Chapter 4
The Capacity to Manage Finances

Oliver M. Glass, Larry Tune, and Adriana P. Hermida

Case Example

Ms. Smith is a 78-year-old Caucasian female who lives with her son in a home outside a metropolitan city. The son moved in three weeks ago after he called Ms. Smith informing him that he is homeless. An adult protective services (APS) report was filed by her daughter alleging that the son is taking Ms. Smith's money to buy opioid tablets off the streets. APS visits Ms. Smith's home and evaluates her alone. She is noticeably confused and is unaware of the current year or month. When asked to draw a clock, Ms. Smith drew a circle with all the hours in the top right-hand corner. She stated that she cannot remember who she banks with, but that her "son should know." When the son is interviewed by APS, he tells them that he is helping Ms. Smith with her bills and check writing

O. M. Glass (✉) · L. Tune · A. P. Hermida
Emory University, Department of Psychiatry and Behavioral Sciences, Atlanta, GA, USA
e-mail: oliver.glass@emory.edu; ltune@emory.edu; ahermid@emory.edu

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as she is "too confused" to do it on her own. The son then explained that he "just writes the checks and mom just signs them." He has slurred speech and is very restless during the evaluation. APS makes a referral for Ms. Smith to have a formal financial capacity assessment.

Introduction

In the coming years, clinicians are likely to be asked to provide expert opinion on whether patients have the capacity to manage their own finances. There will be increased demand, caused by (1) an aging population, (2) an increased prevalence of dementia, (3) a growth in per capita wealth, and (4) a higher frequency in divorce and remarriage [1]. A 2013 estimate found that at least 34% of the nation's wealth comes from older adults [2]. To add to this, a lack of financial capacity is directly correlated with financial exploitation. Dementia progresses slowly, where an exact demarcation of when someone loses their ability to manage their finances is hard to determine. Delirium, which may occur independently or with co-occurring dementia, typically has a waxing and waning of cognitive ability. Therefore, when someone is delirious, there may be lucid intervals where one may argue that the individual has capacity, but moments later, the person's consciousness may deteriorate. Evaluating monetary decision-making capacity can prove useful as it can be used to gauge whether one is at significant risk for financial exploitation. Individuals with dementia are especially vulnerable when it comes to financial exploitation, as they may lose twice as much money per case of financial exploitation when compared to those without a major neurocognitive disorder [3]. In this chapter, we will explore the relationship between aging and financial decision-making, while demonstrating how cognitive impairment may influence financial and testamentary capacity.

Financial and Testamentary Capacity

Financial Capacity

Mild cognitive impairment (MCI) and Alzheimer's dementia (AD) are often associated with lack of awareness of cognitive deficits [4, 5]. This impacts the individual's ability to pass the standard capacity assessment [6]. As a result, in the individual whose financial capacity is called into question, cognitive status must first be evaluated through a standardized screening tool. If necessary, financial capacity may need to be checked through neuropsychological testing. To make matters more complex, MCI and dementia are often associated with depression and apathy [7]. This can prove detrimental to an individual's ability to demonstrate capacity. Bayard et al. found that [8] those with MCI and AD are more likely to make disadvantageous selections on the Iowa Gambling Task (IGT). They are more likely to make choices that provide a high immediate reward despite the heightened risk for future punishment. Furthermore, the study found that individuals with MCI and AD performed similarly on the IGT [8]. Some people with MCI may develop disinhibition along with a lack of concern [9]. Disinhibition along with a lack of concern will likely contribute to poor financial decisions and an increased risk of financial exploitation. A person with isolated frontotemporal impairments may in certain cases be able to conduct complex financial decisions but exhibit irrational behavior secondary to pathological impulsivity. Brain imaging combined with objective cognitive testing can be valuable when evaluating an individual for financial capacity.

Stoeckel et al. [10] found a relationship between atrophy of the medial frontal cortex in individuals with mild AD and poor performance on the Financial Capacity Instrument (FCI), indicating impairment in financial skills. The prefrontal cortex is particularly important in executive functioning [11]. Executive functioning impairment is directly correlated to poor financial skills [12]. The larger the prefrontal cortex volume in healthy individuals, the better the executive functioning [11]. When there is an imaging study which shows atrophy of this specific brain region, providers should assess for deficits in financial management. Objective cognitive measurement tools that have an executive functioning component (e.g., the Montreal Cognitive Assessment [MOCA]) can provide objective data to supplement the evaluator's assessment.

Testamentary Capacity

Testamentary decision-making capacity is the act of executing a will, and this capacity relies on the "ability to understand relevant facts and an appreciation of the reasonably foreseeable consequences of taking specific actions regarding the formation of a will" [13]. Testamentary capacity can be called into question when the individual is alive or deceased. The more the will deviates from the natural heir of inheritance, the more the individual must demonstrate a higher level of decision-making ability. In evaluating testamentary capacity where the will deviates from the natural heir(s), the evaluator should assess if the person understands who the natural heir to the inheritance is and the ability to appropriately describe the events that have led to the decision. The evaluator should determine whether there was any correlation between abnormal behaviors (e.g., whether there was an emergence of cognitive impairment) and the decision relating to the will. Shulman et al. [13] emphasized that the testator should demonstrate understanding of the following concepts when being evaluated for testamentary capacity including:

1. the nature and extent of his property
2. the persons who are natural objects of his bounty,
3. the testamentary provisions he is making, and he must, moreover, be capable of:
   (a) appreciating these factors in relation to each other;
   (b) forming an orderly desire as to the disposition of his property.

Cognitive fluctuations occur in various neurodegenerative disorders but are more commonly noted in delirium and Lewy body dementia [13]. The so-called "lucid interval" and its importance to the capacity assessment is the subject of ongoing legal debate. Some argue that the use of the lucid interval is invalid, arguing that it would be "extremely short in duration, often on the order of seconds or minutes" [13]. As a result, the individual who is being evaluated would not have the sufficient amount of time to appreciate all the relevant factors. If one is experiencing a "lucid interval," it is still within the context of a medical pathophysiological influence that may significantly alter judgment. In cases where an individual has previously made a financial decision (e.g., a will) while in a state of delirium, he may later argue that he had diminished capacity at the time of the financial decision, and that the decision was made when he did not have purpose or knowledge. In post-mortem cases, family members or individuals who would otherwise benefit from the will may similarly contest that will if they are able to provide sufficient evidence to support their case.

Neuroanatomy and Imaging

Rosenbloom et al. [14] clearly outlined how decision-making is dependent on three brain regions:

1. The anterior cingulate cortex (ACC), which organizes conflicting options
2. The dorsolateral prefrontal cortex, which integrates multiple sources of information
3. The orbitofrontal cortex (OFC) and limbic pathways, which are associated with affective-based decisions and reward

It is believed that the more complex the decision-making, the more important the connections between the abovementioned brain regions.

In 2017, Spreng et al. [15] used magnetic resonance imaging (MRI) to compare financially exploited older adults with older adults who were exposed to exploitive situations but were able to identify and avoid it. They found anatomical changes in the financially exploited group, particularly in the anterior insula and posterior superior temporal cortices. These brain regions were noted to have significant roles in affectively based decision-making and social cognition [15–17]. There is also literature describing the impact of decreased insula activity in older adults. They are more likely to rate untrustworthy faces incorrectly [16], increasing the risk for being financial exploited. The OFC and ACC, two of the three main frontal regions in decision-making, have bidirectional connections with the insular and temporal cortices [14]. Individuals with an insular lesion tend to be "indifferent with regard to risky options" [18] or have "emotional bluntness towards risk" [14, 18]. This may resemble apathy, a symptom of MCI and dementia, which may negatively influence the effected individual's ability to correctly assess consequences of decisions [8], including finances.

Relevant Assessment Methods

Grisso and Applebaum have provided legally relevant criteria for decision-making capacity [6]. These can be helpful in assessing financial decision-making capacity. These criteria in making treatment decisions are by far the most commonly used in the assessment of capacity.

1. The individual should clearly indicate the preferred treatment option, where frequent reversals of choice due to a psychiatric or neurologic condition may indicate lack of capacity.
2. The individual should understand relevant information, and this should be demonstrated by the person whose capacity is being questioned.
3. He or she should have the ability to appreciate the situation and its consequences.
4. The person should be able to engage in a rational process of manipulating the relevant information.

Some may argue that an individual who is able to possess the four abilities mentioned above may appropriately have financial capacity and/or testamentary capacity. While not explicitly mentioned in the four elements, evaluators may recognize the individual's vulnerability to undue influence by assessing how well he or she manipulates the relevant information. Nonetheless, the way a lonely, old age individual performs in a structured, formal setting may be different than at home. Therefore, one can demonstrate financial decision-making capacity but still be overwhelmingly vulnerable to financial exploitation.

The Financial Capacity Instrument (FCI) evaluates 9 domains and 18 financial ability tasks, and provides 2 total scores [19]. The FCI has been found to be a reliable assessment tool [20] but contains over 100 items and may take more than an hour to administer [21]. The FCI-Short Form (FCI-SF) measures 37 items and in a concise manner evaluates a range of financial skills in less than 15 minutes [21]. Swanson et al. found that the FCI-SF is sensitive in distinguishing mild cognitive impairment (MCI) and mild Alzheimer's disease dementia [22].

The Lichtenberg Financial Decision Screening Scale (LFDSS) assesses financial decision-making capacity while preventing financial exploitation [23]. The LFDSS consists of ten items, seven of which rate financial decision-making, and three that assess for susceptibility to undue influence. At present, significant limitations of the LFDSS include that it was only studied in a single population group without randomization or blinding.

Lawton and Brody [24, 25] described three levels where an individual of older age may function in regards to financial ability:

1. Level 1 (Independent)—The individual is able to manage his or her finances independently (e.g., can write checks, pays rent, goes to the bank, and is able to budget appropriately).
2. Level 2 (Partially dependent)—Needs help with banking and major purchases but can manage basic day-to-day purchases.
3. Level 3 (Dependent)—The person is not able to handle finances and requires the assistance of others for every financial-related task.

These three levels for financial functioning have not been correlated with vulnerability to financial exploitation (e.g., being particularly vulnerable predatorial fraud and scams). One may hypothetically appear to be independent in financial functioning but may be abnormally incapable of thwarting undue influence.

The Schematic of the Semi-Structured Clinical Interview for Financial Capacity (SCIFC) is a method developed by Marson et al. [26] that guides providers in assessing overall financial capacity and the following eight relevant domains:

1. Basic monetary skills
2. Financial conceptual knowledge
3. Cash transactions
4. Checkbook management
5. Bank statement management
6. Financial judgment
7. Bill payment
8. Knowledge of personal assets and estate arrangements

Even though this interview focuses on domains that can be helpful to understand the financial functioning of an individual, poor performance does not mean that an individual lacks capacity. For instance, if an individual struggled with arithmetic throughout his life and has adequately compensated using a calculator or an accountant, then this could be considered his baseline. Niccolai et al. used the FCI to evaluate 49 persons with MCI and found that semantic arithmetic knowledge is an important cognitive predictor of whether an individual with MCI may lose financial capacity [27]. Nonetheless, the individual whose financial capacity is being called into question may still be able to perform well on Grisso and Applebaum's elements despite poor performance on the SCIFC or FCI.

Widera et al. proposed certain questions that can be included in an informal assessment to probe for potential financial impairment or vulnerability [28]:

General Questions: "Who manages your money, property (and/or investments)?"

"Do you have anyone besides yourself on your checking and savings account?"

"How long has it been like this?"

"Are you having any problems?"

Specific Questions: "Are you having any new problems making change (and/or calculating tips)? "

"When was the last time you were late paying a bill?"

"When was the last time you bounced a check?"

"Have you received any letters or phone calls from your bank with concerns about your account?"

"Has anyone stolen or cheated you out of money?"

Discussion

Accurate assessment of financial capacity is still an area of uncharted territory. It can be challenging to determine an individual's ability to thwart undue influence. Evaluators should be assessing whether the individual has had a significant change in financial management over a specific period of time. For example, the individual who has never donated to a for-profit organization has suddenly started to send them an alarming amount of money, possibly indicating a neurological and/or psychiatric basis for this new behavior. While an individual who has provided donations to a specific charity throughout his or her adult life and has maintained this pattern of giving into late life would not cause the same level of concern.

Family members who are likely to financially benefit from the older individual may be biased and overestimate the individual's financial capacity. Likewise, some family members who raise the issue of impaired financial capacity in their relative may be seeking monetary benefit. An exploitative "friend" or family member may seek the status of payee over an older age individual where funds are spent on the "friend" or family member rather than on the older individual. Some may call the payee in such a circumstance as "a license to exploit." Even though the payee should be discussing the way the money is being spent with the older aged individual, the older individual may overestimate the trustworthiness of the payee and/or have impaired awareness of who is managing his or her finances due to cognitive deficits (e.g., poor memory).

Normal aging (without cognitive impairment) has been associated with an individual's diminished ability to register untrustworthy faces, and therefore increases one's risk for financial exploitation. It is important for the evaluator to keep in mind that certain medications (e.g., anticholinergics, benzodiazepines), polypharmacy, and the use of illicit substances may alter an individual's ability to make rational decisions, including those related to finances. Additionally, in cases where the individual may be accompanied by another individual (e.g., family or friend), the evaluator should ask for that person to step out of the room during the assessment to diminish potential influence. Although collateral information is vital during a financial capacity evaluation, it should not be obtained while assessing the individual whose capacity is being evaluated. The examiner should consider conducting an evaluation over multiple sessions to ensure that the person is providing consistent information.

Older individuals are not likely to be as savvy as the younger generation with using new technology and the internet. As a result, even when an older individual is without cognitive deficits, they may be at increased risk for exploitation through the internet. While the same individual can make appropriate financial decisions, they often are not able to detect an online scam (e.g., a fake bank page that requires your log in information, which then takes all of your funds). One may argue that such a circumstance of financial exploitation is not always an indicator of cognitive impairment. Ethically, providers should balance the concepts of beneficence, where protection is the goal, versus the appreciation of the individual's autonomy [29]. The evaluator's counter-transference and biases may have the potential of influencing the financial capacity assessment by not being able to adequately balance these two ethical concepts. However, it is important to note that there is literature [30] indicating that providers frequently overestimate patients' capacity to make decisions. This overestimation of decision-making capacity in older individuals may lead to detrimental clinical and legal consequences. This overestimation of capacity may be partly due to inadequate training in performing capacity evaluations but also due to administrative or system-based influences.

If an individual is found to lack financial capacity, the court may appoint a guardian or conservator depending on the circumstance and specific state law. Even if an older age individual may appear to have capacity to manage their finances, certain factors such as normal aging, mild cognitive impairment, and loneliness may cause the individual to struggle with dealing of undue influences over their finances. The authors of this chapter are not aware of any validated evaluation tools that focus on an individual's ability to resist undue influence in the setting of making financial decisions. While some individuals may appear to be cognitively intact, they may have impairments in their overall functioning. As a result, it is recommended that evaluators of financial capacity weigh the individual's cognition, emotional state, impulsivity level, and ability to resist undue influence.

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