

This matter arises from Monmouth County Division of Social Services's (MCDSS) May 19, 2021 determination that Petitioner was eligible for Medicaid benefits beginning on April 1, 2021.¹ Petitioner is seeking an earlier date. Based upon my review of the record, I hereby ADOPT the findings and conclusions of the Administrative Law Judge (ALJ).

In order for an applicant to have been approved for the Long-Term Care Services and Supports (LTSS) program, the applicant must need nursing home level of care. See 42 CFR § 435.236 and 42 CFR 435.1005. That level of care requires that pre-admission screening (PAS) be 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] services described in N.J.A.C. 8:85-2.2." N.J.A.C. 8:85-2.1(a); See also N.J.S.A. 30:4D-17.10, et. seq. The assessment must be done in person and prior to receipt of benefits. It is the Medicaid provider's responsibility to request the clinical eligibility determination at least thirty and up to 180 days in advance of financial eligibility. Medicaid Communication No. 16-09.

Understanding that the COVID-19 Public Health Emergency required modifications to the regulations and that certain waivers were allowed by the Centers for Medicare and Medicaid Services (CMS), the Office of Community Choice Options (OCCO) which administers the PAS program, waived two requirements: that the PAS be done prior to admission and that the assessment be conducted face-to-face. No other requirements were waived. To that end, nursing and assisted living facilities were still required to refer residents to OCCO to determine if the requirements of N.J.A.C. 8:85 were met.

When OCCO receives a referral for clinical eligibility of an individual pending Medicaid who is residing in an assisted living, nursing facility, or special care nursing facility, OCCO

¹ The May 19, 2021 notice additionally advised that a penalty of twenty-four days was being imposed on Petitioner's receipt of Medicaid benefits as a result of transfers totaling \$8,774.83. R-8. However, Petitioner is not contesting the penalty imposed and is only contesting the date of eligibility in this matter.

has a certain number of days in order to complete the PAS. An assisted living and special care nursing facility has fourteen days and a nursing facility has thirty days. Medicaid Communication No. 16-09. If OCCO does not conduct the assessment within the specified time period, OCCO has the ability to realign the clinical eligibility to begin on the fifteenth day after receiving the referral for assisted living and special care nursing facilities or the thirty-first day after receiving the referral for nursing facilities. Ibid.

In the present matter, an application for Medicaid benefits was filed on Petitioner's behalf with MCDSS on February 12, 2021. R-1. On March 25, 2021, MCDSS referred Petitioner to OCCO for a PAS after receiving a referral request from the assisted living facility's attorney sometime after March 21, 2021. RR-3. The documents in the file indicate that OCCO used the modified process to assess Petitioner and found that she met clinical eligibility as of April 9, 2021, fifteen days after OCCO received the referral for the assessment. RR-10A. On May 19, 2021, MCDSS advised Petitioner that her application for Medicaid benefits was granted, effective April 1, 2021 for ancillary services with LTSS benefits beginning on April 25, 2021. R-7. Neither Petitioner's representatives nor Petitioner's provider directly referred the matter to OCCO for a PAS, and Petitioner presented no documentation showing that a PAS was requested from OCCO prior to March 25, 2021. Further, there was no delay or failure to review the referral in a timely matter and accordingly, an earlier clinical eligibility date is not warranted.

Thus, for the reasons set forth in the Initial Decision and set forth above, I hereby ADOPT the Initial Decision in this matter. However, I note that Petitioner may be eligible for a deduction of her Pre-Existing Medical Expenses (PEME) from her income. See Medicaid Communication 18-10.

THEREFORE, it is on this 11th day of MARCH 2022,

ORDERED:

That the Initial Decision is hereby ADOPTED.



Jennifer Langer Jacobs, Assistant Commissioner
Division of Medical Assistance and Health Services