

NHS Continuing Healthcare and NHS-funded Nursing Care Appeal Procedure

Used by:

**NHS Barnsley CCG
NHS Doncaster CCG
NHS Rotherham CCG
NHS Wakefield CCG
NHS North Kirklees CCG
NHS Greater Huddersfield CCG
NHS Sheffield CCG**

Last Review Date	January 2018
Approving Body	CHC Delivery Board
Date of Approval	7 th November 2019
Date of Implementation	8 th November 2019
Next Review Date	8 th November 2022
Review Responsibility	Shared Services Operational Lead
Version	7.5

REVISIONS/AMENDMENTS SINCE LAST VERSION

Date of Review	Amendment Details
July 2018	Amendment to reflect latest guidance from NHS England Section 5.1 – Additional information to ensure clarity regarding record requests and availability of records
June 2019	Sections 1.1, 4.6 and 6.4 to reflect the 2018 revised National Framework Section 4.5 to reflect GDPR legislation

Contents

1. Introduction	4
2. The Role of the Continuing Healthcare Appeals Shared Service	4
3. Requests for an Appeal	5
4. Upon Receipt of a Request for Appeal	6
5. Gathering of Information	7
6. Local Resolution Meetings	8
7. Challenges to the outcome of the Local Appeal Process	9
8. Exceptionality Criteria (regarding non-submission of an Appeal by the Department of Health stipulated 6 month time limit following notification of an eligibility decision)	9
9. Review and dissemination	10
10. References	11

1. Introduction

- 1.1 This procedure is created in accordance with paragraph 195 of the National Framework for NHS Continuing Healthcare (CHC) as revised in October 2018. This guidance replaces the previous version of the National Framework, published in November 2012. The revised 2018 National Framework follows an extensive period of external engagement with stakeholders across the NHS, Local Authorities, and patient representative groups. The 2018 National Framework has been collaboratively written by the Department of Health, NHS England and Local Authorities. The 2018 National Framework is intended to provide greater clarity to individuals and staff, through a new structure and style and reflect legislative changes since the 2012 National Framework was published, primarily to reflect the implementation of the Care Act 2014.

The Regulations under the Act set out the Standing Rules to be followed when determining eligibility for NHS Continuing Healthcare and NHS-funded Nursing Care (FNC), and this process is designed to set out a clear pathway as to how individuals, or their representatives, may challenge eligibility for CHC.

This procedure refers to a challenge made by an individual or their representative following an assessment of eligibility for NHS CHC as an appeal, whereas the Standing Rules use the term 'review' for the same situation. Therefore when this document refers to an 'appeal' this equates to a 'review of an eligibility decision' made by a Clinical Commissioning Group (CCG).

- 1.2 This procedure is not for use where disputes arise between public bodies as to funding responsibilities or for disagreements between the CHC multi-disciplinary team (MDT) regarding the recommendation. The procedure applies exclusively to cases for which the CCG is the Responsible Commissioner.
- 1.3 This procedure only applies to periods of care where eligibility for funding has been assessed. It does not apply to periods of unassessed care.
- 1.4 The Department of Health states the responsible CCG should deal with a request within three months of receipt of the initial request, where possible.

2. The Role of the Continuing Healthcare Appeals Shared Service

- 2.1 It is the duty of the responsible CCG to take reasonable steps to ensure that an assessment of eligibility for CHC is carried out in all cases where it appears to the NHS that there may be a need for such an assessment.

The purpose of such an assessment is to establish whether a patient has a Primary Health Need which is utilised to establish a patient's eligibility for

Continuing Healthcare funding. The actual decision on whether or not a person demonstrates a Primary Health Need remains the responsibility of the CCG.

The CHC Appeals Shared Service is commissioned to perform appeals of those decisions on behalf of the Clinical Commissioning Groups of Barnsley, Doncaster, Rotherham, Wakefield, North Kirklees, Greater Huddersfield and Sheffield.

- 2.2 This Procedure sets out the process to be followed by the CHC Appeals Shared Service to determine whether an individual's case is appropriate for consideration under the appeal procedure, in order to assess whether that individual has been wrongly denied CHC funding.
- 2.3 This procedure aims to:
 - Adhere to the Standing Rules for Continuing Healthcare
 - Provide transparency throughout the appeal process
 - Adhere to guidance from the National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care in addition to the timescales set by the Department of Health in 2018
 - Adhere to the guidance for CCGs on the time limits for individuals to request a review of an eligibility decision for NHS Continuing Healthcare funding from 2018
 - Adhere to the 'Refreshed Redress Guidance' (April 2015)
 - Adhere to the NHS Continuing Healthcare Operational Procedure for Independent Review Panels (2009)

3. Requests for an Appeal

- 3.1 Where a CHC assessment has been carried out and the individual or their representative who holds the appropriate legal authority to do so wishes to challenge the outcome of the decision they must do so through the agreed local Appeal process.
- 3.2 In cases where an individual does not have the mental capacity to manage their own affairs a representative may request an appeal of an eligibility decision on their behalf if they hold one of the following documents:
 - A Lasting Power of Attorney which has been registered with the Office of the Public Guardian. This can be either a Health and Welfare Lasting Power of Attorney or a Property and Financial Affairs lasting Power of Attorney.
 - An Enduring Power of Attorney which has been registered with the Office of the Public Guardian.

- An order of the Court of Protection appointing them as Deputy and the order enables them to decide to request a review of an eligibility decision.
- An order from the Court of Protection, deciding that a review of eligibility should take place.

Where no person holds any of the documents from the aforementioned list, each case will be considered on an individual basis, taking into account what would be in the best interest of the individual.

- 3.3 All challenges must be received by the CHC Appeals Shared Service no later than six months following communication of the decision regarding CHC eligibility. Any requests received outside of the six month timeframe will be considered for exceptional circumstances (see section 8 for criteria).
- 3.4 A request for an appeal may be made in the following circumstances:
- Where an individual or their representative is dissatisfied with the decision regarding eligibility for NHS Continuing Healthcare following completion of a Decision Support Tool.
- Or
- Where there has been a failure to follow national guidance in reaching its decision as to determine the individual's eligibility for NHS Continuing Healthcare.

- 3.5 A request for an appeal can only be made once the recommendation has been accepted by the responsible CCG as a decision. The decision will remain unchanged until such time as it is overturned. If, as a result of the local Appeal process the decision is overturned, CHC funding will normally be backdated to the date on which the assessment which the appeal period relates to was completed.

Any refund will be in line with the NHS Continuing Healthcare Refreshed Redress Guidance, 2015.

- 3.6 This procedure **does not** cover the following challenges:
- The content of the Department of Health National Framework for Continuing Healthcare and NHS-funded Nursing Care. These challenges need to be pursued with the Department of Health
 - The type and/or location of any offer of NHS-funded Continuing Healthcare services or NHS treatment. These challenges need to be pursued through the standard NHS Complaints Procedure.

4. Upon Receipt of a Request for Appeal

- 4.1 In line with the Department of Health guidance, appeals must be received in

writing no later than six months after the date of the letter advising of the outcome of the decision regarding eligibility for NHS Continuing Healthcare. Exceptional criteria may apply to the above time limit (see section 8).

- 4.2 Once an appeal letter has been received from the individual and/or their representative outlining the reasons for the request for an appeal of the NHS Continuing Healthcare eligibility decision, an acknowledgement letter will be sent in writing to the individual and/or their representative enclosing the following documents within 5 working days (where possible):

- a copy of the CHC Appeal Procedure
- appeal questionnaire for completion
- consent form for completion

The individual and/or their representative will be required to send the following documentation to the CHC Appeals Shared Service department within 14 days from the date of the acknowledgment letter:

- any relevant legal documentation
- a signed consent form
- a completed copy of the questionnaire
- any additional evidence that they wish to be considered

- 4.3 The CHC Appeals Shared Service must ensure the appropriate consent to share information is obtained. In a case where there is a lack of mental capacity the principles of the Mental Capacity Act 2005 will be applied.
- 4.4 Where the individual to whom this decision relates is deceased, the person requesting the appeal will need to provide evidence that they are entitled to benefit from the deceased's estate.
- 4.5 On receipt of the requested information from the appellant inclusive of proof of eligibility to act, copies of all care records, associated medical and social care records will be requested from the providers pertinent to the individual's case. In many cases this will be under Subject Access Requests – Access Personal Data Under the Current Data Protection Legislation and Access To Health Records Act 1990. Disclosure must be made within the timescales laid down by the current Data Protection legislation i.e. within one calendar month. The calculation of one calendar month is from the date on which the request is received or (if later) the day on which it is received:
- any requested clarification information
 - any information requested to confirm the requester's identity

5 Gathering of Information

- 5.1 Attempts should be made to access information from all reasonable sources to ensure a complete and robust appeal is undertaken. If any difficulties are

identified with obtaining the relevant records it will be clearly documented within the appeals paperwork which records are missing and what actions have been taken to source and secure access to the records.

- 5.2 The appeal process will consider evidence of the time period used by the CHC Multi-Disciplinary Team for their original recommendation and any other relevant information for a period of three months prior to the date of the Decision Support Tool.
- 5.3 There may be exceptional circumstances where it is necessary for evidence prior to the three month time frame preceding the Decision Support Tool to be considered.
- 5.4 Where the CHC Appeals Shared Service finds that not all the evidence has been considered, or that a robust decision-making process did not lead to a sound decision on eligibility, the case with an appeal investigation report will be returned to the responsible CCG for reconsideration.

6. Local Resolution Informal and Formal Meetings

- 6.1 If the individual and/or their representative has chosen to employ a third party to act on their behalf, the CHC Appeals Shared Service will ensure it is clear who should be contacted directly through all the stages of the process.
- 6.2 During both Local Resolution Meetings (LRM) the individual and/or their representative should be prepared to discuss the exact reasons for the appeal and any additional evidence that may have been supplied.
- 6.3 The CHC Appeals Shared Service will explain the appeal process and make every effort to ensure that the individual and/or their representative has a clear understanding of the NHS Continuing Healthcare eligibility criteria and how it applies to their own situation. All concerns from the individual and or their representative will be addressed during the meetings and signposted where possible if they are not within the remit of the Appeals team.
- 6.4 The Appeal nurse will make initial contact with the individual and/or their representative to have a two way meaningful discussion and a written summary will be provided to both parties. During this discussion a formal meeting will be offered to the individual and/or their representative.
- 6.5 Detailed notes will be taken at the formal meeting.
- 6.6 If no further information is presented to the CHC Appeals Shared Service, it will then be considered whether there is sufficient evidence to proceed with the appeal or close the case. Only when there is a clear omission on the part of the responsible CCG that not all the evidence has been considered, or that a robust decision-making process did not lead to a sound decision on eligibility, will the CCG continue with the appeal.

6.7 The outcome of the Local Resolution Meeting will be communicated in writing to the individual and/or their representative.

7. Challenges to the outcome of the Local Appeal Process

7.1 In such cases where the individual fails to meet the eligibility criteria and does not demonstrate a Primary Health Need and the individual and/or their representative remains dissatisfied with the outcome they have the right to request that NHS England examine the evidence via an Independent Review. NHS England should receive this request no later than six months from the date of the appeal decision letter.

8. Exceptionality Criteria

(regarding non-submission of an appeal by the Department of Health-stipulated six month time limit following communication of an eligibility decision)

8.1 The CHC Appeals Shared Service and /or the responsible CCG (dependent on local process) will consider whether there are exceptional circumstances and if a request for an assessment should be considered outside of the deadlines. Each case will be considered on its individual merits.

8.2 Where the appeal is received directly to the CHC Appeals Shared Service it will make a recommendation to the relevant CCG as to whether a request for an appeal after the deadline should be accepted.

8.3 In order to determine whether exceptional circumstances exist, the CHC Appeals Shared Service will consider all relevant factors, including the following scenarios:

8.3.1 If the individual had the capacity to understand the meaning of the deadline referred to in paragraph 3.3 and the steps they needed to take to request an assessment:

- Were there circumstances that meant the individual could not reasonably have been expected to know about the deadline (e.g. they were out of the country for the entire period or they were otherwise incapacitated)?

8.3.2 If the individual lacked the capacity to understand the meaning of the deadline referred to in paragraph 3.3 (see above) and the steps they needed to take to request an appeal:

- Did they have anyone appointed to manage their affairs (e.g. an Attorney registered with the Office of the Public Guardian or a Court of Protection appointed Deputy)?
- If so, were there circumstances that meant such an Attorney or Deputy could not reasonably have been expected to know about the deadline (e.g. they were out of the country for the entire period or

- they were themselves incapacitated)?
- Was there any other individual who could reasonably have been expected to know about the deadline and its consequences for the individual?
 - Would it be in the best interests of the individual to apply for an appeal?
- 8.3.3 Was there an error on the part of any NHS body in processing a request for an appeal, which was received prior to the relevant deadline?
- 8.3.4 At the time of the assessment is there evidence that was known, or should reasonably have been known, to the relevant CHC Appeals Shared Services or CCG that the individual did demonstrate a Primary Health Need?
- 8.3.5 Examples of issues that are not exceptional include where a patient or their representative:
- believes they were unaware of the deadline for an appeal despite a letter having been sent to the patient stating that the deadline existed
 - was unaware that care provided by the Local Authority is means-tested
 - was unaware of a decision taken by the patient or a separate representative not to pursue an appeal and disagrees with that decision

(The above list is illustrative and is not intended to be exhaustive.)

9. Review and Dissemination

This procedure will be reviewed as indicated by the review date unless there are legislative changes to organisational infrastructure, etc. which may require review at an earlier date.

Staff will receive instruction and direction regarding this framework via:

- Line manager
- Specific training course
- Other communication method e.g. team meetings, CCG intranet

10. References

Department of Health (2012) *NHS Continuing Healthcare Guidance for Strategic Health Authorities and Primary Care Trusts on the time limits for individuals to request a review of eligibility decision for NHS Continuing healthcare funding.*

Available at: <http://www.dh.gov.uk/publications>

Strategic Health Authorities, (2009) *NHS Continuing Healthcare and NHS Funded Nursing Care: Operational Policy: Independent Review Panels version 5*

Available from: joanne.crosby@northwest.nhs.uk

Department of Health (2018) *National Framework for NHS Continuing Healthcare and NHS – Funded Nursing Care October 2018 (Revised)*

Available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/746063/20181001_National_Framework_for_CHC_and_FNC - October 2018 Revised.pdf

The Stationery Office on behalf of the Department of Constitutional Affairs (2007) *Mental Capacity Act 2005 Code of Practice*

Available from: www.tsoshop.co.uk or www.publicguardian.gov.uk

Guidance for Strategic Health Authorities and Primary Care Trusts on the time limits for individuals to request a review of an eligibility decision for NHS Continuing Healthcare Funding

<https://www.gov.uk/government/publications/guidance-on-the-time-limits-applicable-from-april-2012-for-requests-on-review-of-eligibility-decisions-for-nhs-continuing-healthcare-funding>

Refreshed Redress Guidance (April 2015)

<https://www.england.nhs.uk/wp-content/uploads/2015/04/nhs-cont-hlthcr-redress-guid-fin.pdf>

Access to Health Records 1990

https://www.legislation.gov.uk/ukpga/1990/23/pdfs/ukpga_19900023_en.pdf

The EU General Data Protection Regulation (2016) and the Data Protection Act (2018).