

adopt, reject, or modify the Initial Decision within 45 days of the agency's receipt. The Initial Decision was received on March 25, 2019.

Based upon my review of the record, I hereby ADOPT the recommended decision of the Administrative Law Judge in its entirety and incorporate the same herein by reference. Petitioner was found to not meet the clinical eligibility criteria for nursing facility level of care so as to receive Managed Long Term Services and Supports (MLTSS) benefits.¹ Eligibility for nursing facility services is determined by the professional staff designated by the Department based on a comprehensive needs assessment that demonstrates that the beneficiary requires nursing home level of care. N.J.A.C. 8:85-2.1.

I agree with the Administrative Law Judge that that Petitioner does not satisfy the clinical eligibility criteria necessary to qualify for nursing facility level of care pursuant to N.J.A.C. 8:85-2.1 and 2.2. Petitioner presented no evidence to contradict the clinical determination. None of the medical records indicate that Petitioner meets nursing home level of care. Indeed, her treating physician wrote that she is not at risk for nursing home care if she did not receive home and community based services. P-1. Petitioner's conduct at the hearing supported this determination as she walked without assistance and testified through a Spanish interpreter for an hour. It appears that Petitioner is independent in areas of daily living and does not suffer from any cognitive impairment. While she may need to perform the activities slowly and with pain, Petitioner admitted that she performs tasks such as eating, toileting, bathing and transferring herself "unassisted by anyone." ID at 5.

¹ Essex County Board of Social Services also denied Petitioner's application due to her income. However, the Long-Term Care Services and Supports (LTSS) program permits the use of a higher income level - 300 percent of the SSI benefit amount. In order for eligibility to be granted at this higher income level, nursing level of care must be necessary. See 42 CFR § 435.236 and 42 CFR § 435.1005. Petitioner appealed that determination but failed to appear at that hearing.

THEREFORE, it is on this 24th day of APRIL 2019,

ORDERED:

That the Initial Decision affirming the denial of clinical eligibility for nursing home level of care is hereby ADOPTED.



Meghan Davey, Director
Division of Medical Assistance
and Health Services