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Assistant Commissioner

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

C.S.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

OFFICE OF COMMUNITY CHOICE

OPTIONS,

RESPONDENTS.

ADMINISTRATIVE ACTION

ORDER OF REMAND

OAL DKT. NO. HMA 11815-23

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. Neither party filed exceptions in this matter. Procedurally, the time period for the Agency Head to render a Final Agency

Decision is June 24, 2024, in accordance with an Order of Extension.

This matter arises from the Division of Aging Services' (DoAs) August 15, 2023 denial of clinical eligibility under N.J.A.C. 8:85-2.1. (R-1, Exhibit 6). Petitioner was assessed at their home by the Office of Community Choice Options (OCCO) on August 15, 2023. Specifically, registered nurse, C.M. met with Petitioner to perform the NJ Choice Assessment. (R-1, Exhibit 5). Petitioner's sister and Designated Authorized Representative, C.D., and their cousin/caregiver, P.C., were also present for the assessment. 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 upheld the denial as the ALJ found that Petitioner had not established, by a preponderance of the evidence, that Petitioner 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.

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.

Further, pursuant to NJ FamilyCare Comprehensive Demonstration Adult Waiver, Section 1115 adult (ages twenty-one and older) individuals must be clinically eligible for MLTSS services when the individual’s 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 of 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, as detailed in the initial decision, C.M. observed Petitioner independently performing various tasks, including ambulation without assistance, decision-making regarding self-care activities, and managing daily routine. Petitioner reported that they ride their bike uptown, and are capable of doing light housekeeping, dishes, and dusting, with reminders. Petitioner further reported they do laundry, use the phone, manage their own finances, select items off the shelf and pays for them unassisted when shopping, gets in and out of the car without assistance, and is independent with eating, personal

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

hygiene, bathing, dressing, toilet transfers, toilet use, bed mobility, transfers, walking and locomotion. Petitioner did advise that P.C. puts their medication in a pill box and Petitioner takes them when scheduled. While Petitioner did exhibit short-term memory deficits, Petitioner demonstrated procedural and situational memory capacities. C.M. found that Petitioner's decisions were consistent, reasonable, and safe and that Petitioner was able to make themselves understood throughout the assessment. C.M. also confirmed that she spoke with Petitioner's caregiver, P.C., who advised she does not assist Petitioner with ADLs, does not bathe, toilet, or assist Petitioner with transfers, walking, locomotion or eating. (R-1, Exhibit 5).

However, as further detailed in the initial decision and contrary to the above findings, Petitioner's sister, C.D. and caregiver, P.C., provided testimony disputing aspects of C.M.'s assessment, particularly regarding Petitioner's need for reminders and assistance with certain tasks and ADLs. C.D. and P.C. highlighted Petitioner's reliance on their reminders for activities including taking his medication, showering, and changing his clothes, despite Petitioner's claims of independence. C.D. did not confirm that Petitioner rides their bike uptown alone, testifying she had never seen Petitioner do so. C.D. also disputed that Petitioner takes care of their own finances, testifying that Petitioner had been issued four new ATM cards because they cannot remember the PIN. P.C. further testified that Petitioner will incorrectly report that they have showered when in fact they had not. (P-2). Furthermore, as noted in OCCO's assessment measuring function status, Instrumental ADLs self-performance and capacity, Petitioner was evaluated as requiring supervision or greater with meal preparation, ordinary housework, and managing medications. (R-1 Exhibit 5).

Petitioner produced medical records demonstrating that Petitioner sought medical attention at Woolwich Neurology on October 19, 2023 reporting memory issues and was diagnosed with mild cognitive impairment. A December 21, 2023 MRI revealed an old infarction in the left parietal lobe with associated brain tissue damage, alongside sides of cerebral atrophy. Further neuropsychological testing was recommended. No further medical records were produced. (P-1).

In remanding this matter to the OAL, I FIND that the record does not support the ALJ's determination that Petitioner does not meet the clinical criteria for Medicaid as outlined in N.J.A.C. 8:85-2.1 or the New Jersey FamilyCare Comprehensive Demonstration. Specifically, the ALJ determined that while there are some indicators demonstrating memory deficits and the medical records document a diagnosis of mild cognitive impairment, Petitioner demonstrates the ability to independently perform their ADLs and accordingly did not meet the clinical criteria. However, the ALJ does not provide a determination as to whether Petitioner satisfies the eligibility criteria as set forth in the NJ FamilyCare Comprehensive Demonstration Waiver, Section 1115, specifically whether Petitioner:

- i. 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;
- ii. 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.

Although the ALJ found as a matter of fact that Petitioner is mildly cognitively impaired and has short-term memory deficits, there remains a dispute regarding the Petitioner's impairment with decision making abilities and need for supervision, or greater,

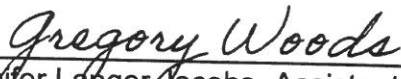
in performing ADLs. Testimony presented by C.D. and P.C. contradicted aspects of the OCCO assessment, particularly concerning Petitioner's decision making abilities and need for supervision or greater with certain ADLs despite claims of independence. The ALJ's credibility determination regarding conflicting testimony from Petitioner's family members and caregivers was not adequately explained in the initial decision.

Therefore, it is ordered that the Initial Decision be REVERSED and the matter REMANDED to OAL for further development of the record. On remand, the ALJ is directed to specifically address whether Petitioner meets the criteria under New Jersey FamilyCare Comprehensive Demonstration Adult Waiver, and to further explain the credibility determination regarding the conflicting testimony.

THEREFORE, it is on this 19th day of JUNE, 2024

ORDERED:

That the Initial Decision is hereby REVERSED and REMANDED.



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

OBO JLJ