



February 5, 2024, in accordance with an Order of Extension.

This matter arises from the Division of Aging Services' (DoAs) May 24, 2023 denial of clinical eligibility under N.J.A.C. 8:85-2.1. Petitioner was assessed by the Office of Community Choice Options (OCCO) on May 23, 2023 at the nursing facility where Petitioner resides. As a result, OCCO determined that Petitioner was ineligible for nursing home level of care finding that Petitioner was not severely cognitively impaired or dependent on physical assistance with three or more Activities of Daily Living (ADL). The Initial Decision reversed the denial as the ALJ found that Petitioner established, by a preponderance of the evidence, that they satisfied the clinical criteria for Medicaid.

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. 8:85-2.1(a). See also, N.J.S.A. 30:4D-17.10, et seq. The assessment must be performed at least every year. 42 USCS 1396r(b)(3)(C), Medicaid Communication No. 16-09.

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(a)1.

Here, Petitioner was admitted to the NF on January 16, 2021 and determined to be in

need of nursing home level of care at that time.<sup>1</sup> Thereafter, in 2021 and 2022 Petitioner's managed care organization's (MCO) annual reassessments determined Petitioner no longer met the level of care.<sup>2</sup> (R-19, 20). The May 23, 2023 assessment by the OCCO nurse included an in-person interview, review of medical chart records maintained by the facility, prior December 16, 2022 and December 26, 2021 assessments conducted by Petitioner's MCO, and the Minimum Data Set (MDS) assessment, a federally mandated process for clinical and comprehensive assessment of all residents' functional capabilities in Medicaid certified nursing homes. See 42 CFR 483.315. Based on the comprehensive review and assessments, the OCCO nurse found that Petitioner's cognitive status was intact, including her decision-making, short-term memory, procedural recall, ability to understand others, make herself understood, and ability to correctly answer questions. The Petitioner was observed walking in the hallway using a rolling walker with a steady gait, and was noted to be alert and oriented to person, place, and time. (P-10). The assessment found no indication of disordered thinking. Petitioner explained that she was independent with ADLs and did not require any assistance, which was confirmed by Petitioner's social worker and unit manager. (P-10).

In addition to the MDS, nursing facilities are required to chart functional limitations in the residents' medical chart. See 42 CFR 483.20. The medical chart records of Petitioner, spanning from January 2021 to May 2023, detail Petitioner's various medical conditions and consultations. However, these records consistently report a lack of a need for assistance from staff in ADLs, instead documenting "no set up or physical help from staff" in relation to

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<sup>1</sup> As a result of the January 15, 2021 PAS, Petitioner was not determined to have an intellectual or developmental disability. (P-9).

<sup>2</sup>Due to restrictions from the COVID-19 Pandemic OCCO did not complete the annual reassessment until 2023.

bed mobility, transfers, eating and toilet use.” (P-11).

Nevertheless, Petitioner’s counsel argues that due to Petitioner’s underlying cognitive impairment of a learning disability, Petitioner did not fully understand the assessment or the questions asked and does in fact require assistance with ADLs including ambulating, using the toilet, and bathing. Specifically, Petitioner relied upon the September 1, 2023 report of treating physician, Dr. GianAngelo Graci, M.D., who concluded that Petitioner, has “complex medical comorbidities” and “is fully dependent on others for all IADLS. With regard to her activities of daily living, she needs assistance to ambulate on inclines and to navigate steps, needs assistance to wipe after using the toilet, needs assistance to wash and dry the posterior aspect of her body, and occasionally needs assistance with putting on her pants and bra.” (P-2).<sup>3</sup> In further support of Petitioner’s position, Petitioner relied on an August 11, 2023 report of Dr. David Worth, M.D., an August 10, 2023 report of Dr. Daniel Huberman, M.D., and a September 15, 2023 report of Dr. Adina Nicola Alexescu M.D.<sup>4</sup> Dr. Worth opined that “[Petitioner] has multiple medical issues including history of anxiety and depression and even suicidal ideation. She has insulin-dependent diabetes, respiratory dysfunction and muscle skeleton limitations.” (P-3). Dr. Huberman opined that Petitioner had on-going medical, emotional and cognitive issues inhibiting her ability to properly care for herself. (P-5). Further, Dr. Alexescu concluded that Petitioner “has very limited ability to understand her multiple medical conditions, to internalize and apply the provided information about her conditions...making her a medically fragile patient who requires close supervision.” (P-6).

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<sup>3</sup> Dr. Graci first evaluated Petitioner in August of 2022 and approximately once a month thereafter. Dr. Graci found that Petitioner had numerous diagnoses including insulin dependent diabetes mellitus, hypertension, hyperlipidemias, obstructive sleep apnea, pulmonary sarcoidosis, pulmonary hypertension, asthma, chronic hypoxemic respiratory failure, heart failure with preserved ejection fraction, obesity, depression, osteoarthritis, meniscal tears, strabismus, learning disability and coronary artery disease.

<sup>4</sup> Dr. Alexescu evaluated Petitioner on August 28, 2023 and September 13, 2023.  
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Dr. Worth, Dr. Huberman, and Dr. Alexescu do not opine that Petitioner is cognitively impaired or conclude that Petitioner is dependent on physical assistance with three or more specific ADLs. Furthermore, the treating records of Dr. Graci do not contain a finding of cognitive impairment or note dependence with ADLs. (P-11).

Nevertheless, in concluding that Petitioner met the clinical eligibility standard, the ALJ found that the evidence presented by Dr. Graci was more credible than the evidence presented by OCCO. However, in reviewing the totality of the medical records, I disagree and find that Petitioner does not meet the clinical eligibility standard required for Long-Term Care Services under N.J.A.C. 8:85-2.1. The Petitioner's admission to the NF in January 2021, initially determined a need for nursing home level of care. However subsequent assessments by the MCO in 2021 and 2022, as well as the comprehensive review conducted by OCCO consistently indicate a lack of dependence with ADLs. The treating physician's reports, although noting various medical issues, do not specifically indicate a severe cognitive impairment or dependence on ADL assistance. In contrast to the ALJ's decision, I find that the totality of the medical records do not support that Petitioner met the clinical eligibility criteria. The credibility of the evidence presented by OCCO, including the New Jersey Choice Assessment in collaboration with the Petitioner's social worker and unit supervisor, outweighs the isolated findings presented by Dr. Graci.

While Petitioner's medical conditions and needs must not be minimized, unfortunately the comprehensive medical records do not support a finding that Petitioner meets the criteria as set forth in N.J.A.C. 8:85-2.1. Petitioner may request a reassessment should Petitioner feel same is appropriate based on a change in need.

THEREFORE, it is on this 23RD day of JANUARY

2024, ORDERED:

That the Initial Decision is hereby REVERSED and OCCO's determination that  
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Petitioner does not meet the clinical eligibility criteria required for Long-Term Care Services is upheld.



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