

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. B-02/12-88  
 )  
Appeal of )

INTRODUCTION

The petitioner appeals a decision by the Department of Disabilities, Aging and Independent Living (DAIL) terminating his benefits under the Choices for Care (CFC) highest needs program. The initial issue is whether DAIL can show that petitioner no longer meets the clinical criteria for the CFC highest needs program. If petitioner does not meet the clinical criteria for the CFC highest needs program, the issue becomes whether petitioner meets the clinical criteria for the CFC high needs program.

Procedural History

A Commissioner's Review dated January 30, 2012 upheld the termination of petitioner's CFC benefits. The petitioner asked for a fair hearing on February 8, 2012. Petitioner is receiving continuing benefits pending decision.

A telephone status conference was held on March 22, 2012 in which petitioner requested time to seek legal representation. Follow-up telephone status conferences were held on May 1 and June 5, 2012.

Partial testimony was taken at hearing on June 26, 2012. The hearing was continued to July 11, 2012 to take testimony from a witness who was ill on the earlier hearing date.

The decision is based on the evidence taken at hearing.

FINDINGS OF FACT

1. The petitioner is a seventy-four-year-old man who receives Social Security retirement benefits. He lives with PD, his girlfriend. PD is petitioner's personal care attendant (PCA).

2. Over three years ago, petitioner was hospitalized due to a combination of problems including a heart attack and a stroke. When petitioner was released from the hospital, petitioner qualified for the CFC highest needs program because he needed extensive assistance with several activities of daily living.

3. BS is a Long Term Care Clinical Coordinator (LTCCC) employed by the Department. BS did an in-person evaluation of petitioner's needs when he applied for the CFC program. The evaluation was done at petitioner's home.

4. Petitioner was reassessed annually to determine his continuing eligibility for CFC services. As part of the assessment process, the petitioner's case manager, SS,

through the local area agency on aging, met with petitioner and completed an Independent Living Assessment (ILA) explaining petitioner's level of need for help with activities of daily living (ADLs), medication management, meal preparation, incidental activities of daily living (IADLs), and, if applicable, incontinence. BS then reviewed the ILAs and made a determination whether petitioner continued to be eligible and, if so, the scope of his service need.

5. For the service year spanning May 30, 2010 through May 29, 2011, petitioner needed extensive assistance with the ADLs of dressing, bathing, transferring, and bed mobility. He needed limited assistance with personal hygiene and supervision with toilet use and mobility.

6. SS helped petitioner complete an ILA for the service year starting May 30, 2011. SS only noted one ADL, bathing, that needed extensive assistance. She noted improvement in the ADLs of dressing, transferring and bed mobility. SS rated petitioner needing light assistance with personal hygiene and dressing. Petitioner needed supervision with bed mobility, toilet use, transferring and mobility.

7. BS reviewed the request and determined that petitioner no longer met the clinical criteria for the CFC

program. BS sent petitioner a Notice of Termination on June 17, 2011 to be effective June 28, 2011. By timely appealing the proposed termination, petitioner kept continuing benefits.

8. The ILA sets out the description of the ADL and the levels of assistance. Petitioner's initial eligibility was based on the need for extensive assistance with dressing, bathing, transferring, and bed mobility. The pertinent sections of the ILA are:

1. DRESSING: During the past 7 days, how would you rate the client's ability to perform DRESSING? (putting on, fastening, taking off clothing, including prosthesis)

INDEPENDENT: No help or oversight OR help provide 1 or 2 times  
SUPERVISION: Oversight/cueing 3+times OR oversight with physical help 1-2 times  
LIMITED ASSISTANCE: Non-wt bearing physical help 3+ times or extensive help 1-2 times  
EXTENSIVE ASSISTANCE: Weight bearing help or full caregiver assistance 3+times  
TOTAL DEPENDENCE: Full assistance every time

2. BATHING: During the past 7 days, how would you rate the client's ability to perform BATHING (include shower, full tub, or sponge bath, exclude washing back or hair)?

INDEPENDENT: No help at all  
SUPERVISION: Oversight/cueing only  
LIMITED ASSISTANCE: Physical help limited to transfer only  
EXTENSIVE ASSISTANCE: Physical help in part of bathing activity  
TOTAL DEPENDENCE: Full assistance every time

4. MOBILITY IN BED: During the past 7 days, how would you rate the client's ability to perform MOBILITY IN BED? (moving to and from lying position, turning side to side, and positioning while in bed)

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-wt bearing physical help 3+ times OR extensive help 1-2 times

EXTENSIVE ASSISTANCE: Weight bearing help OR full caregiver assistance 3+ times

TOTAL DEPENDENCE: Full assistance every time

7. TRANSFER: During the past 7 days, how would you rate the client's ability to TRANSFER? (moving to/from bed, chair, wheelchair, standing position, EXCLUDES to/from bath/toilet)

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-wt bearing physical help 3+ times or extensive help 1-2 times

EXTENSIVE ASSISTANCE: Weight bearing help or full caregiver assistance 3+ times

TOTAL DEPENDENCE: Full assistance every time

9. The pertinent testimony came from BS on behalf of the Department and from petitioner and PD. All concur that petitioner has improved over time. Based on their testimony, petitioner no longer needs extensive assistance with dressing, bed mobility and transferring; he does not need the type of weight bearing or full caregiver assistance contemplated by the CFC program for those ADLs. The question

is whether petitioner needs extensive assistance with bathing; the following findings of fact deal with this issue.

10. BS testified at hearing. She does a home visit and assessment for applicants to the CFC program. During the reassessment process, she reviews the ILAs. She talks with the case managers when she has questions about the ILAs or wants further clarification.

On petitioner's most recent ILA, the case manager checked extensive assistance for bathing. BS had questions and spoke with the case manager about the ILA and was told by the case manager that petitioner did not meet the criteria for the program.

BS did not believe that petitioner needed extensive assistance or physical help with bathing and found that petitioner no longer met the clinical criteria for the CFC program. In addition, BS looks at whether there is a medical need for bathing seven days per week, and if there is not, finds that the bathing criteria is not met. She did not see a medical need for bathing seven days per week.

11. The petitioner testified at hearing. He explained that about three years ago, he had blood poisoning, a mild stroke and a heart attack and was hospitalized including three weeks in the Intensive Care Unit. He agreed that he

has improved over the past three years but believes that he still needs help. He is currently using physical therapy services.

Petitioner said he needs help getting into and out of the bathtub. He said PD washes his hair for him because he cannot reach his head.

He has some problems with balance. He is able to drive and still rides his motorcycle.

12. PD is petitioner's girlfriend and has been with him for twenty-seven years. She is petitioner's PCA.

PD said she washes petitioner's back and feet; petitioner can do the rest of his bathing. PD's description does not meet the description of extensive assistance.

13. The Department presented additional testimony from KK who has observed petitioner because her parents are neighbors of petitioner. Her testimony was not germane to the level of assistance needed for bathing. The petitioner presented testimony from SF whose family is presently staying with petitioner. His testimony was not germane to the level of assistance needed for bathing.

14. Petitioner does not need extensive assistance with bathing.

ORDER

The Department's decision is affirmed.

REASONS

The Choices for Care (CFC) highest and high needs program gives individuals who would otherwise be in a nursing home the option of receiving personal care services in their home or community setting.

Petitioner qualified for the CFC program several years ago after suffering a combination of significant medical problems including a heart attack and a stroke that impacted his ability to do his activities of daily living. Over time, petitioner improved.

Petitioner's eligibility is assessed annually to determine if he still meets the clinical criteria, and if so, the extent of services that should be provided for him.



The pertinent eligibility criteria are found below:

IV.B.1 Highest Needs Group

b. Individuals who apply and meet any of the following eligibility criteria shall be eligible for and enrolled in the Highest Needs group:

i. Individuals who 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.

. . .

IV.B.2 High Needs Group

b. Individuals who meet any of the following eligibility criteria shall be eligible for the High Needs group:

i. Individuals who require extensive or total assistance on a daily basis with at least one of the following ADLs:

- Bathing
- Eating
- Physical Assistance to Walk
- Dressing
- Toilet Use

. . .

Petitioner does not meet the criteria for the highest needs group because he does not need extensive assistance with toilet use, eating, bed mobility or transfers. The Department has shown that petitioner no longer meets the criteria for the highest needs group.

Although petitioner no longer meets the criteria for the highest needs program, the next step is to consider whether

he meets the criteria for the high needs group. If a person needs extensive or total assistance with bathing, the person can qualify for the high needs group if he/she meets the financial criteria for the program.

Bathing does not include washing hair or washing the person's back. Assistance getting into and out of the bathtub is limited assistance. There is also no necessity that bathing needs medical documentation that bathing is necessary seven days per week.

The question is whether petitioner needs physical help with other parts of bathing. The evidence does not show this need.

Based on the foregoing, the Department's decision is affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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