

III. Discussion

Ms. T made an offer of proof as to why she was qualified to participate in the Waiver program. She argued that the prior decision only found that she had materially improved, but not that she had materially improved enough to no longer qualify. She then offered to prove that she needed weight bearing physical assistance in at least three activities of daily living, and that this was sufficient to qualify for the Waiver program.

Assuming the truth of Ms. T's offer regarding her need for physical assistance, the division's determination must still be upheld. The prior decision held that, as of the date of decision, "the evidence in this case demonstrates that Ms. T's condition has materially improved and as a result, the Division's decision terminating her Waiver services is AFFIRMED."⁵ Similarly, the decision concluded "Ms. T's condition has materially improved to the point where she no longer qualifies for Medicaid Waiver services."⁶ In other words, there was a factual finding that her condition had improved enough to no longer qualify for the Waiver program.

Neither the division nor the final decisionmaker on appeal may ignore the prior ruling. The prior decision made a factual finding that Ms. T does not qualify for the Waiver program. Therefore, the division was required to evaluate her income eligibility based on the rules applicable to individuals who are not in the Waiver program. Neither the division nor the final administrative decisionmaker may consider new evidence as part of this hearing to overrule the prior factual findings.⁷

To the extent she believes the prior decision was incorrect, Ms. T has two remedies, both of which may be pursued simultaneously. First, she may contest the prior decision in Superior Court. Second, she can re-apply for the Waiver program and submit new or additional evidence as to her physical condition. If she is denied at that stage, and assuming she meets all other eligibility requirements, she could request an administrative hearing on that determination.

⁵ *In re K T*, OAH No. 12-0393-MDS, page 8.

⁶ *In re K T*, OAH No. 12-0393-MDS, page 9.

⁷ This is essentially a collateral estoppel issue. This doctrine is applicable in administrative proceedings. See *Harrod v. State*, 255 P.2d 991, 999 – 1000 (Alaska 2011); *In re L B*, OAH No. 12-0406-MDS (Commissioner of Health and Social Services 2012), page 9.

IV. Conclusion

Because she is no longer eligible for the Waiver program, Ms. T no longer meets the income eligibility limit for Medicaid. Accordingly, the division's decision to terminate her Medicaid benefits is affirmed.

Dated this 21st day of May, 2013.

Signed _____
Jeffrey A. Friedman
Administrative Law Judge

Adoption

The undersigned, by delegation from of the Commissioner of Health and Social Services, adopts this Decision, under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 13th day of June, 2013.

By: *Signed* _____
Name: Ree Sailors
Title: Deputy Commissioner, DHSS

[This document has been modified to conform to the technical standards for publication.]