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

D.Z.,

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 10842-24

As Assistant Commissioner for the Division of Medical Assistance and Health Services (DMAHS), I have reviewed the record in this case, including the OAL case file, the documents in evidence, and the Initial Decision in this matter. Neither Party filed exceptions. Procedurally, the time period for the Agency Head to render a Final Agency Decision is May 8, 2025.

This matter arises regarding the Office of Community Choice Options' (OCCO) June 18, 2024, denial of Petitioner's clinical eligibility under N.J.A.C. 8:85-2.1¹ and New Jersey's NJ FamilyCare Comprehensive Demonstration, Section 1115. The issue presented here is whether OCCO properly denied Petitioner's clinical eligibility under Medicaid regulations.

Eligibility for nursing facility (NF) services will be determined by the professional staff designated by the Department based on a comprehensive needs assessment that demonstrates that the beneficiary requires, at a minimum, basic NF services. Individuals requiring NF services 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 (ADL), like bathing, dressing, toilet use, transfer, locomotion, bed mobility, and eating. N.J.A.C. 8:85-2.1(a).

New Jersey's NJ FamilyCare Comprehensive Demonstration requires applicants for Medicaid Managed Long Term Services and Supports (MLTSS) to meet a Nursing Facility Level of Care (NFLOC) requirement. It means they need full-time care typically associated with a nursing home, which is assessed through an in-person evaluation focusing on ADLs and cognitive function.

By letter dated June 18, 2024, Petitioner was notified by the Department of Human Services, Division of Aging Services, that Petitioner was not clinically eligible for NFLOC

¹ N.J.A.C. 8:85-2.1 was readopted, effective October 16, 2024, and was recodified to N.J.A.C. 10:166, effective November 18, 2024.

in a nursing facility or the community because they did not meet the NFLOC qualifications in accordance with N.J.A.C. 10:166 and New Jersey's NJ Family Care Comprehensive Demonstration, Section 1115. (R-1, Exhibit 5.) Petitioner filed a request for a fair hearing. ID at 2. The hearing was conducted on December 10, 2024. Ibid. At the time of the hearing, Petitioner no longer resided at the nursing facility. Petitioner was discharged from the nursing facility and was admitted to an assisted living facility. ID at 4.

During the hearing, Erica Fields (Fields), Social Worker, testified that OCCO designated her to determine the clinical eligibility for NFLOC. ID at 2. On June 10, 2024, Fields conducted an assessment utilizing the NJ Choice Assessment tool (vol.2023) at the facility where Petitioner resided. ID at 3. Petitioner acknowledged the reason for Fields' visit and verbalized wanting to be in the community with their family. Ibid. Per Fields, Petitioner was alert and oriented to person, place, and time during the assessment. Ibid. Petitioner's short-term memory was intact during the assessment, as evidenced by their ability to identify and recall three unrelated objects after five minutes. Ibid. Petitioner was also able to name the current President at the time of the assessment. Ibid. Petitioner was able to count backwards and forward from one to ten. Ibid. Petitioner was also knowledgeable about their diagnosis and treatment regimen. Ibid. Petitioner was eating without assistance. Ibid. At the time of assessment, Petitioner occasionally asked for assistance in bathing their feet. Ibid. Petitioner's Certified Nurse's Aide, Mrs. Fredrick, confirmed that Petitioner was independent with ADLs and occasionally receives assistance washing their feet. Ibid. Petitioner did not exhibit any significant cognitive impairment. Ibid. Fields further testified that she reviewed the Minimum Data Set (MDS), Residential Assessment and Care Giver Screening tool, Springhills Skilled (GG) dated June 9, 2024, which a nurse completed to document Petitioner's level of care, their cognitive ability, and their memory. ID at 4.

Peter Paisley, (Paisley), M.D., the Medical Director of the nursing facility testified on Petitioner's behalf. ID at 4. Paisley testified he was Petitioner's attending physician. Ibid. Paisley confirmed that Petitioner was admitted to the facility in March 2024 and was discharged in August 2024. Ibid. Paisley stated that Petitioner suffered from dementia and had good days and bad days. Ibid. Petitioner took multiple medications for mild dementia and psychosis, and their daughter was concerned because they had multiple falls at home. Ibid. Paisley further testified that Petitioner did not need hands-on assistance in ambulating but did use a walker to get around. Ibid. Paisley finally testified that Petitioner seemed like a typical nursing home patient. Ibid.

Laurie Kline (Kline), Nursing Administrator, testified for Petitioner that she is not arguing with the OCCO assessment but that some days are better than others for the Petitioner. ID at 5. Kline testified that the nurses had performed multiple cognitive assessments on Petitioner, and they were repeatedly found to be mild to moderately impaired. Ibid. More specifically, she indicated that the April 9th Functional Ability Goals Analysis (section GG) indicated that Petitioner requires assistance with showering and supervision on some days with additional ADLs. Ibid. Kline indicated that the "documents" show Petitioner needed assistance in toileting, showering, and bathing. Ibid. Kline referred the court to Exhibit R-10, pages 1-13, which was identified as a Springhills Skilled (GG). Ibid. When the ALJ asked which page she was referring to, Kline could not give the ALJ a page number. Ibid.

The Administrative Law Judge (ALJ) noted that to qualify for a nursing facility level of assistance, the applicant must have deficits in at least three of the ADLs mentioned above and/or severe cognitive impairments that compromise their personal safety. Despite having a diagnosis of dementia, the credible evidence demonstrated that Petitioner's short-term memory was intact and could perform all of their ADLs except for

occasionally needing assistance bathing their feet. ID at 9. The ALJ concluded that Petitioner did not meet the criteria set forth at N.J.A.C. 10:166 for NFLOC, and therefore, the decision of OCCO was proper. Ibid.

I agree with the ALJ's findings. 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. Here, OCCO assigned Fields to evaluate Petitioner's clinical eligibility for nursing level of care. She determined that Petitioner did not meet NFLOC, as they did not need hands-on assistance in any ADLs and, at most, needed supervision in bathing their feet. Mrs. Fredrik also confirmed that Petitioner occasionally needed help with washing their feet. Additionally, the assessment did not identify any cognitive deficits.

The Initial Decision appropriately affirmed the denial of benefits based on OCCO's assessment, the facility's care records, and Petitioner's statements at the time of the assessment, finding that Petitioner did not meet the clinical criteria for NFLOC. However, should Petitioner's medical condition change, Petitioner may request a new assessment

Thus, OCCO properly denied Petitioner's clinical eligibility for NFLOC under N.J.A.C. 10:166 and New Jersey FamilyCare Comprehensive Demonstration, Section 1115.

THEREFORE, it is on this 5th day of MAY 2025,

ORDERED:

That the Initial Decision is hereby ADOPTED.

Gregory Woods

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