



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
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Director

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

S.W.,

PETITIONER,

v.

NJ OFFICE OF COMMUNITY

CHOICE OPTIONS,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 7033-2018

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this matter, consisting of the Initial Decision, the documents in evidence and the contents of the OAL case file. Respondent filed exceptions to the Initial Decision. Procedurally, the time period for the Agency Head to render a Final Agency Decision is November 26, 2018 in accordance with an Order of Extension.

This matter concerns the termination of Petitioner's clinical eligibility. Medicaid requires that individuals receiving Long Term Services and Supports (LTSS) be found

clinically eligible based on an assessment that they require nursing home placement. Based upon my review of the record, I hereby REVERSE the recommended decision of the Administrative Law Judge. I FIND that the credible evidence in this record indicates that Petitioner does not satisfy the clinical eligibility criteria necessary to qualify for the LTSS.

The LTSS benefits that are administered through managed care organizations (MCOs) are known by the acronym MLTSS. Petitioner had been previously found eligible for MLTSS in August 2015 and was residing in a nursing facility. That nursing facility sought a new assessment from Petitioner's MCO, Amerigroup, as the facility determined that Petitioner should be discharged as she was independent in her activities of daily living (ADLs), had not received any therapy in the past 100 days and was leaving the facility to stay "out late or overnight frequently". R-2. The MCO's assessment was done on March 19, 2018 by Miles Kummings. The recommendation was that Petitioner continues to meet nursing home level of care. However, that assessment is not dispositive as clinical eligibility must be done by professional state staff. N.J.A.C. 8:85-2.1. The Office of Community Choice Options (OCCO) is delegated to determine clinical eligibility. When Petitioner was assessed for continued clinical eligibility by an OCCO nurse, it was determined that she is essentially independent in the activities of daily living and she no longer met the requirement for nursing home level of care as required by N.J.A.C. 8:85-2.1. See R-1 in evidence. Petitioner presented no legally competent evidence to contradict this determination.

The Initial Decision relies on Petitioner's daughter's post hearing submission and the observations of Petitioner at the fair hearing. Petitioner questioned the accuracy of the nursing notes but failed to present any witnesses with clinical knowledge of her condition. Although hearsay evidence is generally admissible in the OAL, "some legally

competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness." N.J.A.C. 1:1-15.5(b); see also Weston v. State, 60 N.J. 36, 51-52, 286 A.2d 43 (1972). I FIND that Petitioner's hearsay statements and allegations concerning the nursing notes, which are a business record of the nursing facility, cannot be used as a basis to discredit those notes. To that end, the credibility of Petitioner and her witness is not supported by sufficient, competent, and credible evidence in the record.

I note that after the hearing was held on June 22, 2018, the record was held open "to allow petitioner to submit any additional factual information." ID at 2. A call was held on July 11, 2018 and the Petitioner was again given time to provide additional documents and post hearing submissions. OCCO submitted additional medical records by letter dated July 20, 2018. Petitioner's post hearing submission is a letter from Petitioner's daughter dated August 18, 2018 but received on August 9, 2018. That letter relates two instances on June 22, 2018 when Petitioner needed assistance to "steady her gait" and on June 26, 2018 when she needed assistance with a shower. P-1. I note that June 22 was the date of the OAL hearing yet this incident was not mentioned at the hearing nor was either incident mentioned in a brief letter sent by Petitioner's daughter on July 10, 2018. To that end the Initial Decision used self-serving, hearsay statements that were not subject to cross-examination to afford no weight to the nursing notes.

I find no basis to diminish the weight of the nursing notes. Rather the nursing notes are consistent with the plan of care meetings held in November 2017, February 2018 and May 2018 when an interdisciplinary team at the nursing facility met to go over Petitioner's plan of care. Petitioner's family was invited to attend each of these meetings but did not respond. R-1 at 65, 65 and 130. Petitioner did not attend the first

two meetings but, after receiving the termination of clinical eligibility notice in April 2018, she attended the May 2018 meeting as evidenced by her signature. R-1 at 130. At each of these meeting the interdisciplinary team found that Petitioner was independent with her ADLs, exited the facility regularly to smoke and was a participant in many activities at the facility.

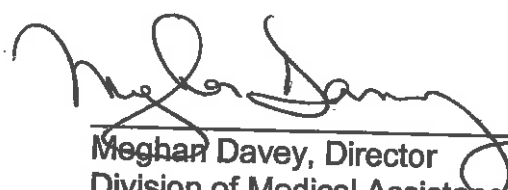
Moreover, there was no credible basis for finding that Petitioner's condition did not improve between the first assessment in March 2018 and the one done in April 2018. As OCCO's exceptions noted, the March 2018 assessment appears to be the outlier when reviewed in light of medical records dating back to November 2017. Even removing the copious handwritten notes indicating that Petitioner did not need assistance with her ADLs, there are three interdisciplinary reports including one where Petitioner was present that confirm she was independent with her ADLs. R-1 at 65, 65 and 130. There is also a Minimum Data Set (MDS) assessment performed on February 17, 2018 that is a federally mandated process for clinical and comprehensive assessment of all residents' functional capabilities in Medicare and Medicaid certified nursing homes. R-1 at 89 to 128. See 42 CFR § 483.315. That document indicates that Petitioner was either independent or in need of no set up or physical help from staff for transferring, bed mobility, walking, locomotion, dressing, eating, and toilet use. R-1 at 99. Petitioner was noted to need set up personal hygiene and oversight help for bathing. R-1 at 100. On May 11, 2018, the skilled nurses' notes show Petitioner is independent in her ADLs with a steady gait and use of a walker. R-1 at 76. Contrary to the Initial Decision's finding, Petitioner's medical history and assessments demonstrate that Petitioner does not need hands on assistance with her ADLs. I find no basis to disregard the consistent and voluminous medical records completed by various medical professionals that support OCCO's finding that Petitioner does not need assistance with

her ADLs and did not meet nursing home level of care. Thus, the Initial Decision is REVERSED and the termination of clinical eligibility is upheld.

THEREFORE, it is on this ^{20th} day of NOVEMBER 2018,

ORDERED:

That the Initial Decision is hereby REVERSED.



Meghan Davey, Director
Division of Medical Assistance
and Health Services