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**State of New Jersey**  
**DEPARTMENT OF HUMAN SERVICES**  
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Assistant Commissioner

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

D.M.,

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 02713-24**

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. Neither party filed exceptions in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is August 5, 2024, in accordance with an Order of Extension.

This matter arises from the Division of Aging Services' (DoAs) January 24, 2024 denial of clinical eligibility under N.J.A.C. 8:85-2.1. (R-6). Petitioner was receiving

Managed Long-Term Services and Support (MLTSS) since June 2020 at a long term care facility. ID at 2. After Petitioner was admitted to the facility, the managed care organization responsible for coordinating Petitioner's Medicaid health-care services performed an unauthorized assessment. Ibid. Due to the pandemic, the Office of Community Choice Options (OCCO) could not complete a clinical eligibility assessment until after 2023, and Petitioner remained in the facility through continuing Medicaid benefits. ID at 2-3. On January 23, 2024, a New Jersey Choice Assessment was conducted by registered nurse, N.S., 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). The Initial Decision upheld the denial as the Administrative Law Judge (ALJ) found that Petitioner had not established, by a preponderance of the evidence, that Petitioner satisfied the clinical criteria for Medicaid. 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(a)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.<sup>1</sup>

Here, the nursing assessment noted that Petitioner performed all ADLs independently including the following: feeding, bathing, dressing upper body, dressing lower body, toilet transfers, toilet use, bed mobility and transfers, and is independent with a wheelchair. (R-5). The nurse noted that Petitioner told her that Petitioner did not require assistance with ADLs and receives physical therapy and occupational therapy two times

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

per week. ID at 4. The assessment found that Petitioner demonstrated no obvious cognitive problems and was able to recall the date, month and day, and answered all questions without cueing or prompting. (R-5). Petitioner independently makes their doctor and transportation appointments and navigates their health insurance information. Ibid.

In response to the OCCO's determination, Petitioner asserted that Petitioner did not want to leave the NF until Petitioner's physical and occupational therapy is completed. ID at 4. Petitioner contends that they are unable to walk without assistance and that they have nowhere to go if discharged from the NF. Ibid.

The Initial Decision held that Petitioner is not severely cognitively impaired or dependent on physical assistance with three or more ADL's. ID at 5. It goes on to state that Petitioner is understandably nervous about transitioning back into the community because of his dependence on a wheelchair for locomotion, however, Petitioner has the ability to do so. Ibid. The ALJ concludes that Petitioner is not entitled to NF services because Petitioner does not meet the clinical criteria for Medicaid-NF by a preponderance of the evidence. ID at 6.

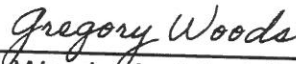
I concur with the ALJ's determination that according to the evidence presented, Petitioner does not meet the clinical criteria for Medicaid as outlined in N.J.A.C. 8:85-2.1, or the New Jersey FamilyCare Comprehensive Demonstration. Petitioner demonstrates the ability to independently perform their ADLs and has no cognitive impairments. While Petitioner may have other medical conditions related to being admitted to the facility in 2020 for the total left-hip arthroplasty for idiopathic aseptic necrosis of left femur, nursing facility care through MLTSS is not appropriate unless this condition meets the clinical level of eligibility.

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 31st day of JULY 2024,

ORDERED:

That the Initial Decision is hereby ADOPTED.

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