



Possible Cognitive Signs of Incapacity

1. **Short-term Memory Loss** A client quickly may forget information discussed in the interview, repeating the same statements or ask
2. **Communication Problems** A great deal can be learned by observing how the client uses language and communicates ideas. For example, a client may have repeated difficulty finding a particular word or naming common items even if they can talk about the item. For example, she may say “I brought my thing with the papers in it” instead of “I brought my notebook.” A common “cover” tactic for older adults with memory or communication problems is to defer to others excessively when asked direct questions, perhaps saying “My wife handles all the appointments, you’d have to ask her if we went,” or “I hardly ever call my own phone number; my son would remember because he uses it.” Clients who are asked direct questions may have trouble staying on the topic, frequently shifting to discussion of unrelated issues, or moving erratically or nonsensically between topics. Such problems can indicate trouble organizing thoughts such as is found in frontal dementia or in thought disorder (e.g., psychotic thinking). Repeated difficulty finding words and vague or disorganized language may indicate an inability to communicate a clear decision or to comprehend important or relevant information.
3. **Comprehension Problems** It is important to explore the client’s comprehension of information with other than yes/no questions. For example, difficulty repeating back or paraphrasing simple concepts is indicative of problems in comprehension. Repeated questioning could indicate poor memory, or it could indicate poor comprehension. Many people with poor memory can paraphrase information.
4. **Lack of Mental Flexibility** A client may lack the capacity to understand or even acknowledge multiple alternatives or viewpoints other than her or his own, or have difficulty comprehending and adjusting to changes. This is different from simply being stubborn in that someone who is stubborn can typically acknowledge that other perspectives exist and can provide reasons for not choosing them. For example, a stubborn person may not want to change a will for particular reasons, whereas an older adult lacking in mental flexibility may exhibit a general fear of making any changes for very vague reasons.
5. **Calculation Problems** A client may have very basic difficulties with simple math problems that are far worse than expected given the level of education. An example of this is someone with a college degree who makes an error in adding dollar amounts together, or lines up columns of numbers incorrectly while adding or subtracting. The client may also present signs suggesting impairment in financial management abilities more broadly, e.g., lack of awareness of current financial assets or debts.
6. **Disorientation** can occur relative to space, time, or location. For example, a long-time client may have difficulty navigating through the attorney’s office building spatially or may get lost driving to the office even if he or she has been there several times over many years (spatial orientation). Once there, the client may not be able to identify where he or she is (orientation to place). The client may also not be aware of what time it is or what year it is, perhaps making references to events from several years ago as if the events were current (orientation to time).

Possible Emotional Signs of Incapacity

1. Significant Emotional Distress A client may be persistently emotionally distressed during an interview or across interviews, beyond typical emotions expected given the circumstances, such that the individual's emotional state makes it very difficult to address the relevant legal questions. For example, the client may appear extremely anxious, tearful, or seem depressed and appear to have no energy and respond very slowly to questions.
2. Emotional Lability/Inappropriateness Rather than a steady emotional state, a client may also either show an extremely wide range of emotions during an interview (perhaps moving quickly from laughter to tears). Alternatively, a client may express feelings that seem highly inconsistent with what he or she is discussing (laughter when discussing death of a spouse, tears of distress while professing to be happy).

Possible Behavioral Signs of Incapacity

1. Delusions are beliefs that are unlikely to be true, such as a belief that neighbors or the government are spying on oneself. Delusional thinking may be manifest more generally in expressions of feeling frightened or unsafe. Presence of delusions may call into question the extent to which decisions are founded on sound reasoning. For example, some delusional nursing home residents occasionally stop eating because of beliefs that their food is being poisoned. However, apparent delusions that seem more reality-based may warrant further exploration. Older adults commonly have concerns about relatives or facility staff stealing money or possessions from them, which unfortunately may be more reality based.
2. Hallucinations are sensory experiences in the absence of physical stimuli that could be responsible for such experiences, such as hearing voices that no one else can hear. They are often auditory or visual, but can involve the other senses: smell, touch, and/or taste. An example is an older adult who seems to be having a conversation with another person who is not there. As with delusions, hallucinations may call into question the extent to which a decision is reality based. However, it should be noted that high functioning older adults who are recently widowed and grieving sometimes report hearing a deceased spouse.

Documentation

Summarize key observations, conclusions, and reasonings in a case note, either in the space provided at the end of the worksheet or elsewhere in a case summary.