

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. B-07/21-419  
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Appeal of )  
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INTRODUCTION

Petitioner appeals the denial of Medicaid "high needs" or "highest needs" Choices for Care eligibility by the Department of Disabilities, Aging and Independent Living (DAAIL or Department). The following is based on an evidentiary hearing held by video and telephone on November 10, 2021, and documents submitted by the Department prior to hearing. Petitioner's daughter represented his interests at hearing and a Nepalese interpreter provided translation during the hearing.

FINDINGS OF FACT

1. Petitioner is a 64-year-old male (at time of assessment) who has been diagnosed with tuberculosis, COPD (chronic obstructive pulmonary disease), Dyslipidemia (cholesterol imbalance), gastroesophageal reflux disease and hypertension. Petitioner lives with his wife, who is also ill, and his daughter. Petitioner is not currently receiving any services from the Department. His daughter applied for Choices for Care (CFC) services in the "high" or "highest"

needs category and he was assessed for eligibility on June 2, 2021. Due to COVID, in person assessments were not being performed at this time so the assessor offered a video or phone assessment; petitioner did not have access to a computer so elected a phone interview. A Nepali interpreter was offered but was declined. The assessment was performed by a DAIL long-term clinical care coordinator who is a registered nurse; she has worked with the program since its inception in 2005. The assessor reviewed the petitioner's medical records prior to the assessment.

2. The assessment form utilized by the Department covers functional performance in nine areas of activities of daily living (ADLs) performed within the home, as well as meal preparation and medication management. The individual's ability to perform tasks in most of the ADLs are rated as follows:

- Independent: No help or oversight OR help provided 1 or 2 times.
- Supervision: Oversight/cueing 3+ times OR Oversight with physical help 1-2 times.
- Limited Assistance: Non-weight bearing physical help 3+ times OR extensive help 1
- Extensive Assistance: Weight bearing help OR full caregiver assistance 3+ times.
- Total Dependence: Full assistance every time.

For the ADL of bathing, performance is rated as follows:

- Independent: No help at all
- Supervision: Oversight/cuing only.

-Limited Assistance: Physical help limited to transfer only.

-Extensive Assistance: Physical help in part of bathing activity.

-Total Dependence: Full assistance every time.

3. In summary, the assessor determined that petitioner was "independent" in one category of ADL, toilet use, needed "supervision" (the most minimal level of assistance) in two ADLs, eating and mobility, and needed "limited assistance" in five other ADLs, the functions of mobility in bed (positioning), transfer, bathing, dressing, and personal hygiene. He did not use adaptive devices and his meal preparation and medication management was done by others (his daughter). At hearing, petitioner's daughter agreed with the assessor's rating of these factors.

4. In addition to a review of the ADLs, the assessor also considered petitioner's cognitive status. She scored him as meeting the category of "modified independence," meaning he had some difficulty in new situations (only). The assessor found that petitioner's medical records reflect that his physician noted that he was alert and oriented during his last medical appointment in April. However, she noted that in May both petitioner and his daughter had stated that his memory was not good. She noted that he was reported as

wandering, but that it did not occur on a daily basis. It was also reported and noted that petitioner occasionally, on less than a daily basis, was socially inappropriate. However, no evidence of physically or verbally aggressive behavior was found. The assessor noted that petitioner had recently been able to independently make the decision to have a surgery for skin cancer.

5. As a result of this assessment, the Department determined that petitioner was not eligible for "high" or "highest" needs CFC. DAIL mailed a letter to petitioner dated June 2, 2021, informing him that he had been determined ineligible for CFC because he did not meet the "nursing home level of care" requirement.

6. The assessor's testimony at hearing was highly credible.

7. At hearing, petitioner's daughter stated that she is seeking CFC services because she works outside the home and is the only available support for her father and mother. She is worried that her father's memory is worsening and that if he leaves the home while she is away, he may be in danger.<sup>1</sup>

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<sup>1</sup> It was suggested to petitioner that the Essential Person program through the Department for Children and Families might be an option that could be of assistance to her family.

ORDER

DAIL's decision is affirmed.

REASONS

The Department of Disabilities, Aging and Independent Living administers the CFC program, which falls under a Medicaid waiver intended to maximize independence and provide services which enable individuals to live in the community, as feasible. Review of the Department's determination is de novo. The Department has the burden of proof at hearing if terminating or reducing existing benefits; otherwise, the petitioner bears the burden. See Fair Hearing Rule 1000.3.0.4.

The CFC implementing regulations set out the eligibility criteria for the program. See Health Care Administrative Rules ("HCAR") § 7.102. An individual may be clinically eligible under the "highest needs group" if they require extensive or total assistance with at least one of the following Activities of Daily Living (ADLs): toilet use; eating; bed mobility; or transfer and require *at least* limited assistance with any other ADL." HCAR § 7.102(6)(A)(i). *Id.* (emphasis in original). An individual may be eligible under the "high needs group" if they "require extensive-to-total assistance with at least one of the

following ADLs: Bathing, Dressing, Eating, Toilet Use, [and] Physical Assistance to Walk." HCAR § 7.102(6)(A)(i).

The evidence in the record fails to show that petitioner meets either standard.

Alternatively, an individual may qualify in these categories<sup>2</sup> if they have a severe impairment with decision-making skills or a moderate impairment with decision-making skills along with a behavioral condition - such as wandering, resists care, verbally or physically aggressive behavior - which occurs frequently and is not easily altered. HCAR § 7.102.5 (a)(6)(2). The evidence presented was that while petitioner did wander occasionally, it did not happen daily and none of the other behavioral conditions were found.

As such, DAIL's denial of petitioner's CFC high or highest needs eligibility is consistent with the applicable rules and must be affirmed. See 33 V.S.A. § 3091(d); Fair Hearing Rule No. 1000.4D.

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<sup>2</sup> There are also other eligibility categories, but none are applicable in this case.