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Assistant Commissioner

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

D.U.,

PETITIONER,

v.

OFFICE OF COMMUNITY CHOICE

OPTIONS,

RESPONDENT.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 01728-2024

As Assistant Commissioner for the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision and the Office of Administrative Law (OAL) case file. No exceptions were filed in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is August 1, 2024, in accordance with an Order of Extension.

The matter arises from the New Jersey Office of Community Choice Options (OCCO) January 9, 2024 denial of clinical eligibility for Nursing Facility Level of Care under N.J.A.C. 8:85-2.1. Petitioner was assessed on January 3, 2024 by Carolyn Martine, RN/RSN, Community Choice Counselor for OCCO to determine their eligibility for nursing facility level of care. ID at 2. Nurse Martine advised the Petitioner that they were not clinically eligible for Nursing Facility Level of Care, in a facility or in the

community, by letter dated January 9, 2024. Petitioner filed a fair hearing request, and a hearing was conducted by the OAL on April 10, 2024. Ibid.

In order to receive Long-Term Care Services, Petitioner had to be found clinically eligible. The mechanism for this 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 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 nursing facility 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. Nursing facility 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 assessed by an OCCO nurse and it was determined that they did not meet nursing home level of care, as they did not need hands-on assistance in any activities of daily living (ADLs), and was found to not suffer from any cognitive deficits. ID at 2. At the time of the assessment, the Petitioner stated that they were independent in eating, showering, dressing, toilet use, bed mobility, and ambulation. Id. at 3. Nurse Martine testified that the Petitioner suffers from hearing loss, incontinence, and experiences tremors in their hand. Martine did not note any issues with short term memory. Ibid. The Petitioner's daughter, L.C., was present during the assessment. Id.

at 2. At the Fair Hearing, L.C. testified that the Petitioner exaggerated his independence for Nurse Martine.

L.C. requested that another assessment be performed, and on March 28, 2024, the Petitioner was examined by Gwendolyn Lupton, APN. Id. at 3. Nurse Lupton noted that the Petitioner was incontinent, and his tremors had progressed, which caused difficulty with ambulation and fine motor movements. Also, due to his Meniere's disease, he had an unsteady gait at times. Ibid. Lupton recommended that the Petitioner use a cane for stability. Ibid.

In the Initial Decision the Administrative Law Judge (ALJ) found that the credible evidence in the record indicated that the Petitioner did not meet the clinical eligibility criteria to qualify for nursing facility level of care, and that the Petitioner failed to present any evidence to contradict this determination. Id. at 5. The ALJ further found that the March 28, 2024 assessment was not relevant because it was performed after the assessment that led to the denial of clinical eligibility, and was presented without any corroborating medical testimony. Ibid. The ALJ also stated that even though the Petitioner did not qualify for nursing facility-level services as of the date of the assessment, they should explore other assistance options, as explained by the OCCO, and if their condition changes, should request a reassessment. Ibid.

Thus, for the reasons stated above, I FIND that Petitioner was properly denied clinical eligibility by the OCCO's assessment. The record does not contain any evidence that contradicts the January 3, 2024 assessment. While the Petitioner's tremors and Meniere's disease may be increasing, they do not need hands-on assistance in any ADLs, and do not suffer from any cognitive deficits. Accordingly, the Initial Decision appropriately affirmed the denial of benefits based on OCCO's assessment, finding that Petitioner did not meet the clinical criteria for nursing facility-level services.

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 23rd day of July 2024,

ORDERED:

That the Initial Decision is hereby ADOPTED.



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