

Based upon my review of the record and for the reasons which follow, I hereby REVERSE the recommended decision of the Administrative Law Judge. The credible evidence in this record indicates that Petitioner does not satisfy the clinical eligibility criteria necessary to qualify for the AIDS Community Care Alternatives (ACCAP) waiver program, which is now encompassed by the Comprehensive Medicaid Waiver. I note that, beginning July 1, 2014, participants in the ACCAP waiver were enrolled in the Managed Long Term Services and Supports (MLTSS) program through their current Medicaid managed care organization (MCO). The MLTSS program provides comprehensive services and supports to help eligible beneficiaries remain living in the community rather than in a nursing facility.

In order for an applicant to qualify for MLTSS, like the ACCAP waiver, he or she must be in need of nursing home level of care. 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. In this case, the designated party is the Division of Aging Services' Office of Community Choice Options. One of its registered nurses assessed the Petitioner in his home and using the NJ Choice standardized assessment tool determined that A.V. is neither cognitively impaired nor dependent in the activities of daily living and therefore does not meet nursing facility level of care as required by N.J.A.C. 8:85-2.1. Petitioner presented no evidence to contradict this determination.

Moreover, contrary to the ALJ's contention, a physician's assessment or additional clinical data is not required to support this determination. The ALJ is confusing the assessment that is performed to determine if an individual meets nursing home level of care with the one that is conducted once an individual has actually entered a nursing home. Thus, while N.J.A.C. 8:85-2.2, the regulation relied upon the ALJ, sets forth the nursing services that are needed by and provided to eligible Medicaid beneficiaries; this regulation does not address the eligibility criteria needed to meet the nursing facility level of care requirement that permits MLTSS' services to be provided in the community.

I note that the Division of Aging Services has offered to counsel and assist A.V. on the availability of AIDS/HIV services and benefits through a number of County programs and I encourage A.V. to work with the Division in this regard.

THEREFORE, it is on this 13th day of November 2014,

ORDERED:

That the Initial Decision reversing the termination of Petitioner's clinical eligibility for continued waiver services is hereby REVERSED.



Valerie J. Harr, Director
Division of Medical Assistance
and Health Services