



Case Scenarios for Webinar 4: 17th May 2022

Functional Assessment of Capacity.

This webinar is structured around a panel discussion of the scenarios below, which relate to decision-making capacity and the functional approach to the assessment of decision-making capacity as set out in the Assisted Decision-Making (Capacity) Act 2015. The Act requires that a person shall not be considered as unable to make a decision unless all practicable steps have been taken, without success, to support them to do so.

These scenarios were written by staff and received by the HSE National Office for Human Rights and Equality Policy in response to a survey of learning needs in November/December 2021.

A recording of the panel discussion will be available on www.assisteddecisionmaking.ie following the webinar.

- 1. Marcio, aged 75 has a cancer-related brain disease and appears to have a fluctuating degree of cognitive impairment - sometimes he has clarity, other times not.
How do we assess his decision-making capacity? What is appropriate here? There are times, often prolonged, when Marcio is not able to process information but other times does seem to be able to process at a basic level.*
- 2. What advice can you give staff where there is disagreement about a person's capacity?
For example, Jeremy's family believe Jeremy does not have capacity while the MDT believe he should have a greater role in decision-making.

Whereas, Peadair's family believe Peadair has full capacity in all decision-making, but the MDT believe that Peadair has capacity to make some decisions but not others.*
- 3. As I understand it capacity assessments will be time and issue specific. I am wondering how this applies to people with non-static conditions where cognitive deficit is known to be a factor and where insight is lacking. There may be no 'test' for insight but the experience of the individual's behaviour would suggest that insight is a problem. So, people make financial decisions, and decisions on healthcare without fully being able to explore some of the unintended consequences of specific decisions.*
- 4. Eddie is a 50-year-old gentleman with a diagnosis of Cerebral Palsy. He has a severe intellectual disability, profound physical disability, non-verbal communication, and does not use a formal communication device. Eddie has lived his whole adult life in a residential service. His physiotherapist Siobhan plans to put a sleep system in place. A functional*

capacity assessment is carried out which finds that Eddie lacks capacity to make a decision to implement the sleep system. Siobhan discusses the plan with her MDT colleagues. Acting in Eddie's best interests Siobhan puts the sleep system in place and establishes monitoring logs to record Eddie's reaction and physical response to the sleep system. This information will be part of a review of the therapeutic outcome and whether Eddie tolerates the sleep system. Is this approach correct? Should a functional capacity assessment be completed each time the sleep system is reviewed which could be every 6 months?

5. *Ida is a 68 year-old lady who is currently in hospital following a stroke. She has high care needs, Barthel index 4/20.*

Ida lives in the care of her son, and has expressed a wish to be at home. She has a complex relationship within her family.

Ida's capacity was assessed by a consultant geriatrician, who judged her capacity to be variable but with no insight into her care needs, no acknowledgement of neglect. Ida is known to safeguarding and community MDT, but she is devoted to her son. The hospital has sought legal advice in relation to wardship.....but she has capacity???

6. *Joelle's 7 year old son is attending a disability service. Joelle is being asked to make significant decisions on his behalf, such as decisions around medications etc. Joelle has a known history of intellectual disability.*

How do we support Joelle's capacity to make those decisions?

7. *What is the approach to assessing capacity under the Act?*

Will there be a different process for assessing capacity under this new legislation and the subsequent practice principles?

Who can determine capacity other than Doctors and psychiatrists? Psychologists? or other professionals?

In situations where a functional assessment is required is there a standard template being developed?