

NHS Continuing Healthcare for Adults – Challenging Decisions

Challenges

Where a Clinical Commissioning Group (“CCG”) refuses to award NHS Continuing Healthcare status (i.e. a complete package of ongoing care arranged and funded solely by the NHS), it is possible to challenge the decision.

Appeals Process

Stage 1: Local Resolution

The first step to challenge a refusal to award eligibility is to request that the CCG initiate the Local Resolution procedure to reconsider its decision.

What must be involved?

- 1) Local Resolution is an attempt to resolve concerns through an informal two-way meaningful discussion, the details of which must be confirmed in writing.

Often when a Local Resolution request is lodged, the CCG will arrange a telephone meeting to discuss the reasons for the decision, grounds for appeal, consider any additional evidence not previously considered and seek to explore possible resolution.

- 2) If a resolution is not possible, a formal meeting (often referred to as a Local Resolution Meeting or Local Appeal) with the individual and/or their representative is convened

The purpose is to discuss the reasons for the appeal with someone on behalf of the CCG with authority to decide next steps. This may include a request to obtain further reports, or to seek clarification/reconsideration by the Multi-disciplinary team who carried out the original assessment and completed the decision support tool.

- 3) Following the Local Resolution Meeting and completion of any agreed next steps, the CCG must confirm in writing whether it will uphold or change the eligibility decision, with a clear and comprehensive rationale for the decision.

In most cases, eligibility decisions must be reconsidered by the CCG via Local Resolution before NHS England will consider an appeal.

Stage 2: Independent Review Panels

If concerns remain once Local Resolution has been completed, a request can be made to NHS England to convene an Independent Review Panel (“IRP”).

Upon receipt of a request, a completed IRP Questionnaire and any supporting appeal submissions or evidence, an Independent Chair will be allocated to consider whether the case ought to proceed to a Panel.

NHS England’s Right to Reject

NHS England may decide not to convene a Panel in cases where it is considered that the individual falls well outside the eligibility criteria (i.e. the primary health need test), or where it is not considered to be appropriate for the Panel to consider the case because a comprehensive assessment of need has not been completed by the CCG.

Scope of an IRP

An IRP can only review:

- a) The primary health need decision made by a CCG, or
- b) The procedure followed by the CCG to reach a decision of non-eligibility.

The Panel

If the Independent Chair agrees the case can proceed, the matter will be placed before a Panel, which should consist of an independent:

1. Chair
2. CCG representative (not involved in the original decision)
3. Local Authority representative (not involved in the original decision)
4. Clinical Advisor (not involved in the individual’s care or the organisation which provides care)*

* It is at the Chair’s discretion as to whether the Clinical Advisor attends the Panel in person, or provides written evidence in support.

The Process

The IRP will re-consider all the evidence provided by the CCG and the appellant in order to address the points in dispute and to decide whether to uphold or disagree with the CCG’s eligibility decision. The family and/or their representative will be invited to attend a Panel hearing to put forward their views and to answer any evidential queries which may arise. The Panel’s deliberations & decision must be confirmed in writing.

The Decision

If the IRP decide eligibility should have been awarded, a CCG must accept NHS England’s recommendation in all but exceptional circumstances.

Stage 3: Parliamentary and Health Service Ombudsman

Decisions by NHS England can be challenged by way of a complaint to the Ombudsman, however the Ombudsman is restricted to consideration of whether there have been any deficiencies in the decision making process only. If the Ombudsman identifies procedural concerns, it may request NHS England reconsider its decision.

Time Limits

All eligibility decisions must be challenged within 6 months of the date of the CCG's original decision letter. A complaint to the Ombudsman must be lodged within 12 months of the date of the decision complained of.

Right of Redress

If a CCG or NHS England overturns a decision and agrees that the adult ought to have been found eligible for NHS Continuing Healthcare, the individual must be put back in the position they would have been in, had eligibility been awarded at the outset.

This means that the CCG must repay all care costs incurred from the 29th day of the period from the date the CCG received the completed Checklist Assessment until the date of the eligibility decision. Unless any fresh assessments of need were completed inbetween the original assessment and the appeal, which may impact the amount of care costs recoverable. Interest is also payable which is calculated in accordance with the Retail Price Index % annual increase.

If the individual is living, the eligibility decision will also mean that care fees going forward must be funded until the 3 month initial and 12 month annual review.

An offer of inadequate redress, or refusal to reimburse an individual, can be challenged by way of complaint to the CCG and/or the Ombudsman.

How can Lester Aldridge assist?

At Lester Aldridge we are highly experienced in representing individuals and their families in the NHS Continuing Healthcare eligibility assessment and appeals processes. We can provide:

- An initial, free assessment to determine the merits of appealing a decision based on the available evidence. We can also recommend how to strengthen the prospects of success. This may include obtaining expert evidence.
- Advocacy at Local Resolution/Local Appeal meetings with CCGs, and at Independent Review Panel hearings with NHS England to ensure family views are clearly articulated.
- In the case of Independent Review Panel hearings, we can recommend expert Barristers whom by virtue of their profession, can provide top tier advocacy, to strengthen the oral presentation of an appeal and maximise prospects of success.
- Detailed written submissions, which identify procedural breaches of the National Framework. In addition, our submissions will forensically analyse all the evidence against the eligibility criteria to facilitate the presentation of evidence-based arguments in support of eligibility.
- On-going support to negotiate with a CCG and/or NHS England throughout the process.
- Advice at each key stage and in respect of any next steps required such as how to lodge a claim for redress, or in relation to brokering a care package.

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