

## Continuing Healthcare and Funded Nursing Care Appeal Procedure

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## **1 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.

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

## **2 The Role of the West and South Yorkshire and Bassetlaw Commissioning Support Unit**

- 2.1 It is the duty of the 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. West and South Yorkshire and Bassetlaw Commissioning Support Unit (CSU) are commissioned to perform that service on behalf of the Clinical Commissioning Group (CCG). 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 CHC. The actual decision on whether or not a person demonstrates a Primary Health Need remains the responsibility of the CCG.
- 2.2 This Procedure sets out the process to be followed by the CSU 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.

## 2.3 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 (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 (March 2012)

## 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 Local Resolution process. See Appendix 1.

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 CSU no later than 6 months following receipt of the decision regarding eligibility. This time limit applies to all assessments undertaken after 1 April 2012 and does not apply

retrospectively. However, appeals relating to assessments carried out before 1 April 2012 will be addressed using this procedure rather than any pre-existent procedure. Exceptionality criteria may apply to the above time limit (see section 9 below).

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 NHS Checklist or 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 the responsible 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.

#### **4 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 the CSU (or the CCG where they wish to manage their own process) in writing within 5 working days of receipt.
- 4.3 The person challenging the decision will be invited to meet a member of the CSU (reviewing officer) within the next 10 days to discuss the nature of their dissatisfaction.
- 4.4 Appropriate consent to discuss the appeal and share information should be sought by the CSU reviewing officer 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 entitled to benefit from the deceased's estate.

## **5 Local Resolution Meeting**

- 5.1 A Local Resolution Meeting (LRM) will be convened within 10 days of receiving notification of an appeal. The CSU will explain the appeal process and make every effort to ensure that the appellant has a clear understanding of the NHS CHC eligibility criteria and how it applies to their own situation.
- 5.2 During the LRM the appellant should be prepared to inform the reviewing officer the exact reasons for 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 reviewing officer 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 CSU with additional information to consider in support of the appeal.

In particular where the individual is deceased the reviewing officer will request a copy of all the appropriate records relating to the appeal period.

- 5.5 This decision will be communicated to the appellant at the meeting and their full participation is encouraged.

## **6 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.
- 6.2 The reviewing officer should address all the relevant points made by the appellant.

## **7 Recommendation for Eligibility**

7.1 Following scrutiny of the information the reviewing officer should make a recommendation regarding the individual's eligibility for NHS CHC. A copy of the newly prepared evidence (Decision Support Tool or similar report) should be sent to the appellant following Quality Assurance by a Senior Nurse. If the recommendation is unchanged from the original assessment as there is no meaningful additional evidence for the Local Review Panel to consider then the appellant should be informed in writing that the appeal is to proceed no further. In all cases the appellant is given the opportunity to respond to the newly prepared evidence and recommendation no later than 2 weeks after the post date of the letter.

7.2 Only when there is a clear omission on the part of the CSU 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 CSU 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.

The CSU may approach another CCG to carry out a peer review of the case if it is believed to be beneficial. This will depend on the particulars of the individual case.

Where the CSU consider there is no new evidence to consider and the appellant wishes to pursue the appeal they should be notified of the address and contact details of the NHS England who will decide whether an Independent Review Panel is appropriate.

7.3 Where there is further evidence to consider, the Local Review Panel should be convened within the CCG area and all new and original evidence should be presented. The appellant is given the opportunity to attend this panel in person and is offered the opportunity to give their views to the panel chair.

7.4 The panel chair should be satisfied that the appellant has been fully involved throughout the Local Resolution Process whether or not they attend the Local Review Panel in person. A decision on eligibility should be reached and communicated within 7 working days and the whole review process should be no longer than 3 months from receipt of the request.

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

## **8 Challenges to the outcome of the Local Review Panel**

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

## 9 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 CSU 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.

9.2 The CSU will make a recommendation to the relevant CCG as to whether a request for an appeal after the deadline should be accepted.

9.3 In order to determine whether exceptional circumstances exist, the CSU will consider all relevant factors, including the following scenarios:

9.3.1 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?
- Would it be in the best interests of the individual to apply for an assessment?

9.3.2 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)?

9.3.3 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?

9.3.4 At the time of the assessment is there evidence that was known, or should reasonably have been known, to the relevant CSU or CCG that the individual did demonstrate a 'primary health need'?



9.5 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 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 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 sooner.

Staff will receive instruction and direction regarding this framework via:

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

## 11 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](mailto:joanne.crosby@northwest.nhs.uk)

Department of Health (2012) *National Framework for NHS Continuing Healthcare and NHS – Funded Nursing Care November 2012 (Revised)*  
Available at: <http://www.dh.gov.uk/health/2012/11/continuing-healthcare-revisions/>

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](http://www.tsoshop.co.uk) or [www.publicguardian.gov.uk](http://www.publicguardian.gov.uk)

**Summary of Local Resolution Process:**

The appellant is contacted by letter to acknowledge their appeal and to request  
The latest CHC assessment and rationale for their decision is requested from  
the relevant CCG

The appellant is invited to a Local Resolution Meeting (see 5.0 below)

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

The Local Resolution Meeting outcome is communicated in writing to the  
appellant

**Local Resolution Process (if the appeal proceeds to a full review):**

Documents sourced from various agencies are examined for evidence

A summary of the original and newly sourced evidence is produced

A quality assurance check is performed by the Senior Nurse Assessor

The summary is sent to appellant for their comments

(A peer review by another CSU/CCG is requested if this is considered to be  
appropriate)

A Local Review Panel is identified/arranged, and the appellant is invited

The summary and any comments from the appellant are presented at the  
panel, minutes are taken and a decision on eligibility is made

The eligibility decision is communicated to appellant along with information  
relating to Independent Review Panel (see 8.0 below)