

The matter arises regarding the termination of Petitioner's clinical eligibility under N.J.A.C. 8:85-2.1. Petitioner was assessed by OCCO in June 2019 at the nursing facility where she resides. She stated she was able to perform all of her activities of daily living (ADLs). R-5. The staff and the clinical notes at the nursing facility confirmed that Petitioner does not have any difficulty performing her ADLs.

In order to receive LTSS benefits, 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 NF 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.

The regulation goes on to state:

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 (bathing, dressing, toilet use, transfer, locomotion, bed mobility, and eating).

Here, Petitioner was assessed by an OCCO nurse and found that she needed assistance with one ADL, bathing. Petitioner's other needs are in areas such as housekeeping, shopping and meal preparation and are considered instrumental activities of daily living (IADLs). See generally N.J.A.C. 10:60-1.2. Limitations in IADLs are not used to assess clinical eligibility.

The Initial Decision reversed the termination by finding that Petitioner was in need of assistance with two IADLs, food preparation and managing medication, and one ADL, occasional bathing assistance. ID at 4. For the reasons that follow, I hereby REVERSE the Initial Decision.

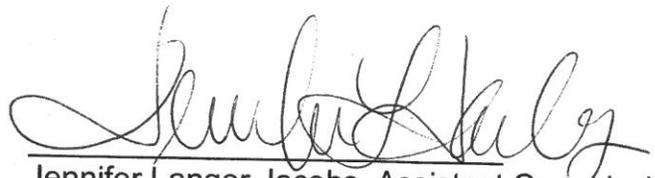
The clinical eligibility regulations require dependency in "several activities of daily living". It is understood that several means more than two ADLs. As the exceptions pointed out, the IADLs referenced are performed by the nursing facility. By virtue of being a resident of the facility, Petitioner does not prepare her own food nor does she need to remember to take medication as the facility provides these services. As such Petitioner was only assessed to have a deficiency in one ADL that is occasional at best. ID at 4. That occasional assistance with bathing cannot be the basis to determine ongoing clinical eligibility where the regulations require dependency in at least three ADLs. Thus, the determination that Petitioner was no longer eligible for a clinical level of care was correct.

The Initial Decision's concern about Petitioner's ability to perform IADLs is well meaning but is not supported by the record and is not germane to the clinical eligibility determination. As mentioned above, IADLs are not considered when determining clinical eligibility. Moreover, Petitioner's residence in a nursing facility prevents her from preparing food or managing her medicine. Nothing in the record indicates that she is unable to do so in a community setting and, even so, those tasks would be part of the discharge plan that is developed by the nursing facility. N.J.A.C. 8:39-5.4(b) and (f).

THEREFORE, it is on this ^{13th} day of FEBRUARY 2020,

ORDERED:

That the Initial Decision is hereby REVERSED.



Jennifer Langer Jacobs, Assistant Commissioner
Division of Medical Assistance
and Health Services