

NHS Continuing Healthcare

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Agenda

- Hugh James – about us
- What is NHS Continuing Healthcare?
- Leading case law
- Process of assessment – how an individual is assessed, who is involved and when an assessment should take place
- The National Framework and Decision Support Tool
- Challenging decisions

Hugh James Nursing Care

- Leading experts in the UK
- Recovered over £250 million
- Acted for over 6000 clients
- Law Society and Age Cymru awards

What do we do?

- We act on behalf of people who are paying for their care fees
- We also act on behalf estates, where the deceased has paid care fees.
- Current assessments and retrospective reviews
- Clients in England and Wales



What is NHS Funded Continuing Healthcare?

- A package of care arranged and funded solely by the NHS, which can be received in a hospital, nursing home or at the individual's home.
- Intended to cover the entire cost of care, including all medical care, nursing care, personal care, living costs and accommodation costs.

Leading Case Law

R. v North and East Devon Health Authority Ex parte Coughlan
[2001] Q.B. 213

- The Court of Appeal established the legal test for eligibility:
The NHS would be responsible for the cost of an individual's care if they can demonstrate that their health needs were:
 - more than merely incidental or ancillary to the provision of accommodation and
 - of a nature which it could be expected that a local authority whose primary responsibility was to provide social services could be expected to provide.

Leading Case Law

R. (on the application of Grogan) v Bexley NHS Trust [2006]
EWHC 44 (Admin)

The High Court reaffirmed the Court of Appeal's ruling in Coughlan.

- The government guidance did not contain a clear test of the approach of the primary health need nor did it contain the ancillary/ incidental test of Coughlan
- The criteria linked eligibility for fully funded NHS care to the registered nursing care contribution

So, what if you are not eligible for full NHS funding?

- You are the responsibility of the Local Authority.
- Unlike the NHS, social services are entitled to means assess the ability to pay for care.
- Means assessment - if you have assets over £50,000 in Wales (£23,250 in England) you have to pay all care home fees. This includes the value of the home if not receiving care at home and no exemption applies

The National Framework

Underpinning Principles

1. People First
2. Integrity of Decision-making
3. No decisions about me without me
4. No delays in meeting an individual's needs due to funding discussions
5. Understand diagnosis, focus on need
6. Co-ordinated care & continuity
7. Communicate

The National Framework

- Government response to case law
- Requires a clear, reasoned decision which is based on evidence from a comprehensive assessment. **Should draw on those that have direct knowledge of the individual.** Must include input of consultant or GP. Should, where appropriate, involve other agencies who work with the individual could include third sector agencies.
- A named care co-ordinator/lead professional must be identified
- There must be a formal MDT meeting. The individual and/or their representative must be invited to participate in the assessment. Whilst not part of the MDT they must be allowed to fully share their views as an equal partner. Any disagreements noted.
- MDT members must comprise of health and social care staff presently or recently involved in assessing, reviewing, treating or supporting the individual, who can meaningfully contribute. **As a minimum must be at least 2 professionals who have direct knowledge of the individual and their needs, from different healthcare professionals and a social worker.**

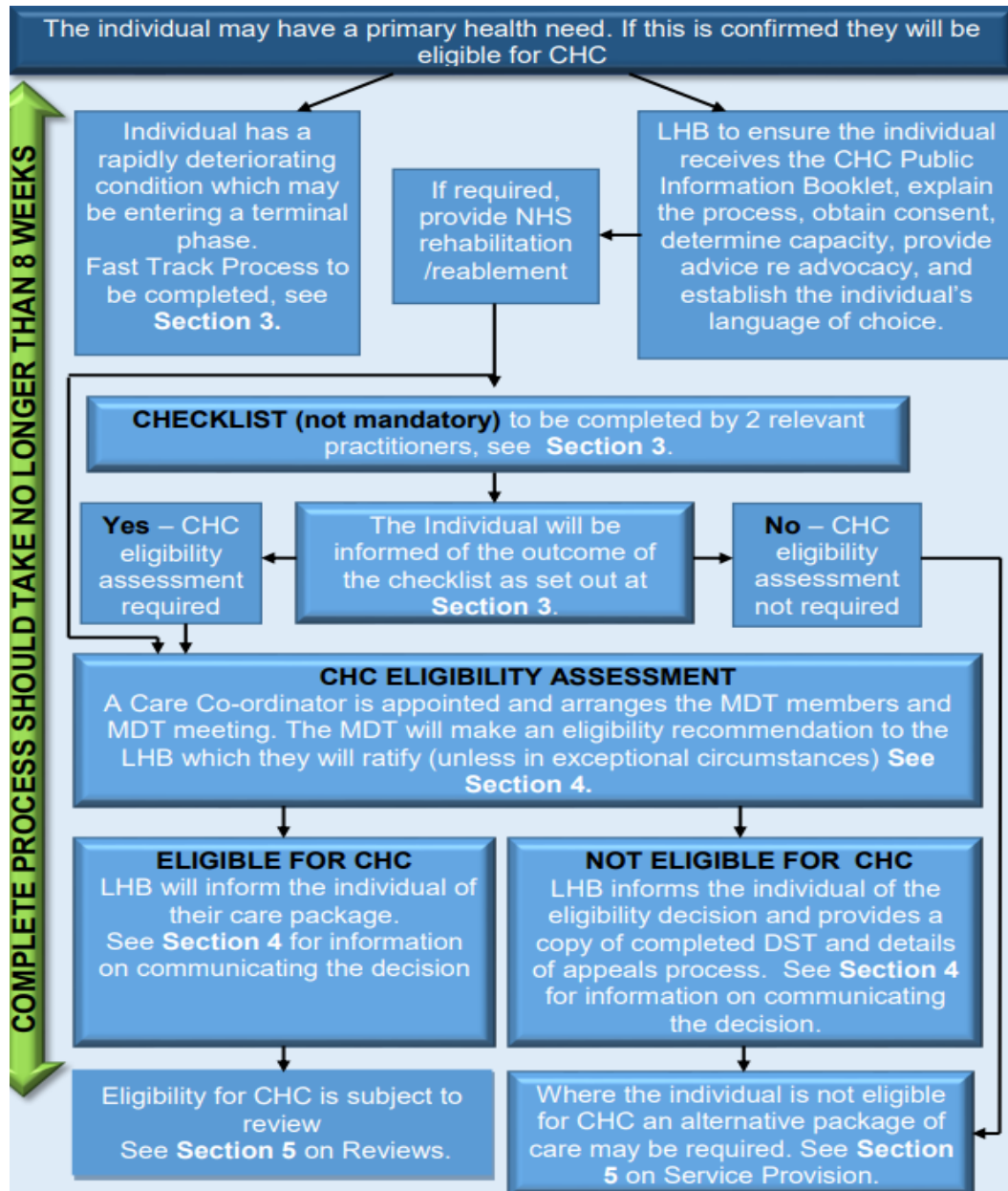
Criterion for eligibility

Sole Criterion for Eligibility: whether a person's primary need is a health need.

- Whether someone is eligible you need to consider the nature, intensity, complexity or unpredictability of needs (4 key characteristics).
- Each of the above characteristics may alone or in combination demonstrate a primary health need, because of the quality and/or quantity of care required. The totality of the overall needs and effects of the interaction of needs should be considered



Assessment Process



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The Decision Support Tool

- 12 care domains
 - Establishing a Primary Health Need
- A level of **priority** in any of the four domains that carry this level
 - Two or more incidences of identified **severe** need

If there is:

- One domain recorded as severe, together with needs in a number of other domains, or
- A number of domains with high and/or moderate needs,

Can indicate a primary health need

Decision Support Tool

UNPREDICTABILITY	INTENSITY	COMPLEXITY											
		INTENSITY											
		P								P	P	P	
		S	S		S	S		S		S	S		S
		H	H	H	H	H	H	H	H	H	H	H	H
		M	M	M	M	M	M	M	M	M	M	M	M
		L	L	L	L	L	L	L	L	L	L	L	L
		N	N	N	N	N	N	N	N	N	N	N	N
	Breathing												
	Nutrition												
	Continence												
	Skin Integrity												
	Mobility												
	Communication												
	Cognition												
	Psychological and Emotional needs												
	Behaviour												
	Drug Therapies & Medication												
	Altered States of Consciousness (ASC)												
	Other significant care needs												

Key: N = No needs L = Low M = Moderate H = High S = Severe P = Priority



Breathing

- Need to consider:
 - Shortness of breath
 - Any use of inhalers and/or nebulisers
 - Impact on activities
 - Any oxygen use
 - Tracheotomy
 - Suction

Nutrition

- Need to consider the following:
 - Can they eat independently
 - If they need feeding how long does it take
 - Do they need prompting and/or supervision
 - Are they PEG fed and is it problematic
 - Any dysphagia/risk of choking
 - Normal diet or pureed or soft
 - Risk Assessment
 - Weight loss
 - Any SALT or Dietician intervention
 - Food fluid charts

Continence

Need to consider:

- Urinary incontinent
- Faecal incontinence
- UTIs
- Constipation
- Catheter/sheath/conveen/stoma
- Management of incontinence

Skin (including tissue viability)

- Any condition which affects or has the potential to affect the integrity of the skin. Need to consider:
 - Waterlow or risk assessment score
 - Any preventative action and the frequency
 - Any pressure relieving equipment eg regular turning, pressure relieving mattress
 - Any wounds including pressure sores and the treatment and how they respond to treatment
 - Any dressing regime
 - Any involvement from Tissue Viability Nurse, GP etc

Mobility

- Need to consider:
 - Ability to weight bear
 - Any aids/assistance required eg hoist, zimmer frame
 - Ability to mobilise
 - Risk of falls (up to date risk assessment is key)
 - If immobile can they reposition themselves independently
 - Any limb contractures
 - How are they transferred

Communication

- This domain deals with difficulties with expression and understanding.
- Includes verbal and non-verbal communication
- Are needs anticipated due to familiarity
- How reliable is the communication

Psychological & Emotional Needs

- Need to consider:
 - Mood disturbance
 - Hallucinations
 - Anxiety
 - Distress
 - Depression
 - Are they withdrawn? Do they engage in care planning or daily activities
 - How they respond to reassurance
- Key is the impact on their health and/or wellbeing

Cognition

- Need to consider:
 - Short-term memory
 - Long-term memory
 - Ability to make decisions
 - Orientation to time, place, person etc
 - Ability to assess risks
- Key to the difference between Severe and High level of need is long-term memory loss in addition.

Behaviour

- Looks at challenging behaviour:
 - Aggression, violence or passive non-aggressive behaviour
 - Severe disinhibition
 - Intractable noisiness or restlessness
 - Resistance to necessary care and treatment
 - Severe fluctuations in mental state
 - Extreme frustration associated with communication difficulties
 - Inappropriate interference with others
 - Identified high risk of suicide

Drug Therapies

- Need to consider:
 - Supervision/administration and/or prompting
 - Compliance or non-compliance with medication
 - Pain, how it responds to medication and impact on daily living
 - Type of medication
 - Route of medication
 - Supervision and monitoring due to fluctuations and/or risks
 - PRN medication
 - Is the medication effective

Altered States of Consciousness (ASC)

- Need to consider:
 - Any history of ASC
 - TIAs, stroke, epilepsy, fits etc
 - Frequency of any ASC
 - Severity of any ASC
 - What intervention is required

How should decisions be made?

- If cannot decide the level the MDT should choose the higher of the levels under consideration.
- Where a particular effect of a condition could be reflected in more than one domain it can be recorded in both and noted.
- Managed Needs- still needs

How long should the assessment process take?

- A *'timely and consistent fashion'*
- The time taken for assessments and agreeing a care package should be completed in 8 weeks from initial trigger to agreeing a care package
- MDT should also advise, if in their professional judgement they can identify when the primary health need became evident & individual should be reimbursed

Primary Health Need

- Once the DST has been completed and eligibility is not automatically identified the individual's needs should be considered in totality to determine whether they have a primary health need.
- The nature, intensity, complexity and unpredictability of the needs should be considered.

Primary Health Need

- NATURE- describes the particular characteristics of an individual's needs and the type and effect of those needs and the quality of interventions required
- INTENSITY- relates to the extent (quantity) and severity (degree) of the needs and the support required to meet them. Including the need for ongoing care
- COMPLEXITY- this is concerned with how the needs present and interact to increase the skill needed to monitor the symptoms, treat the condition and/or manage the care
- UNPREDICTABILITY- this describes the degree to which needs fluctuate, creating challenges in managing them. Also the level of risk to the person's health if adequate and timely care is not provided. Likely to have fluctuating, or unstable or rapidly deteriorating condition

The National Framework

Eligibility does not depend on:

- The setting of care
- Changes in the competence and the ability of the care provider to manage care
- The use (or not) of NHS employed staff to provide care
- The need for/presence of “specialist staff” in care delivery
- The existence of other NHS funded care or
- Any other input-related (rather than needs related) rationale
- Diagnosis of an illness

Care Package if eligible for CHC

- Governed by Sustainable Care Planning in Continuing NHS Healthcare guidance.
- They must consider:

Sufficiency: The care package should be proportionate to need.

Safety

The care package should not expose individuals to undue risk.

Quality

The care package should be based upon a clear plan of care.

Affordability

The care package should not be disproportionately expensive to provide.

Reliability

The care package should be able to be reliably delivered on a day to day basis.

Exceptionality: The care package should be considered against the criteria for exceptionality.

Why you need to act promptly

- Can only request a retrospective review for the previous 12 months from the date of the request for a review
- Following an assessment there is 28 days to advise of an intention to appeal then 6 months from the assessment to submit reasons for appeal.

The Appeal Process

- Each HB will have a local review process
- External peer review (from another Directorate or HB)
- Local review process will include a meeting with the individual
- Independent Review Panel



Fast Track Process

- For individuals with a rapidly deteriorating condition which maybe entering a terminal phase
- The process enables the health authority to bypass the Checklist and Decision Support Tool for immediate provision of NHS Continuing Healthcare
- Health Boards must have a robust fast track process in place to complete the assessment process within 2 days.
- Should be completed by an appropriate clinician who should give reasons why the individual meets the conditions requiring a fast track decision to be made

Further information

- Hugh James Nursing Care website:
[www.hughjames.com/service/nursing-care/Other case studies](http://www.hughjames.com/service/nursing-care/Other%20case%20studies)
 - ◆ FAQs
 - ◆ News and articles
 - ◆ Free confidential assessment

Response to the problems being encountered

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www.hughjames.com/nursingcare



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