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STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES

J.Z.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES AND
OFFICE OF COMMUNITY CHOICE
OPTIONS,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 13201-24

As Assistant Commissioner for the Division of Medical Assistance and Health Services (DMAHS), I have reviewed the record in this case, including the Initial Decision and the Office of Administrative Law (OAL) case file. Petitioner filed exceptions in this matter and the Office of Community Choice Options (OCCO) filed a Reply. Procedurally, the time period for the Agency Head to render a Final Agency Decision is June 6, 2025.

This matter arises from OCCO's July 23, 2024, denial of clinical eligibility under N.J.A.C. 10.166-2.1. (R-6). Petitioner applied for Managed Long-Term Services and

Support (MLTSS). On July 16, 2024, a New Jersey Choice Assessment was conducted by registered nurse, Kathleen Laterza, at the facility where Petitioner resided. (R-5). 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). Ibid. The Initial Decision upheld the denial as the Administrative Law Judge (ALJ) found that Petitioner is not clinically entitled to nursing facility services. I agree with the ALJ's findings.

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 NF [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.

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. 8:85-2.1.

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 is a 50-year-old who suffers from heart failure, asthma, psychosis, anxiety disorder, depression, mood disorder, myalgia, has a cardiac pacemaker, insomnia, hyperlipidemia, hypertension, peripheral vascular disease, atherosclerosis of native arteries of extremities, and major depressive disorder. ID at 5. The nursing assessment noted that Petitioner performed all ADLs independently, including bathing, dressing, toilet transfer/toilet use, transfers, bed mobility, eating and locomotion. (R-7). The assessment found that Petitioner demonstrated no obvious cognitive problems and was able to recall the day, month and year, and was able to identify and recall three unrelated objects after five minutes. Ibid. Petitioner independently makes their doctor appointments. Ibid. Additionally, the assessment narrative indicates that Petitioner stated they take care of themselves and do not need help with dressing, showering, getting up, walking or any care. Ibid.

In the Initial Decision, the ALJ stated that he assessed and weighed the credibility of

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

the two witnesses. ID at 4. Kathleen Laterza testified for OCCO and the ALJ deemed her credible. Ibid. Petitioner testified on their own behalf. Ibid. Petitioner testified that he could not use his hands and that he has problems with memory due to his congestive heart failure. ID at 4-5. The ALJ found much of Petitioner's testimony to be exaggerated and some of Petitioner's statements were not supported by the evidence. Ibid. The ALJ deemed Petitioner to be less than credible. ID at 5. Pursuant to N.J.A.C. 1:1-18.6(c), the agency head may not reject or modify any finding of fact as to issues of credibility of lay witness testimony unless it first determines from a review of the record that the findings are arbitrary, capricious or unreasonable, or that they are not supported by sufficient, competent, and credible evidence in the record. I do not find the ALJ's credibility determination to be arbitrary, capricious, unreasonable or unsupported by the record.

The ALJ also discussed the medical records placed into evidence. ID at 6. The ALJ stated that the Nursing Progress Notes (P-3) and Physical Therapy Notes (P-4) do show instances where Petitioner requires assistance with ADLs, but none of the instances in the Physical Therapy Notes are prior to the date of the assessment and only one note in the Nursing Progress Notes mentioning a need for assistance with personal care is prior to the assessment.² ID at 6. The Initial Decision goes on to state that neither of these medical records indicate short term memory loss or cognitive impairment prior to the date of the assessment, if at all. Ibid.

The ALJ found that Ms. Laterza determined that Petitioner was cognizant, did not require limited assistance with three or more activities of daily living, did not have problems with short-term memory and was not minimally impaired or greater with decision making. ID

² This nursing progress note is dated July 19, 2024, which is actually after the assessment date of July 16th but before the denial letter which is dated July 23rd.

at 5. The ALJ agreed and concluded that Petitioner did not require assistance with ADLs or that Petitioner was cognitively impaired so that they required a nursing facility level of care, and that Respondent correctly applied the regulation covering eligibility for nursing facility level of care. ID at 7. Therefore, the ALJ found that Petitioner was not clinically eligible for nursing facility level of care at the time of the July 16, 2024, assessment. Ibid.

In response to the Initial Decision, counsel for Petitioner filed exceptions. Within the exceptions, Petitioner made four main arguments. First, Petitioner argued that OCCO evaluated Petitioner under the wrong standard. In summary, Petitioner alleges that because the witness for OCCO stated that “hands-on” assistance with at least three ADLs was needed and since the words “hands-on” are not in the Comprehensive Waiver they are using the wrong standard and therefore the assessment was flawed. The second argument Petitioner made in the exceptions is that OCCO’s witness was incorrect in her assessment of ADLs because she distinguishes ADLs from instrumental activities of daily living (IADLs). Petitioner’s third argument is that OCCO’s witness repeatedly conflated the statutory language for N.J.A.C. 10:166-2.1 (MLTSS) and N.J.A.C. 10:60-3.1 (PCA Services). The fourth argument is essentially a summary of why Petitioner should be approved for MLTSS benefits.

OCCO filed a reply to Petitioner’s exceptions. In summary, OCCO’s reply argues that Petitioner failed to follow the requirements for filing exceptions, that the Petitioner should not ask DMAHS to substitute “unofficial” sound recordings in lieu of official court transcripts, and that OCCO appropriately evaluated Petitioner in determining the Petitioner did not need physical “hands on” assistance with at least three ADLs. OCCO acknowledges that the words “hands-on” are not explicitly written in the Comprehensive Waiver approval. However,

they argue that when the three prongs of the Comprehensive Waiver are read together, there is a distinction between prong one, addressing physical limitations, and prongs two and three, which address cognitive decline. Prongs two and three only require "supervision" or greater with at least three ADLs, which means the individual can physically perform their ADLs but needs supervision due to their cognitive decline. On the other hand, prong one requires more than "supervision." It requires "limited assistance" or greater due to the individual not being able to physically perform their ADLs. This means the individual requires some type of physical "hands-on" help to perform their ADLs. Additionally, OCCO argues that ADLs are defined in N.J.A.C. 10:166-2.1(a)(1) as bathing, dressing, toilet use, transfer, locomotion, bed mobility, and eating, which are distinguishable from instrumental activities of daily living (IADLs).

I concur that when the three prongs are read together, "limited assistance" implies "hands-on" assistance with ADLs. Additionally, I concur that N.J.A.C. 10:166-2.1(a)(1) clearly defines ADLs as bathing, dressing, toilet use, transfer, locomotion, bed mobility, and eating, which are distinguishable from IADLs when assessing nursing facility level of care.

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. At the time of the evaluation, Petitioner demonstrated the ability to independently perform their ADLs and had no cognitive impairments.

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 2nd day of JUNE 2025,

ORDERED:

That the Initial Decision is hereby ADOPTED.

Gregory Woods

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