

# New approaches to determining financial capacity and risk for exploitation

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## Article Info

### Article Notes

Received: May 12, 2017

Accepted: June 06, 2017

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In 2007<sup>1</sup>, Moye and Marson noted that few working models of financial capacity were available. The following year<sup>2</sup>, the APA/ABA's (2008) Assessment of Older Adults with Diminished Capacity stated that unlike clinical judgment scales for the assessment of capacity for medical treatment, no such scales existed for financial capacity. As is often the case with gerontology, it can be difficult to translate scales that were developed to measure age-related changes—or even neurodegenerative disease-related changes—into clinical practice. Most financial capacity measures include a number of financial domains, such as bill paying, checkbook management, and cash transactions<sup>3</sup>, yet the legal standards for financial incapacity are strongly related to informed (financial) decision-making. The rating scale we present here was created to provide an instrument for clinical judgment of capacity (i.e., capacity for a specific decision or transaction).

This commentary will examine the conceptual model we introduced in 2015 (Lichtenberg, Stoltman, Ficker, Iris, & Mast) and empirical evidence for the reliability and validity of the measure's rating scale. The financial decision-making scale is unique, in that it focuses on an actual significant financial decision(s) and/or transaction(s) and incorporates contextual variables specific to financial decision-making, and therefore goes beyond financial management skills, cognition, or rational decision-making by incorporating financial situational awareness (e.g., self-efficacy, financial strain), psychological vulnerability regarding finances, and susceptibility to undue influence and/or exploitation. We argue that decisional incapacity is likely to greatly increase the older adult's vulnerability to financial exploitation. In addition, the intersection of decisional incapacity and financial capacity is heightened when cognitive decline or impairment is present. We examined these hypotheses in two separate data collections. First, we will examine the most common methods of measuring financial capacity and financial exploitation, then summarize our studies.

## A traditional approach to the measurement of financial capacity

Marson (2001) conceives of three aspects of financial capacity: (a) specific financial abilities, (b) broad domains of financial activity, and (c) overall financial capacity. In his 2001 study, for example, financial capacity was strongly linked to stages of Alzheimer's disease. In subsequent studies, Marson and colleagues have employed the eight-domain Financial Capacity Instrument<sup>4</sup>, which

assesses basic monetary skills, financial knowledge, cash transactions, checkbook management, bank-statement management, financial judgment, bill payment, and knowledge of personal assets and estate arrangements. One significant weakness of the FCI is that it uses neutral or hypothetical stimuli (e.g., “How could you be sure the price of a car is fair?”). Yet valid and reliable tools are essential if we are to adequately assess financial decision-making abilities specific to the individual at risk—especially regarding significant financial transactions, which are defined as transactions that may result in significant losses or harmful consequences.

### **A more recent method of measuring financial exploitation**

The most comprehensive measure to date for assessing financial exploitation is a self-report instrument, the Older Adult Financial Exploitation Measure<sup>5</sup>. The OAFEM is a yes/no questionnaire designed to assess whether the older adult has been victimized by any of the forms of financial exploitation highlighted in the scale (e.g. thefts, scams, abuse of trust). For example, question #47 asks whether the older adult has been the victim of a scam that involved giving to a fraudulent charity. These and other questions are excellent for identifying areas to investigate—and with a non-defensive and reflective older adult, the answers are likely to be valuable for substantiating past or ongoing abuse. Because the scale is designed to measure how much exploitation has taken place in the past, however, it does not assess current performance-based financial judgment or decision-making capacity, such as understanding the consequences of a pending financial decision. As a result, older adults who are not aware that they are being victimized—due to emotional manipulation and/or cognitive impairment—may not give an accurate self-report.

### **A new approach to financial decision-making**

The Lichtenberg Financial Decision Rating Scale (LFDRS) extended<sup>6</sup> Appelbaum and Grisso’s (1988) model of decisional ability. The 66-item scale consists of a self-report section and a rating scale section, and has four subscales: Financial Situational Awareness, Psychological Vulnerability, Susceptibility to Undue Influence or Financial Exploitation, and Intellectual Factors (i.e., decisional-ability factors). Videotaped LFDRS interviews were conducted with five older adults. Following Marson et al.’s (2009) methods, interrater reliability was established across 10 independent raters by having multiple raters view the videotapes and score the LFDRS<sup>7</sup> (see Lichtenberg et al., 2015, for details). In our second study<sup>8</sup>, we presented preliminary criterion validity results for the LFDRS, and the LFDRS was related to both money management skills and neurocognitive variables. While the 66-item LFDRS

is useful for those seeking to perform a thorough capacity evaluation, it is impractical for use by professionals in the adult protective services, financial, or legal sectors. We thus created a 10-item screening scale, the Lichtenberg Financial Decision Screening Scale<sup>8</sup>. We have collected data from separate samples for the LFDSS and the LFDRS. We will now summarize the results of those studies with regard to the intersection of financial decisional capacity, financial exploitation, and cognitive decline.

### **Study 1: The overlap of financial decision-making capacity and exploitation**

We trained APS and non-APS professionals to administer and score 213 screening scales<sup>8</sup>. Our hypothesis was that in cases of both probable financial incapacity and/or financial exploitation, decision-making abilities would be deficient. Our results demonstrated that the screening scale’s risk score was similar for those who had been financially exploited and those who had deficits in financial decision-making abilities. We also found significant differences between (a) those who had been exploited financially and those who had not and (b) those whose financial transaction was not carried out due to the professional’s concerns about capacity and those with no capacity concerns. We interpreted these results as supporting the hypothesis that decision-making deficits underlie both incapacity and exploitation.

### **Study 2: Decision-making abilities, cognitive decline, and financial exploitation**

Lichtenberg (2017)<sup>9</sup> describes the initial findings of our examination of the intersection of cognitive decline, decisional abilities, and financial exploitation in a sample of 200 community-dwelling older adults living independently, half of whom were African American. In the analyses below, we found no differences by race. Each participant was either making or had recently made a significant financial decision and completed a 60-minute battery of cognitive tests and a money management test<sup>8</sup>. Participants were then separated into two groups based on decisional abilities (intact; deficiencies) and cognition (intact; decline in cognition). A consensus conference method was used to determine the former, and decline in cognition was determined by having at least two cognitive test scores one standard deviation below the group mean. We then examined the frequency of financial exploitation (not in the past two years; in the past two years), as determined by a consensus conference.

Overall, 8% of the sample (n=16) displayed decisional ability deficiencies, whereas 20% showed some evidence of cognitive decline (n=40). Only three of the 137 participants with intact decisional abilities and cognition (2%) had been financially exploited, whereas 67% of those with deficiencies in decisional abilities and a decline in cognition

(8/12) had been financially exploited ( $X^2=27.28$ ;  $p<.001$ ). Interestingly, cognitive decline alone only had a financial exploitation rate of 11% (3/28), which was similar to those whose only deficit was in decisional abilities (8.7%; 2/23). These data imply that risk of financial exploitation increases with either decisional deficiencies or cognitive decline, but particularly increases with a combination of both.

Our findings are in line with Boyle and colleagues with the Rush University Memory and Aging Project<sup>10,11,12</sup>, who were able to examine financial decision-making and cognition longitudinally. In a sample of more than 400 older adults<sup>10</sup>, found that even modest cognitive decline (i.e., decline that would not fall within the range of cognitive impairment) was related to a decline in financial decision-making. Further, they speculated that decision-making and cognition were related but independent constructs. In a subsequent study<sup>11</sup>, found that older persons without dementia but with decision-making deficits experienced a fourfold increase in mortality across a four-year follow up<sup>12</sup>. Tested the discrepancy between cognition and decision-making in a sample of 689 older adults, and found that in 13% of cases, scores on decision-making were more than 1 z score below cognition, and in 11% of cases, cognition scores were lower than decision-making scores.

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