Demystifying Capability Assessments

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No disclosures

Objectives

- understand how laws affect clinical decision in capability assessments
- appreciate situations when capability assessments are not necessary
- navigating how to get proper renumeration for this medical legal work

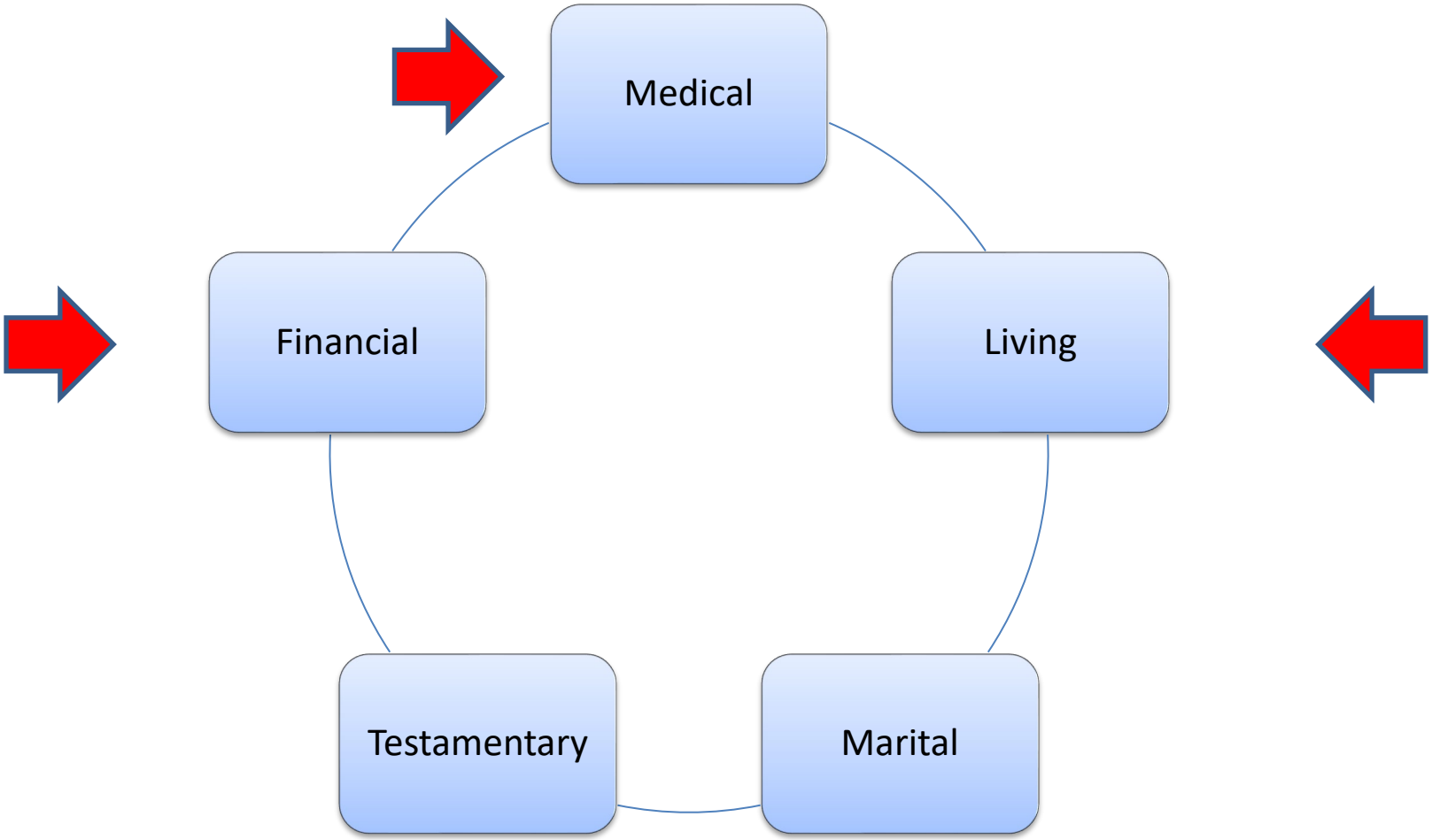
Outline

- Sometimes there is not a need for capability assessments
- General review of capability assessments
  - Laws applicable to certain capability assessments
- Financial aspect of capability assessments

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Domains of capability



Do we need medical capability?

- What is the actual barrier for patient to consent?
- What is the intervention proposed? Is it actually executable? Will it be actually beneficial after it is done?

Do we need living capability?

- What is the barrier to consenting for placement?
- What are we trying to prevent? Falls? Would placement achieve the treatment goals?
- Does the patient agree with the team already?

Do we need financial capability?

- What is at stake?
- Is there power of attorney in place?
  - If not we may be setting up patient for high cost and lose ability to obtain one
- What is the current financial set up?

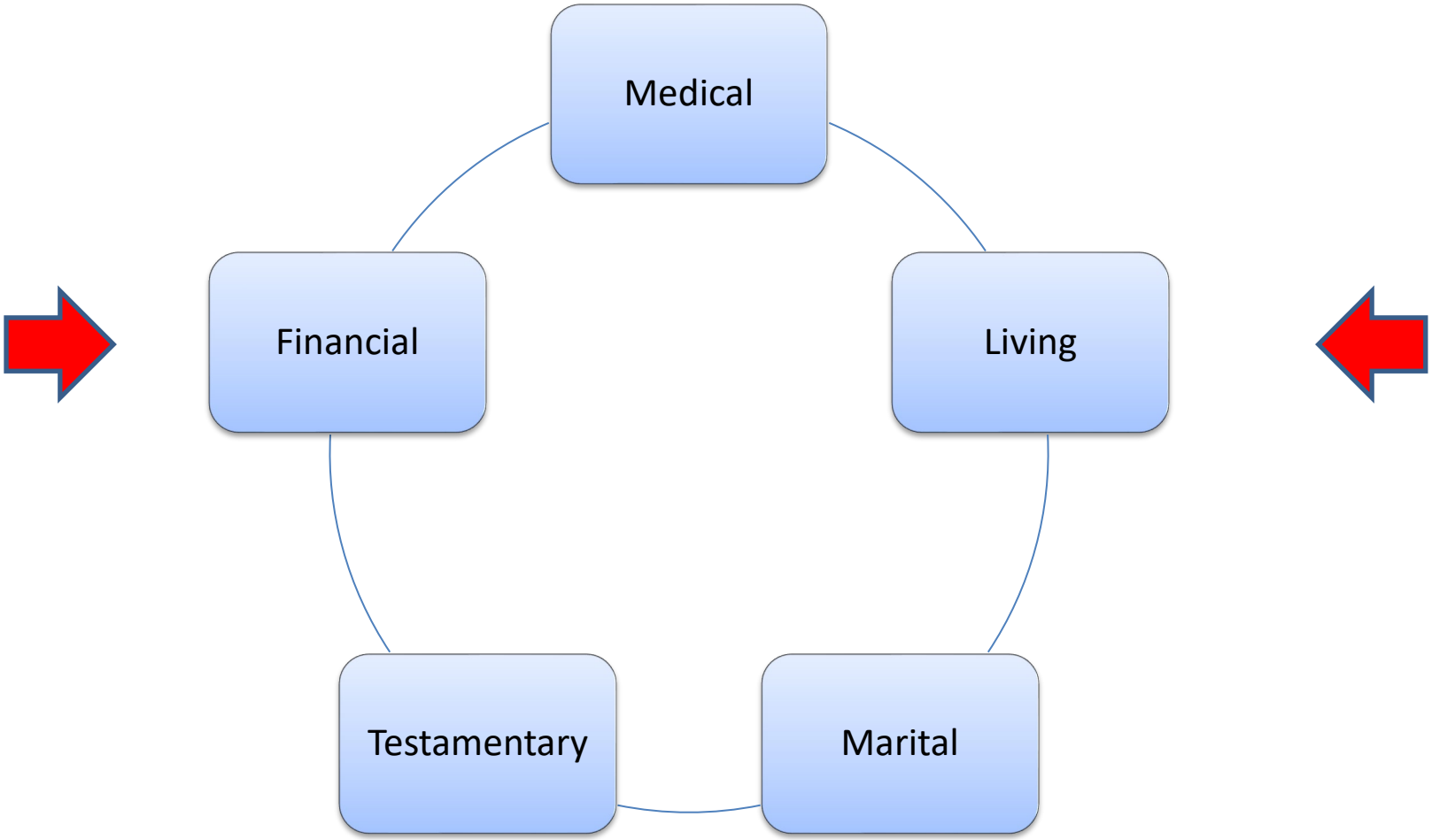
Outline

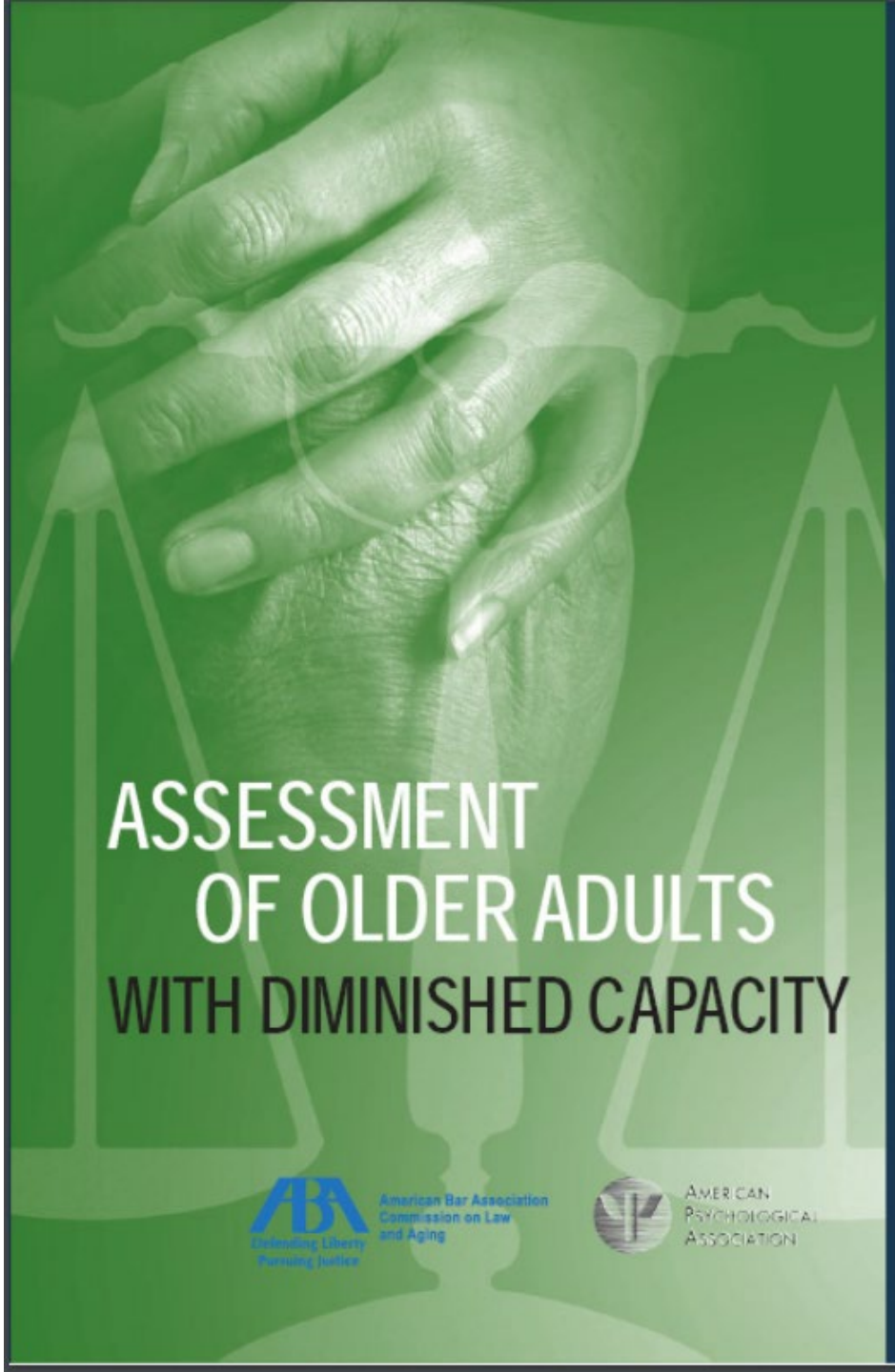
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Capability assessment overview

- General psychiatric history to rule out psychiatric conditions affecting decision making capacity
- Inform the patient about the assessment and the potential consequences
- Patient allowed to refuse participation
- Domain specific questions / skills
- Collateral information
- Cognitive tests (e.g. MMSE, MoCA, Mini-Cog)

Domains of capability





ASSESSMENT OF OLDER ADULTS WITH DIMINISHED CAPACITY

A HANDBOOK FOR PSYCHOLOGISTS

American Bar Association
Commission on Law and Aging
Defending Liberty Pursuing Justice

American Psychological Association

Living capability – legal aspects

- Health Care (Consent) and Care Facility (Admission) Act
  - Everyone is presumed capable to consent until proven otherwise
  - Temporary Substitute Decision Maker
    - Hiearchy (spouse > child > parent …..)
    - 19 years old; been in contact in past year; no dispute

Living capability – legal aspects

- Representation Agreement Act:
  - The purpose of this Act is to provide a mechanism:
    - to allow adults to arrange in advance how, when and by whom, decisions about their health care or personal care, the routine management of their financial affairs, or other matters will be made if they become incapable of making decisions independently, and
    - to avoid the need for the court to appoint someone to help adults make decisions, or someone to make decisions for adults, when they are incapable of making decisions independently.

Standard Powers [s. 7]	Enhanced Powers [s. 9]
Personal care Includes: • employment, diet, dress, exercise • where you live and with whom, arranging home support, caring for pets • participation by an adult in social, educational, vocational and other activities • contact or association by an adult with other persons, and • licences, permits, approvals or other authorizations of an adult to do something	**Personal Care** Items from the previous column plus: + Consent or refuse consent to physically restrain, move or manage adult or have adult physically restrained, moved or managed, when necessary and despite adult's objections + Consent to admission to a care facility but only: (a) a family care home,(b) a group home for the mentally handicapped, or(c) a mental health boarding home. + arrange for temporary care & education of minor kids or other wards (if listed specifically) + interfere with religious practices (but only if listed specifically)

Living capacity - components

- Particular focus on functional abilities (ADL and IADLs)
- Focus on risk identification and mitigation
  - Falls
  - Fire
  - Illness
- Collateral of real world functioning and risk situations are crucial

GUIDELINES
FOR
CONDUCTING ASSESSMENTS
OF CAPACITY

Capacity Assessment Office
Ontario Ministry of the Attorney General

© Capacity Assessment Office, Ministry of the Attorney General, May 2005

APPENDIX II: SAMPLE INTERVIEW QUESTIONS: PERSONAL CARE

1. FACTUAL UNDERSTANDING

"Where do you live? Who do you share your home with? Are there relatives or close friends nearby? Do they visit often?"

"Do you live in a shelter or on the street?"

"Do you provide care or support to others?" (ailing spouse, dependent children)

"Who does your cooking/grocery shopping/cleaning?"

"What is your average day like? What kind of things/activities do you do all day?"

"Are you thinking of moving to another place? Why?"

"Do you have any health problems? Do you take any pills or medicine? Do you see a doctor often?"

2. AREAS OF UNMET NEED

"You told me you get your own meals. Do you have any problems with cooking or using the stove? Have you had a kitchen fire or burned any pots lately? Have you lost weight lately?"

"What would you do if a fire started in your home? If you had a bad fall, how would you get help?"

"Do you know how to use the telephone to call for help?"

"If you were going to go out right now, what kind of clothes would you need?"

"Do you have problems with wetting yourself?"

"Do you ever have any problems finding your way home from the store? What is your address and telephone number?"

"What do you usually eat for breakfast/lunch/supper? Do you sometimes forget to eat? Do you not feel like eating? Is it too hard to prepare? Is there not enough money to buy food?"

"Do you have to eat special food to keep you well? Are you pretty good about watching what you eat? Have you ever been in trouble because of what you ate?"

"Have you ever been sick or infected a cut because you didn't keep yourself clean?"

"Do you have trouble keeping an apartment or staying in one place? Why?"

"Did you ever forget to take your pills? What happened to you?"

"How do you tell if a pill or something in a bottle is poison or if it will hurt you?"

3. WHERE CONCERN EXISTS AS TO INADEQUATE FUNCTIONING

(i) Insight into Problem

"Your family is worried because you got lost twice last month. Do you remember what happened?"

"I see burn holes in your sweater/on the carpet from lit cigarettes. How did that happen? What would happen to you if you fell asleep while smoking?"

"Have you been able to care for yourself lately as well as you'd like to? What has happened?"

"You have been in hospital two times in the past month for mixing up your pills. Do you see this as a concern?"

"Do you know that your family is worried about you? They're afraid you may wander away from home and become lost. Do you think this is likely to happen?"

"Why is your wife so worried about your health?"

(ii) Decision - Specific Probing

"You won't allow someone to come into your home to help you with your bath/dressing. What could happen to you if you can't keep your body or clothes clean?"

"You have chosen to live on the street and only use the shelter when it gets too cold. Can you think of anything good about having your own place? What wouldn't you like about having a place of your own? What do you like about living the way you do? What do you dislike? Is it dangerous to live on the street?"

(iii) Reasoned Choice

"The last time you worried about your food you ate only eggs. You got so sick you ended up in hospital. After treatment, you knew you only ate eggs because of your mental illness. Is your refusal to eat meat the same kind of thing?"

"Your family wonders why you won't put in smoke detectors. Is there something about the smoke detectors that worries you or makes you afraid?"

"Your children think you've changed. Do you think there is a way that your decision could make sense to them?"

"Are you doing this of your own free will or do you feel you are being forced to do this?"

Centre for Neuro Skills

Independent Living Scale©

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Bakersfield, California 93306
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cns@neuroskills.com

Hygiene and Grooming

	M	T	W	Th	F	Sa	S
undressed							
located and took towel							
turned on water							
adjusted temperature							
used plug with bath							
got in safely							
washed all body parts							
used soap correctly							
used shampoo correctly							
turned off water							
was safe in tub/shower							
got out safely							
dried off completely							
deposited used towel							
combed hair							
applied deodorant							
shaved, if needed							
brushed teeth with paste							
flossed teeth, if needed							
care of menses							
totals							
avg. assist level							

ASSISTANCE LEVELS **0** = no assistance required **1** = minimal language or gestural prompt
2 = intermittent language or gestural prompt **3** = minimal physical prompt **4** = intermittent physical prompt
5 = guided performance **6** = unable **X** = not observed **R** = patient refused **NA** = not applicable

Living capability – considerations

- Can we mitigate risk in other ways?
- How can we get the patient to the care facility when they will refuse and become aggressive?
- Is the result what we are wanting the outcome to be? What if the TSDM is questionable?

Financial capability – Legal aspects

- Power of Attorney act:
  - An adult may make an enduring power of attorney unless the adult is incapable of understanding the nature and consequences of the proposed enduring power of attorney.

Financial capability – Legal aspects

- An adult is incapable of understanding the nature and consequences of the proposed enduring power of attorney if the adult cannot understand all of the following:
  - (a)the property the adult has and its approximate value;
  - (b)the obligations the adult owes to his or her dependants;
  - (c)that the adult's attorney will be able to do on the adult's behalf anything in respect of the adult's financial affairs that the adult could do if capable, except make a will, subject to the conditions and restrictions set out in the enduring power of attorney;
  - (d)that, unless the attorney manages the adult's business and property prudently, their value may decline;
  - (e)that the attorney might misuse the attorney's authority;
  - (f)that the adult may, if capable, revoke the enduring power of attorney;
  - (g)any other prescribed matter.

Financial capability – Legal aspects

- Patient Property Act:
  - The Attorney General, a near relative of a person or other person may apply to the court for an order declaring that a person is, because of
    - (a)mental infirmity arising from disease, age or otherwise, or
    - (b)disorder or disability of mind arising from the use of drugs,
  - incapable of managing his or her affairs or incapable of managing himself or herself, or incapable of managing himself or herself or his or her affairs.

Guidelines for Issuing a Certificate of Incapability Under the *Patients Property Act*



PUBLIC GUARDIAN AND TRUSTEE OF BRITISH COLUMBIA

Guiding Principles for Issuing Certificates of Incapability

1. Incapability assessments should only be conducted as a last resort and are unnecessary if there are alternate ways of adequately meeting the adult's needs.

2. Incapability assessments are undertaken only if the assessment will serve the interests of the adult.

3. An adult has the right to be informed of the intention to conduct an incapability assessment and to be informed of the outcome of the assessment.

4. Incapability assessments begin with the presumption that the adult is capable of making decisions.

5. Incapability assessments are conducted fairly and with respect for the adult.

6. A capable adult has a right to make decisions about his or her financial affairs and must not be assessed as incapable solely because others disagree with the adult's decisions.

7. An incapability assessment is a process to be completed in consultation with the adult, those who are supportive of the adult and an inter-professional team as appropriate.

8. Incapability assessments in the Certificate of Incapability context are concerned solely with the adult's ability to make decisions about his or her financial and legal affairs.

9. Incapability assessors respect the adult's rights to privacy, dignity and well being.

10. A determination of incapability does not automatically mean a Certificate of Incapability is issued. A Certificate of Incapability is only issued as a last resort when the adult needs the PGT as Committee of Estate to protect and manage his or her financial and legal affairs.

Financial Capacity - components

- Focus on financial understanding:
  - Income / Expenses
  - Assets / Debts
- Ability to understand basic prices
- Ability to understand basic mathematics
- Need to have collateral to verify claims!

In addition to exploring the adult's general understanding or his or her financial situation, the following are some specific types of indicators that can be examined:

- The adult's knowledge/understanding of his or her income and its sources, including any pension or other retirement income
- The adult's knowledge/understanding of his or her bills that require payment on a regular basis
- The adult's knowledge/understanding of his or her debts
- The adult's knowledge/understanding of his or her financial assets including his or her investments and property
- The adult's knowledge/understanding of his or her legal needs
- Whether the adult has a power of attorney or a representation agreement, or another person assisting with the management of his or her financial affairs
- Whether the adult has a will, and what it means to have a will
- Whether the adult has a bank account and, if so, whether it is a joint account
- Whether the adult has a credit card and, if so, what it means to have a credit card
- Whether the adult knows how to get to the bank
- Whether the adult knows how to write cheques, use a bank debit card, and/or use an ATM
- Whether the adult ever runs out of money for food, or for the rent, or for the payment of other bills
- Whether the adult's family/friends try to borrow money from the adult
- Where the adult keeps his or her cash
- Whether the adult gives money to charities

A Financial Assessment & Capacity Test (FACT) For A Psychogeriatric Population: *Development and Concurrent Validity*

Edward L. Black, PhD, CPsych[1,2] , Tom J. Ross, B.A.[1],
Tobi Flanagan, BScOT[1], Kiran Rabheru, MD, FRCPC[3], Hans J. Breiter, PhD, CPsych[2]

4. ***"Please identify each coin and bill by name and value."*** Present in the same order for each administration of this question. If the client identifies the coin/bill, but does not state the value then cue by asking "***What is it worth?"***

Denominations include a penny, nickel, dime, quarter, 1 dollar coin/bill,
two dollar coin/bill, 5 dollar bill, 10 dollar bill
2 points for each to total 4 points. Client may manipulate coins in order to identify them.

5. Client is given a sum of money that adds up to $20.00. The following denominations of bills/coins should be placed in front of the client:

2 five dollar bills
3 toonies
1 loonie (Canadian one dollar coin)7 quarters
6 dimes
11 nickels
10 pennies

Examiner asks client to: ***"Look at the money in front of you and count out $13.37"***
3 points for the correct change
2 points within 10 cents of $13.37
1 point within 25 cents of $13.37
0 points error greater than 25 cents

6. *Delayed Recall:* ***"Do you remember that I asked about Mrs. Jones going to the store?"*** "***What were the items that Mrs. Jones needed to buy at the store?"***

1 point for each correct item (bread, toothpaste, dish soap)
Total score 3 points

Financial Capability - considerations

- Is the result what we want? What if the TSDM is questionable?

Committeeship – legal aspect

- Patient Property Act:
  - The Attorney General, a near relative of a person or other person may apply to the court for an order declaring that a person is, because of
    - (a)mental infirmity arising from disease, age or otherwise, or
    - (b)disorder or disability of mind arising from the use of drugs,
  - incapable of managing his or her affairs or incapable of managing himself or herself, or incapable of managing himself or herself or his or her affairs.

Committeeship – legal aspect

- Can result in committee of estate or of person
- Assessment is typically done via an independent medical examiner
- Involves lawyers and can be VERY COSTLY (about $50k)
- Need a court proceeding

Committeeship - components

- Need to perform medical, living and also financial capability assessment
- Final legal report produced for court submission

Outline

- Sometimes there is not a need for capability assessments
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What does MSP pay for?

- MSP will pay for your patient encounter – best to utilize for living arrangement and medical capability as there is no other way it is compensated
- If financial capability is requested – who requested it?
  - Always establish renumeration from the agency requesting it with estimate and agreed upon payment
  - PGT? Use PGT pay schedule (invoice PGT with case #)
  - Lawyer for committeeship? Use doctors of BC non-insured services or set an hourly rate for items not defined (invoice the law firm – avoid invoicing patient directly)

Service Canada

PROTECTED B (when completed)

Personal Information Banks
ESDC PPU 116, 146

Certificate of Incapability

Information about the Old Age Security and/or Canada Pension Plan beneficiary

Beneficiary's Social Insurance Number

◯ Mr. ◯ Mrs. ◯ Ms ◯ Miss Usual First Name and Initial	Last Name
Address (No., Street, Apt., P.O. Box, R.R. and City)	Province or Territory
	Country - If other than Canada / Postal Code

Note: If you are applying on behalf of an individual who is homeless or at imminent risk of being homeless please enter the community where the individual resides.

Please note that, to be considered incapable of managing his/her own affairs, a person must be suffering from severe mental impairment or a physical illness or impairment. (Please refer to the questions below.) If you are related by blood or marriage to the incapable individual or to the person applying to administer the benefits of the incapable individual, you cannot certify the individual's incapability.

Does the person named above have:

1. Good **general knowledge** of what is happening to their money or investments?	◯ Yes ◯ No	Comments
2. Sufficient **understanding** of the concept of time, in order to pay bills promptly?	◯ Yes ◯ No	Comments
3. Sufficient **memory** to keep track of financial transactions and decisions?	◯ Yes ◯ No	Comments
4. Ability to **balance** accounts and bills?	◯ Yes ◯ No	Comments
5. Significant **impairment of judgement** due to altered intellectual function?	◯ Yes ◯ No	Comments

In addition:

6A. How long have you known this person?	6B. Please state this person's date of birth.
7. Do you consider this person **capable** of managing their own affairs? ◯ Yes ◯ No	**If no**, is improvement expected? (Provide date)

Complete questions 8 and 9 if you are a medical professional (Physician, Registered Nurse, Nurse Practitioner, Psychologist, or Psychiatrist).

8. Diagnosis of impairment	Date impairment started
9. Comments	

Service Canada delivers Employment and Social Development Canada programs and services for the Government of Canada.

PGT payment scale

The current fee listing effective April 1, 2023 for completion of the form is:

A94533 Completion of Public Trustee's form for Opinion of incapacity (extra to examination) .....$ 417.00

The examination fees are as follows, also effective April 1, 2023:

12101 Complete examination - in office (Age 0 - 1) $217.00
00101 Complete examination - in office (Age 2 - 49) $193.00
15301 Complete examination - in office (Age 50 – 59) $217.00
16101 Complete examination - in office (Age 60 - 69) $225.00
17101 Complete examination - in office (Age 70 - 79) $245.00
18101 Complete examination - in office (Age 80+) $253.00

REVISED FEES FOR UNINSURED SERVICES
EFFECTIVE APRIL 1, 2024*

A00007	Consultative or Advisory Committee work - per half day (3.5 hours)	$ 1402.00
A00008	- per day	$ 2799.00
A94533	Completion of Public Trustee's form for opinion of incapacity (extra to examination)	$ 434.00
A00069	Insurance company form to include review of records - short report	$ 180.00
A00059	- extensive report	$ 236.00

A00070	For filling out an ordinary printed form reporting on a patient's condition or submitting like information in letter form. This item should not be used for time loss benefit or insurance forms normally covered under A00059, A00060 and A00069.	$ 205.00
A00071	A Medico-Legal letter or form is defined as a short factual written communication given to any lay person (e.g.: lawyer, insurance representative) in relation to a patient for some purpose primarily unconnected with treatment.	$ 434.00
A00072	A simple Medical-Legal Report is one, which will recite symptoms, history and records and gives diagnosis, treatment, results and present condition. This is a factual summary of all the information available on the case.	$ 1294.00
A00073	A Medical-Legal opinion report will usually include the information contained in the medical-legal factual report and will differ from it primarily in the field of opinion. This may be opinion as to the course of events when these cannot be known for sure. It can include opinion as to long term consequences and possible complications in the further development of the condition. All the known facts will probably be mentioned, but in addition there will be extensive exercise of expert knowledge and judgement with respect to those facts with a detailed prognosis. ***Required to meet specific criteria to qualify for court admission as an expert report.***	$ 2165.00
A00074	Testimony per day	$ 3457.00
A00075	Testimony per half-day or less	$ 2165.00
A00091	Preparation to give testimony, per hour **NOTE**: This fee does not include charges for extra record keeping necessary to provide expert testimony. These charges are in addition.	$ 515.00
A00092	Failure of notification of hearing, scheduled consultation meeting, discovery, depositions, or trial adjournment or out - of - court settlement. **NOTE**: Fee item A00092 applies where the patient or legal counsel fails to give 5 working days' notice of cancellation of court or other legal appearance or meeting.	$ 2596.00

A00095 Review of paper or EMR records by physician (for medical/legal purposes or transfer of patient records). - per 15 minutes or portion thereof $ 122.00

NOTES:

i) The fee for this service can be adjusted at the physician's discretion based on the time and extent of physician involvement and secretarial and other direct or indirect costs such as cost of supplies to produce an electronic copy .

ii) This fee is for review of the paper or EMR file only.

iii) Photocopying paper records may be charged in addition.

iv) At the physician's discretion, an additional $1.45 per page for paper copies is billable for large and/or complex charts.

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