

**Continuing Healthcare and Funded Nursing Care
 Appeal Procedure**

**August 2016**

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**1.0 Introduction**

1.1 This appeal procedure is created in accordance with paragraph 151 of the National Framework for NHS Continuing Healthcare (CHC) as revised in November 2012 (implemented on 1 April 2013). The National Framework for NHS CHC reflects the new NHS framework and structures created by the Health and Social Care Act 2012, effective from 1 April 2013. This document can be accessed via:

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/213137/National-Framework-for-NHS-CHC-NHS-FNC-Nov-2012.pdf>

The guidance applies to time limits starting from 1 April 2012 for individuals or their families and representatives to request a review of an eligibility decision for NHS continuing healthcare funding by the local Clinical Commissioning Group (CCG) or responsible NHS body at a local level.

<https://www.gov.uk/government//news/eligibility-for-nhs-continuing-healthcare-funding-guidance>

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 representative, 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 a decision’ regarding CHC eligibility made by a CCG.

1.2 This procedure is not for use where disputes arise between public bodies as to funding responsibilities or disagreement regarding a recommendation for funding made by the multi-disciplinary team (MDT). The procedure applies exclusively to patients registered with a Sheffield GP or any other patient for whom Sheffield CCG is the Responsible Commissioner, as defined by the Department of Health.

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 has set a time limit of 3 months for responsible CCGs to conduct an investigation and bring an appeal to its conclusion.

**2.0 The Role of the Appeals Nurse’s**

2.1 This Procedure sets out the procedure to be followed by the appeals nurse’s to determine whether an individual’s case is appropriate for consideration under the appeal procedures, in order to assess whether that individual has been wrongly denied NHS funding.

2.2 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 (2012)
* Adhere to the NHS Continuing Healthcare Operational Procedure for Independent Review Panels (2009)
* Adhere to the 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 (15 March 2012)
* Adhere to the Core Values of the CCG when engaging with members of the public.

**3.0 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 Local Resolution process.

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| **Local Resolution Process:**The applicant is contacted by letter to acknowledge their letter of appeal and to request proof of consent, identity and authority to act if appropriateThe applicant is contacted by the Appeals Nurse (by phone) to discuss the rationale for appeal and to invite them to attend a Local Resolution Meeting with the appeals nurses, consideration will be given to the time frame for the resolution of appeals but convenience for the applicant will also be considered. The Appeals Nurse will visit the care home to gather the care plans and any other relevant documentation from health and social care in preparation for the Local Resolution Meeting. Meet the patient.Depending on the particulars of the case, at the Local Resolution Meeting it will be agreed to either close the case or proceed with the appealThe Local Resolution Meeting outcome is communicated in writing to the applicant including a copy of the minutes of the meeting. |
| **Local Resolution Process (if the appeal proceeds to a full review):**Documents sourced from the care home, the Local Resolution Meeting minutes and the applicant’s views on why they disagree with the recommendation of the MDT will be included in the appeals report by the appeals nurse and discussed with the original MDT members. **Possible outcomes:**1. The MDT will reconsider this information and will make a decision based on this information if they wish to amend their original recommendation or not. Possible outcomes include:
	1. If the recommendation is to be amended this will added to the appeal report by the Appeals Nurse on behalf of the MDT. For robustness, the appeals report will be attached to the DST under appeal. This will be checked by the Operational Lead Nurse, if the recommendation is agreed then a letter with the appeal report, outcome and explanation for the change in recommendation will be sent to the applicant advising that their Appeal has been upheld.
	2. If the MDT do not feel that with the information presented by the appeals nurse this would affect their recommendation this is acknowledged in the report by the appeals nurse. This information is checked by the Operational Lead Nurse and a letter with the appeal report and an explanation for no change in the recommendation and why there is no primary health need identified will be sent to the applicant. This letter will have the information on how to request an Independent review from NHS England.
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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 above 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 Sheffield CCG no later than 6 months following receipt of the decision regarding eligibility.

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 CHC following completion of
 the 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 CHC.

3.5 A request for an appeal can only be made once the recommendation has been accepted by Sheffield CCG. The decision will remain unchanged until such time as it is overturned. If, as a result of the Local Resolution process the decision is overturned, NHS funding will normally be back dated to the date when the assessment to which the appeal period relates to was completed.

* + Any refund will be in line with the Refunds Guidance incorporated in The National Framework for NHS Continuing Healthcare and NHS-Funded Nursing Care, 2012.
* A copy of this procedure will be sent to all those who wish to challenge

a decision regarding eligibility.

3.6 The following challenges are outside the scope of this procedure:

* The content of the Department of Health National Framework for Continuing Healthcare and NHS-funded Nursing Care. These 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 need to be pursued through the standard NHS Complaints Procedure.
* The individual disagrees with the outcome of a screened out Checklist, the CCG may be asked to reconsider its decision through the standard NHS Complaints Procedure. The process followed is that the original referrer who completed the Checklist is asked to reconsider their evidence and weightings within the Checklist.

**4.0 Upon Receipt of a Request for Appeal:**

4.1 Challenges are preferably to be made in writing. If a challenge is made orally, the individual or family member must be encouraged or, where required, assisted to put their challenge in writing no later than 6 months from the date they were notified of the decision regarding eligibility for NHS CHC. Exceptionality criteria may apply to the above time limit (see section 9 below).

4.2 The challenge must where possible be acknowledged by Sheffield CCG in writing within 5 working days of receipt.

4.3 The person challenging the decision will be contacted by phone by a member of the appeal team within 7 working days to discuss a convenient date and time for the local resolution meeting. Consideration must be given by all parties of the 3 months process when advising the applicant about meeting dates.

4.4 Appropriate consent to discuss the appeal and share information should be sought by the Appeals Business Support Team, determined by the particularities of the individual case. In cases or a case where there is a lack of mental capacity the principles of the Mental Capacity Act 2005 will need to be applied.

4.5 Where the individual to whom this decision relates to is deceased, the person requesting the appeal will need to provide evidence that they are an executor or administrator to the estate. If proof of this is not returned a decision will be made as to whether the appeal progresses under the auspices of the best interest process until the aforementioned legal documentation is made available. If such forms are not provided within 2 months, the application will be considered withdrawn, unless exceptional circumstances can be shown as to why the appeal should continue. Exceptional circumstances in this context means:

* an event or events which has significantly delayed supplying the grant of probate or letters of administration, which the person making the appeal was unable to control or influence; and
* The delay or delays was so lengthy as to make it impossible to meet the three month deadline.
* The CCG would expect regular communications from the applicant or their representative if grant of probate or letters of administration are being progressed.

**5.0 Local Resolution Meeting**

5.1 A Local Resolution Meeting (LRM) will be convened after receiving notification of an appeal. The CCG will explain the appeal process and make every effort to ensure that the applicant has a clear understanding of the NHS CHC eligibility criteria and how it applies to their own situation.

5.2 During the LRM the applicant should be prepared to inform the Appeal Nurse Assessor the exact reasons for the appeal, although this will already be established following the initial telephone contact upon receipt of the appeal. This may include the submission of additional information that was not available at the time of the assessment.

5.3 Detailed notes will be taken at the meeting

5.4 The Appeal Nurse Assessor will assimilate the information provided at the meeting and will make a decision as to whether to revisit the individual (where possible) in order to provide the CCG with additional information to consider in support of the appeal.

 In particular where the individual is deceased the reviewing officer will obtain a copy of all the appropriate records relating to the appeal period from the relevant health and social care records.

Depending on the particulars of the case, at the Local Resolution Meeting it will be agreed to either close the case or proceed with the appeal

5.5 This recommendation will be communicated to the applicant at the meeting and their full participation is encouraged.

**6.0 Gathering of Information**

6.1 Attempts should be made to access information from all reasonable sources to ensure a complete and robust review is undertaken. In the case of a deceased patient, the CCG will ensure that it makes every attempt to gather the relevant records for the period under review. However, in the unlikely event of no records being available this will have an impact on the CCG’s ability to complete a robust report to support the appeal.

6.2 The Appeal Nurse Assessor should address all the relevant points made by the applicant.

**7.0 The Appeals Process**

7.1 The applicant is contacted by letter to acknowledge their letter of appeal and to request proof of consent, identity and authority to act if appropriate

7.2 The applicant is contacted by the Appeals Nurse (by phone) to discuss the rationale for appeal and to invite them to attend a Local Resolution Meeting with the appeals nurses, consideration will be given to the time frame for the resolution of appeals but convenience for the applicant will also be considered.

The Appeals Nurse will visit the care home to gather the care plans and any other relevant documentation from health and social care in preparation for the Local Resolution Meeting. Meet the patient.

Depending on the particulars of the case, at the Local Resolution Meeting it will be agreed to either close the case or proceed with the appeal

The Local Resolution Meeting outcome is communicated in writing to the applicant including a copy of the minutes of the meeting.

7.3 Only when there is a clear omission on the part of the 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. Specifically the latest assessment documentation held by the CCG will be examined to ensure that any decision made was appropriate to evidence it contains.

7.4 Documents sourced from the care home, the Local Resolution Meeting minutes and the applicant’s views on why they disagree with the recommendation of the MDT will be included in the appeals report by the appeals nurse and discussed with the original MDT members.

**Possible outcomes:**

* The MDT will reconsider this information and will make a decision based on this information if they wish to amend their original recommendation or not. Possible outcomes include:
	1. If the recommendation is to be amended this will added to the appeal report by the Appeals Nurse on behalf of the MDT. For robustness, the appeals report will be attached to the DST under appeal. This will be checked by the Operational Lead Nurse, if the recommendation is agreed then a letter with the appeal report, outcome and explanation for the change in recommendation will be sent to the applicant advising that their Appeal has been upheld.
	2. If the MDT do not feel that with the information presented by the appeals nurse this would affect their recommendation this is acknowledged in the report by the appeals nurse. This information is checked by the Operational Lead Nurse and a letter with the appeal report and an explanation for no change in the recommendation and why there is no primary health need identified will be sent to the applicant. This letter will have the information on how to request an Independent review from NHS England.

7.5 If the CCG fail to meet the 3 month timeframe, this will be communicated in writing to the applicant or their representative explaining the reasons why this has not been achieved.

**8.0 Challenges to the outcome of the Appeal**

8.1 In such cases where the individual fails to meet the eligibility criteria and the applicant remains dissatisfied with the outcome they have the right to request that the NHS England examine the evidence at an Independent Review. This request should be made no later than 6 months following the date the appeal decision letter was sent by the CCG.

**9.0 Exceptionality Criteria**

**(Regarding non-submission of an appeal by the Department of Health-stipulated 6-month time limit following notification of an eligibility decision)**

9.1 The CCG will consider whether there are exceptional circumstances and if a request for an appeal of recommendation should be considered outside of the deadlines. Each case will be considered on its individual merits.

9.2 In order to determine whether exceptional circumstances exist, the CCG will consider all relevant factors, including the following scenarios

9.2.1 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?

9.2.2 If the individual had the capacity to understand the meaning of the deadline referred to in paragraph 3.2 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)?

9.2.3 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?

9.3 Examples of issues that are not exceptional include where a patient or their representative:

* believes they were unaware of the deadline for appealing despite a letter having been sent to the patient and representative 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.

**10.0 Governance**

10.1 This guidance takes effect once authorised by the Chief Nurse.

10.2 The policy will be published on the CCG’s website until such a time it is reviewed and/or amended.