

Decision Making Capacity Assessment: Documenting Discussion and Findings

Your documentation will be read and relied upon by others who likely don't have the same understanding of the decision making process and capacity issues. It is important to have discussion and findings sections that clearly spell out your reasoning. Areas to include:

- Describe risk conditions and how any risk might be mitigated.
- Analysis of decision-making abilities, including retained capacities and supports.
- Relate data to specific steps of decision making process, including risk assessment analysis.
- Explain path of analysis to conclusions, along with potential alternative arguments and relative evidence.

The following examples are excerpts of my own reports, redacted for confidentiality. I typically use a template document with sections that I fill in as applicable, so you'll notice pieces look familiar across these excerpts; you'll see differences as well due to the variety of cases/details.

EXAMPLE: Discussion of cognitive testing results vs MMSE

Note regarding cognitive testing: As noted above, [APS] reported that on [date], [client] had seen [Doctor], who did the Mini Mental Status Exam (MMSE) and that [client] had scored 22 out of 30. Per [APS], the note said "mild memory loss" and "I have no concerns."

However, by the MMSE scoring guidelines, a score of 20 to 24 out of 30 indicates mild dementia, which most doctors would identify as something concerning. (See information about the MMSE and scores at https://www.alz.org/alzheimers-dementia/diagnosis/medical_tests)

Even so, the MMSE is problematic as it a very old testing tool and is poorly regarded in comparison with other testing tools. The MMSE lacks sensitivity to detect mild cognitive impairment and does not measure many executive functioning related tasks. The SLUMS, Montreal Cognitive Assessment (MOCA), and Rowlands Universal Dementia Assessment Scale (RUDAS) are more robust cognitive tests that are widely regarded as superior to the MMSE. The SLUMS, MOCA, and RUDAS are also backed by more clinical research, particularly with the geriatric population.

It should be noted that any cognitive testing tool by itself is not a definitive diagnostic measure and should not be viewed as such. However, the combination of [client]'s relatively poor MMSE score of 22 out of 30, and his very poor SLUMS score of 8 out of 30, can be considered with the observations from this interview and other corroborating information to show that [client]'s cognition and memory are very significantly impaired and have an impact on his functioning and decision-making.

EXAMPLE: Discussion of decision making

The four basic criteria examined in assessing decision-making capacity include understanding the problem, appreciating the situation and options, reasoning about options, and choosing an option / expressing a choice.

Understanding – [Client] demonstrated cognitive performance deficits in multiple areas essential to her being able to understand her situation and relevant information: attention and concentration, short-term memory, ability to understand and retain information around what her options are. Note, this is based on observation at this visit, and not on her cognitive testing specifics, which were not available at the time of this writing.

Appreciating – [Client] was largely unable to use information and logic to see consequences of different options or likely outcomes of different actions. Her judgment was impaired, with inaccurate assessments of her own care needs as well as unrealistic expectations for what she should be able to receive in terms of care. She has demonstrated a lack of ability to plan or organize, to carry out tasks, or to gather information – for example, about her Social Security and Medicaid benefits.

Reasoning – Because [Client] has limited ability to understand relevant information or to appreciate the situation and options, she is unable to evaluate options for action to see what might be better or worse options. She is unable to see the consequences and lacks insight around her situation.

Choosing – Because she has limited ability to understand relevant information, appreciate the situation and options, or reason through options for action, while she is able to express a choice, she does not demonstrate an ability to carry out action and follow through on her expressed choice.

In examining decision-making capacity, it is also important to consider:

- Does the person’s decision in this situation represent a change from previous decisions? No, it appears that her situation is long-standing.
- Does it affect everyday safety and functioning? Yes, significantly.
- What is the complexity and substance of the documents, situation, or action? Her financial situation, while difficult, is likely less complex and substantive than the issues around her care needs and living situation.

While decisional capacity is time-specific, the fact that these difficulties have been present for a number of years indicates that [Client]’s abilities to manage her situation are not likely to improve. In fact, given the progressive nature of cognitive impairment and the aging process, it is highly likely that her abilities will continue to worsen, and significantly so.

I want to restate my opinion in contrast to the views expressed in chart notes regarding cognition vs capacity. It was stated in chart notes that [Client] “is cognitively intact (25/30 on MoCA” – however, a score of 26 or above is normal and a score of 25 indicates cognitive impairment. Again, cognitive testing is not a proxy for capacity but rather an indicator of the underlying mental processes involved in making decisions. However, it has also been clearly documented in chart notes how [Client] has been unable to execute “the tasks necessary to preserve her well-being and to continue living in her current home-environment.”

EXAMPLE: Discussion and summary findings

Discussion

The four basic criteria examined in assessing decision-making capacity include understanding the problem, appreciating the situation and options, reasoning about options, and choosing an option / expressing a choice.

Understanding – [Client] demonstrated cognitive performance deficits in some areas essential to being able to understand his situation and relevant information:

- Attention and concentration were impaired; he had difficulty following conversation and APS reported he had difficulty understanding the DMM contract.
- Short-term memory was impaired in terms of recalling items and story details.
- Math: [Client] is a college graduate but had difficulties with math (subtraction errors in testing).

- Fund of knowledge and understanding of financial and legal matters: [Client] has an MBA and has owned a rental property for many years, so it was surprising that he had so thoroughly lost control of his rental property and assets.
- Executive functioning: demonstrated deficits in examination and by interview, as well as reported functional difficulties.

Appreciating – [Client] demonstrated limited ability to use information and logic to see consequences of different options or likely outcomes of different actions. He appeared to have difficulty to plan or organize, or carry out tasks, as well as gathering information. He was not able to see the consequences or to have insight around his financial situation. In terms of his medical situation, he refused the neurological referral from his primary care and medication management appears problematic. Also, the reported behaviors at his dentist raise concerns about his judgment, impulse control, and (lack of) inhibitions.

Reasoning – Because [Client] had limited ability to understand relevant information or to appreciate the situation and options, he appears less able to evaluate options for action to see what might be better or worse options.

Choosing – Because [Client] has limited ability to understand relevant information, appreciate the situation and options, and less ability to reason through options for action, he has limited ability to choose appropriate options that are in his best interest, and to communicate and carry out his choice.

In examining decision-making capacity, it is also important to consider:

- Does the person's decision in this situation represent a change from previous decisions? Yes. [Client] had built substantial savings and assets in prior years and had managed his apartment building independently.
- Does it affect everyday safety and functioning? Yes. [Client]'s assets have been compromised and his own home has structural damage and safety issues. His executive functioning appears significantly impaired.
- What is the complexity and substance of the documents, situation, or action? Significant. The amount of money that has been exploited is a substantial loss of [Client]'s assets. The issues with the rental property building and fire code deficiencies could put that asset at risk as well.

While decisional capacity is time-specific, the fact that these difficulties have been present for at least the last few years indicates that [Client]'s abilities to manage his situation are not likely to improve. In fact, given his diabetes and other medical conditions, he is at a high risk of further medical complications and neurocognitive decline.

Summary

Diagnostic Impression: The information gathered by report, by observation and interview, and by cognitive testing supports a clinical diagnosis of unspecified neurocognitive disorder (DSM-V: 799.59; ICD-10: R41.9). In lay terms, this indicates mild cognitive impairment with some significant factors, but not necessarily to the degree of a dementia diagnosis. However, it appears likely that with [Client]'s deficits in functioning, he would meet the clinical criteria for a dementia diagnosis. At the time of this visit, the dementia diagnosis is deferred for further neurological examination and imaging.

Findings of decision-making capacity: This visit and related information from [CM] and APS contributed to both a psychological assessment of [Client]'s attention, concentration, memory, abstraction, judgment/insight, executive function, as well as a decision-specific assessment of his knowledge, skills, abilities related to his situation and challenges. [Client] is also clearly under undue influence from [AP], and is unable to recognize the risks or impact this has had on his personal and financial independence and well-being.

At the time of this visit, the evidence demonstrates that [Client] has **limited decision-making capacity to manage his finances and medical care.**

EXAMPLE: Discussion and summary findings

Discussion

Vulnerable adult status: RCW 74.34.020(20) defines a vulnerable adult as follows: “ ‘Vulnerable adult’ includes a person: (a) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or... (f) Receiving services from an individual provider; or (g) Who self-directs his or her own care and receives services from a personal aide under chapter 74.39 RCW.”

[Client] is 73 years of age, has functional and physical disabilities to care for herself in tasks of cooking and cleaning, and mental/cognitive impairment that limit her abilities to care for herself in terms of medical care and medications; and [CG] moved into her home to provide assistance to her.

RCW 74.39.007 defines self directed care and personal aide as follows: “(1) ‘Self-directed care’ means the process in which an adult person, who is prevented by a functional disability from performing a manual function related to health care that an individual would otherwise perform for himself or herself, chooses to direct and supervise a paid personal aide to perform those tasks. (2) ‘Personal aide’ means an individual, working privately or as an individual provider under contract or agreement with the department of social and health services, who acts at the direction of an adult person with a functional disability living in his or her own home and provides that person with health care services that a person without a functional disability can perform.”

Although [family] reported that [CG] denied he was a caregiver to [Client], under the definitions of RCW.39.007, he moved into her home to be “working privately” as a “personal aide” in exchange for housing: he was providing cooking and cleaning that she was unable to perform for herself due to her arthritis as well as cognitive and functional impairments.

Based on the information provided by [Client], [family], and [CM], and my assessment at this visit, she meets the vulnerable adult criteria.

Decision-making capacity: The four basic criteria examined in assessing decision-making capacity include understanding the problem, appreciating the situation and options, reasoning about options, and choosing an option / expressing a choice.

Based on the neurology clinic note and my assessment at this visit, the evidence points to major concerns for her decisional abilities:

- **Understanding** – [Client] demonstrated cognitive performance deficits in multiple areas essential to her being able to understand her situation and relevant information: attention and concentration, short-term memory registration and recall, and abstract reasoning. She doesn’t seem to understand that [CG] is trying to evict her from her own home.
- **Appreciating** – [Client] had limited ability to use information and logic to see consequences of different options or likely outcomes of different actions. Her reasoning and judgment were moderately impaired. She reported having difficulty in planning or organizing and carrying out tasks. Family have needed to help her with her cell phone to be able to access the internet, to obtain medical care, and to get meals delivered.
- **Reasoning** – Because [Client] has difficulty being able to understand relevant information or to appreciate the situation and options, she therefore is less able to evaluate options for action to see

what might be better or worse options. She said [CG] promised to not kick her out, but he is giving her papers that say she is being evicted.

- **Choosing** – Because [Client] has difficulties being able to understand relevant information, appreciate the situation and options, or reason through options for action, she is less able to express or communicate a choice and carry out action.

In examining decision-making capacity, it is also important to consider:

- Does the person's decision in this situation represent a change from previous decisions? Yes, the mobile home was her biggest financial asset, purchased with her long-time partner; giving it to [CG] without any compensation doesn't seem consistent with her prior behavior.
- Does it affect everyday safety and functioning? Yes, the situation with [CG] is affecting her daily life, her mental and emotional well-being, and potentially her safety as well.
- What is the complexity and substance of the documents, situation, or action? The papers transferring ownership of the mobile home were complex enough that [Client] said she didn't really understand what she was signing. [Family] said [CG] was giving her printed eviction notices but she didn't understand whether they were official/legal or not.

While decisional capacity is time-specific, the fact that these difficulties have been present for at least the past several months if not the past few years indicates that [Client]'s abilities to manage her situation are not likely to improve – in fact, it is highly likely that her cognitive and functional impairments will continue to worsen with age.

Undue influence: As discussed above, the frameworks defining undue influence point to several factors in [Client]'s situation: [CG] moved in to help her with cooking and cleaning, and did so for a time, even making improvements to the home. They proceeded to take over her home, limited her access to much of her home, isolated her and prevented family from entering to visit, used her social security number to rent a storage area and take out a loan in her name, and ultimately made her sign papers transferring ownership of her home to [CG]. Since then, they have escalated their control and verbal/mental abuse and harassment, compounding her personal history of trauma into acute and ongoing distress.

Summary

Diagnostic Impression: The information gathered by report, by observation and interview, and by cognitive testing supports a clinical diagnosis of unspecified neurocognitive disorder (per DSM-V: 799.59; ICD-10: R41.9).

Findings of vulnerability: Based on information gathered at this visit and related information from [CM], [Client] meets the RCW criteria for a vulnerable adult.

[Client] is significantly vulnerable and her mild to moderate cognitive and executive functioning impairments, combined with a significant trauma history and physical impairments, limit her ability to fully manage her financial and legal affairs. She is unable to protect herself from financial losses and is at personal risk with [CG] being in her home. She is highly vulnerable to undue influence and indeed appears to have been subjected, on a continuing basis, to undue influence as well as personal and financial exploitation.

Findings of decision-making capacity: This visit and related information from [CM] contributed to both a psychological assessment of [Client]'s attention, concentration, memory, abstraction, judgment/insight, executive function, as well as a decision-specific assessment of her knowledge, skills, abilities related to his situation and challenges. She is also clearly under undue influence from the two men living in her home and is unable to recognize the risks or impact this has had on her financial situation.

At the time of this visit, the evidence demonstrates that [Client] has limited decision-making capacity to manage her finances and medical care. It is my opinion, concurring with that of neurologist [redacted] per his clinic note, that she does have capacity to sign a will and to appoint a power of attorney for finances and healthcare. She has the ability to instruct an agent in regards to her values and preferences, but she might not be able to make decisions or provide specific instructions about moderately complex financial issues. [CM] reported [Client] has already has executed a POA appointing her daughter as her agent. With a POA in place, guardianship is not needed.

I want to make clear that it is my view that although [Client] does not require a guardian at this time, this does not mean that she isn't vulnerable and subject to undue influence and financial exploitation.

I also want to make clear that while I cannot make an estimation of [Client]'s decision-making capacity at the time that she signed the papers transferring ownership of her home, it is clear that undue influence was a factor at that time.

EXAMPLE: Discussion and summary findings

Discussion

The four basic criteria examined in assessing decision-making capacity include understanding the problem, appreciating the situation and options, reasoning about options, and choosing an option / expressing a choice.

Understanding – [Client] demonstrated some cognitive performance deficits in multiple areas essential to her being able to understand her situation and relevant information: attention and concentration, short-term memory, and language fluency. She was unable to accurately recall information from her doctor or to accurately report the timeline of when testing had occurred.

Appreciating – [Client] at times has had difficulty in using information and logic to see consequences of different options or likely outcomes of different actions. While her testing performance wasn't too bad, she has demonstrated poor reasoning and judgment around the protection order, stopping to talk to her [family and offer him a ride home, when she has a no-contact order to protect herself from him. She was unable to see the consequences and had poor insight around the situation.

Reasoning – Because she has difficulties in understanding relevant information or appreciating the situation and options, [Client] has difficulty in evaluating options for action to see what might be better or worse options. When she had obtained resources for an overdue bill for her essential needs, she reasoned that purchasing an expensive vacuum cleaner instead for “self care” was justified.

Choosing – While [Client] is able to make a choice and carry out action, because of difficulties in the earlier steps of the decision making process, her choices and actions at times are not to her benefit.

In examining decision-making capacity, it is also important to consider:

- Does the person's decision in this situation represent a change from previous decisions? No, her decision making process does not appear to have significantly changed.
- Does it affect everyday safety and functioning? Yes and no – some of her decisions have negatively impacted her finances, and decisions around her [family] have been problematic, but not necessarily affected her everyday safety and functioning.
- What is the complexity and substance of the documents, situation, or action? At the time of this visit, this is the unknown area – it appears that she has been relatively able to handle issues with less

complexity or substance, but she has had great difficulty with issues like her living situation and planning for her future.

While decisional capacity is time-specific, the fact that these difficulties have been present for years if not decades, indicates that [Client]'s abilities to manage her situation are highly unlikely to improve. In fact, it is more likely that [Client]'s health conditions and depression will significantly contribute to the decline in her decision making skills as she ages.

Summary

Diagnostic Impression: The information gathered by report, by observation and interview, and by cognitive testing supports provisional clinical diagnoses of Unspecified Neurocognitive Disorder (DSM-V: 799.59; ICD-10: R41.9) and Depressive Disorder Unspecified (DSM-V: 311; ICD-10: F34.1), with possibly Anxiety Disorder Unspecified (DSM-V: 300; ICD-10: F41.9) and Posttraumatic Stress Disorder (DSM-V: 309.81, ICD-10: F43.12). Note that these diagnoses are provisional, based on limited information available at the time of this visit.

In layman's terms, I would say it appears that [Client]'s cognitive impairment is impacting her functioning, but is not in the range of dementia.

Depression can cause cognitive impairment, and cognitive problems can worsen depression. Both depression and cognitive impairment can be caused by and worsened by PTSD, and all these can be magnified by stress. Further, each of these can be amplified by medical conditions, and in particular, chronic pain. It appears all of these issues are factors in [Client]'s situation at this time.

Findings of decision-making capacity: This visit and related information from [CM] contributed to both a psychological assessment of [Client]'s attention, concentration, memory, abstraction, judgment/insight, executive function, as well as a decision-specific assessment of [Client]'s knowledge, skills, abilities related to her financial and legal affairs.

At the time of this visit, the evidence demonstrates that **[Client] has some limitations to her decision-making capacity to manage her financial and legal affairs, but not enough deficits to justify intervention.**

Findings of need for assistance and protection: [Client] is somewhat vulnerable and her mild to moderate cognitive and executive functioning impairments, combined with a significant lack of insight, limit her ability to fully manage her financial and legal affairs. She has been unable to protect herself from financial losses and puts herself at personal risk by contradicting the protection order she has against her [family].

At the time of this visit, the evidence demonstrates that **[Client] may benefit from a representative payee and/or fiduciary money manager to protect her resources and ensure her bills are paid and her needs are met.** Ideally [Client] would agree to a representative payee and/or fiduciary money manager to assist her with her finances.

[Client] is functioning well enough at the time of this visit that it seems unlikely that intervention from Adult Protective Services would be justified at this point. However, should she have more financial problems or have other situations develop that compromise her wellbeing, there may be more justification for intervention.