the clinical criteria for Medicaid at the time of OCCO's denial. Ibid.

Petitioner filed exceptions to the Initial Decision, disagreeing with the ALJ's determination that Dr. Patel and Social Worker Locilento were unable to provide results, records, or other credible evidence that contradicted the assessment. Petitioner argues that both Dr. Patel and Ms. Locilento provided testimony based on their four to five years of personal experience with Petitioner and that the testimony of a treating doctor and a social worker who are familiar with Petitioner is more persuasive than an hour and a half long assessment performed by a nurse who did not know Petitioner. As there is a significant discrepancy between Dr. Patel stating that Petitioner could die if he is discharged from the nursing home and the OCCO assessment finding that Petitioner did not need nursing level of care, Petitioner argues that there is a need for a new, independent assessment.

Respondent filed a reply to Petitioner's exceptions in which they point out that Petitioner's physical therapy records reflect that he did not have a shortness of breath while lying flat or after exercise, activity or exertion. Further, the physical therapy discharge summary explicitly noted Petitioner was independent with multiple ADLs including bed mobility, transfer, and locomotion. Respondent went on to reiterate that both Petitioner and Petitioner's own witness, Dr. Patel, testified that he can perform ADLs without assistance. Respondent went on to state that Petitioner's claim that he has problems with his decision-making abilities is not supported by the evidence as both the physical therapy notes and Petitioner's daily direct care provider, Jasmine Ballos, state that he has good decision-making abilities. Additionally, the most recent MDS indicated Petitioner scored a 14 out of 15 on his Brief Interview for Mental States, which indicates Petitioner is cognitively intact. Lastly, Respondent replied to Petitioner's request for an independent assessment under N.J.A.C. 1:10B-14.2 by stating that based on the nature of a clinical eligibility assessment for MLTSS under N.J.A.C. 10:166-2.1 and the New

Jersey FamilyCare Comprehensive Waiver, a clinical eligibility assessment is not based on any of the medical reasons listed in N.J.A.C. 1:10B-14.2, and therefore Petitioner cannot rely on it to request an independent medical assessment.

I concur with the ALJ's determination that according to the evidence presented, Petitioner does not meet the clinical criteria for Medicaid as outlined in N.J.A.C. 10:166-2.1 or the New Jersey FamilyCare Comprehensive Demonstration. While Petitioner was only able to recall two of three items during the clinical assessment, which indicated his memory was impaired at some level, the assessment also showed that Petitioner's decision-making ability was reasonable and safe. (R-6). This is supported by the physical therapy notes which stated Petitioner was able to be understood by others, was able to understand others, and had independent decision-making abilities, (R-11a) along with the MDS Brief Interview for Mental Status report in which Petitioner scored 14 out of 15 points. (R-7). Additionally, Jasmine Ballos, who cared for Petitioner often, stated he was intact and had safe decision-making abilities. (R-6). Lastly, Nurse Palma determined, partially based on her own observations, that Petitioner's decision making was both intact and safe. ID at 5. With respect to Petitioner's ability to independently perform ADLs, the assessment noted that the Certified Nursing Assistant stated that Petitioner was independent with his ADLs and the LPN often assigned to Petitioner stated that he was independent with his care. ID 3-4. Lastly, Petitioner testified that he is able to perform his ADLs slowly without hands-on assistance. Ibid. While I recognize that there is potentially contradictory evidence in the record in this case, it is the responsibility of the ALJ to weigh the evidence in the record, including the relative credibility and persuasiveness of each witness, and act as the fact finder. The ALJ has made findings of fact in this case, and I do not believe there is a valid basis for overturning these findings.

Thus, for the reasons set forth above and those contained in the Initial Decision, I

hereby ADOPT the Initial Decision in this matter.

THEREFORE, it is on this 20th day of APRIL 2026,

ORDERED:

That the Initial Decision is hereby ADOPTED.



Gregory Woods, Assistant Commissioner
Division of Medical Assistance and Health Services