

Capacity Checklist

From time to time those who work for or support people with a disability are confronted with situations where the level of a person's disability may affect his or her ability to make important decisions. While there should be a presumption of capacity to make decisions for all people with a disability there are situations where an individual's diminished capacity may seriously undermine his or her interests. The purpose of this checklist is to assist people like disability advocates, lawyers, disability & aged care workers etc to consider all relevant issues if they must make such an assessment. This checklist is not meant to replace more comprehensive assessments by relevant professionals.

This checklist is adapted from: "Assessment of Older Adults with Diminished Capacity: A Handbook for Lawyers, by the ABA Commission on Law and Aging and the American Psychological Association (2005)" and Darzins R et al (2000) Who can Decide? The six step capacity assessment process.) *Mark Grierson (Disability Advocacy NSW Inc. www.da.org.au*

Capacity (Basic Definition)

In general, when you assess the capacity of a person to make a particular decision, you are considering whether or not the person:

- is able to understand the facts involved in the decision;
- knows the main choices that exist;
- can weigh up the consequences of the choices;
- can understand how the consequences affect them and their situation; and
- can communicate their decision. ('Capacity Toolkit')

Additionally capable decisions are not based on delusional constructs. (Darzins)

Further research into the particular capacity issue in legislation or case law is often necessary. Is the issue about financial management, guardianship, making a will, signing a contract, power of attorney etc or instructions to a lawyer, advocate or support worker?

1 ISSUES TO CONSIDER FIRST:

1.1 What is the issue/decision for which capacity is being assessed?

1.2 What was the trigger event or reason to consider the persons capacity to make a decision?

2 OBSERVATIONAL SIGNS

2.1 Cognitive Functioning

2.1.1 Short-term Memory Problems.

(E.g. Repeats questions frequently, forgets what is discussed within 15-30 min. Cannot remember events of past few days.)

2.1.2 Language/Communication Problems.

(E.g. Frequent difficulty finding words, vague language, trouble staying on topic, disorganised, bizarre statements or reasoning.)

2.1.3 Comprehension Problems.

(E.g. difficulty repeating simple concepts, repeated questioning.)

2.1.4 Lack of Mental Flexibility.

(E.g. Difficulty comparing alternatives, difficulty adjusting to changes.)

2.1.5 Calculation/Financial Management Problems.

(E.g. addition or subtraction that previously would have been easy for the client has become difficult, bill paying difficulty).

2.2 Emotional Functioning

2.2.1 Emotional Distress.

(E.g. anxious, tearful/distressed, excited/pressured/manic.)

2.2.2 Emotional Lability.

(E.g. moves quickly between laughter and tears, feelings inconsistent with topic.)

2.3 Behavioural Functioning

2.3.1 Delusions.

(E.g. Fearful, feels unsafe. Feels others out “to get” him/her, spying or organized against him/her).

2.3.2 Hallucinations

(Appears to hear or talk to things not there. Appears to see things not there, misperceives things).

2.3.3 Poor Grooming/Hygiene

Unusually unclean/unkept in appearance inappropriately dressed.

2.3.4 Other Observations/Notes of Functional Behaviour

2.4 Mitigating/Qualifying Factors Affecting Observations

2.4.1 Stress, Grief, Depression, Recent Events affecting stability of client

(Ask about recent events, losses.)

2.4.2 Medical Factors

(Ask about nutrition, medications, hydration.)

2.4.3 Time of Day Variability

(Ask if certain times of the day are best.)

2.4.4 Hearing and Vision Loss.

(Assess ability to read/repeat simple information).

2.4.5 Educational/Cultural/Ethnic Barriers.

(Be aware of race and ethnicity, education, long-held values and traditions.)

3 TASK-SPECIFIC FACTORS IN PRELIMINARY EVALUATION OF CAPACITY

The more serious the concerns about the following factors (The higher the function needed in the following abilities)

3.1 Is decision consistent with client’s known long-term values or commitments? {i.e. can client articulate reasoning leading to this decision?}

3.2 Is the decision objectively fair? Will anyone be hurt by the decision? Is client’s decision consistent over time? {i.e. Are primary values client articulates consistent over time?}

3.3 Is the decision irreversible? {i.e. Can client appreciate consequences of his/her decision?}

4 PRELIMINARY CONCLUSIONS ABOUT CLIENT CAPACITY - After evaluating 1, 2, and 3 above:

| | 4.1 Intact | 4.2 Mild Problems | 4.3 Substantial Problems | 4.4 Severe Problems | |
|---------------------------------|----------------------------|--------------------------|---------------------------------|----------------------------|-----------------------------|
| | Definitely capable. | Probably capable. | Maybe capable. | Probably incapable | Definitely incapable |
| Understand issue. | | | | | |
| Understand choices. | | | | | |
| Appreciate consequences. | | | | | |

4.1 Intact : No or very minimal evidence of diminished capacity

Action: e.g. Proceed with assistance.

4.2 Mild problems: Some evidence of diminished capacity.

Action: Proceed with assistance (work with client to reduce capacity problems), or consider consultation with relevant professional, or consider referral for formal capacity assessment to substantiate conclusion, with client consent.

4.3 Substantial problems: Substantial evidence of diminished capacity

Action: Proceed with assistance with great caution, or consult with relevant professional, or refer for formal capacity assessment, with client consent.

4.4 Severe problems: Client lacks capacity to proceed with advocacy action or decision/s.

Action: Referral to relevant professional for formal capacity assessment to confirm conclusion, do not proceed with case; or withdraw, after careful consideration of how to protect client's interests.

5 CONCLUSION:

Summarise key observations, application of relevant criteria for capacity (refer Section 4 above), conclusions, and actions to be taken: