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STATE OF ALASKA
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
OFFICE OF HEARINGS AND APPEALS

In the Matter of	)	
	)	
[redacted],	)	OHA Case No. 08-FH-428
	)	
Claimant.	)	Div. Case No. [redacted]
	)	

FAIR HEARING DECISION

STATEMENT OF THE CASE

[redacted] (Claimant) applied for Medicaid benefits[1] under the Home and Community Based Waiver (hereinafter "HCB Waiver") program. On June 13, 2008, the Division of Senior and Disabilities Services (Division) sent her notice her application was denied. (Ex. D) The Claimant requested a fair hearing contesting the denial on June 24, 2008. (Ex. C) This office has jurisdiction pursuant to 7 AAC 49.010.

The hearing was held on September 22, 2008 [redacted], the Claimant's husband, attended the hearing telephonically and represented the Claimant. The Claimant did not attend the hearing. [redacted], the Claimant's care coordinator, attended the hearing telephonically and testified on behalf of the Claimant.

[redacted], a Health Program Manager III, attended in person to represent the Division. [redacted], a registered nurse employed by the Division, also attended in person and testified on behalf of the Division [redacted], a registered nurse employed by the Division, attended telephonically and testified on behalf of the Division.

[1] The record does not indicate the date of Claimant's application.

ISSUE

Was the Division correct to deny the Claimant's application for Medicaid HCB Waiver benefits because she did not require a nursing facility level of care?

FINDINGS OF FACT

1. Claimant is a [redacted] year old woman (date of birth [redacted]) who lives with her husband and one minor child. (Ex. E, p. 1) She has been diagnosed with a seizure disorder, pelvic pain, dysfunction uterine bleeding, dysmenorrheal, and irregular menses. (Ex. G)

2. Claimant applied for Medicaid assistance under the HCB Waiver program. Claimant was assessed for HCB Waiver eligibility on March 27, 2008. (Ex. E, p. 1) The person who conducted the assessment was [redacted], a registered nurse. *Id.* The Claimant, her husband, and her care coordinator, [redacted], were present for the assessment. *Id.*

3. The March 27, 2008 HCB Waiver assessment (Consumer Assessment Tool) scored the claimant with a "2" and found she did not qualify for HCB Waiver services. (Ex. E, p. 13) Specifically, the assessor, [redacted], found that as of March 27, 2008:

   a. The Claimant did not require any professional nursing services. (Ex. E, p. 5) The Claimant was scored as not having an uncontrolled seizure disorder within the 7 day period preceding the assessment where "[d]irect assistance from others is needed for safe management of an uncontrolled seizure disorder." *Id.* The last time the Claimant had a seizure was two months before the assessment. (Ex. E, p. 1)

   b. The Claimant required medication management 3 or more days per week, but did not otherwise require any special treatments or therapies. (Ex. E, p. 5)

   c. The Claimant had both long and short-term memory problems and her daily decision making cognitive skills were moderately impaired. However, the Claimant did not require professional nursing assistance to manage her cognitive impairment. (Ex. E, pp. 5 – 6) The assessment scored the Claimant with a cognitive impairment score of 10, due to memory problems (score of 2), difficulties in remembering and using information (score of 3), global confusion - being periodically confused (score of 2), spatial orientation - getting lost in her neighborhood (score of 2), and some minor verbal communication difficulties (score of 1). (Ex. E, p. 7)

d. [redacted] did not score the Claimant with a 3 in memory problems, because the Claimant was able to provide her background information. ([redacted] testimony) [redacted] did not score the Claimant with a 4 in memory and use of information because the Claimant did not require "reminding all the time" [redacted] was there. ([redacted] testimony) [redacted] did not score the Claimant with a 3 in the confusion category because she was not told the Claimant was confused all the time. ([redacted] testimony) Ms. [redacted] did not score the Claimant with a 3 in the orientation category, because she was told the Claimant had gotten lost in the neighborhood, but was able to find her way in her own home. ([redacted] testimony) She also observed the Claimant had difficulty communicating but was able to carry on a simple conversation, so she scored the Claimant with a 1 in the verbal communication category. ([redacted] testimony)

e. The Claimant did not exhibit any problem behaviors, except for wandering (score of 3), which did not require nursing intervention. (Ex. E, pp. 6) However, the assessment scored the Claimant with a behavior score of 9, due to restless sleep patterns (score of 3), wandering that did not jeopardize her health or safety (score of 2), difficult behavioral demands on other people (score of 3), danger to herself or others (score of 0), and occasional difficulties in understanding her needs (score of 1). (Ex. E, p. 7)

f. [redacted] scored the Claimant with 3 in sleep patterns because she was told the Claimant woke during the night. She scored the Claimant with a 2 in wandering because she was not told the Claimant had wandered into a potentially dangerous situation. She scored the Claimant with a 3 in behavioral demands because she was informed of events where the Claimant had become upset. She scored the Claimant with a 0 in danger to herself and others because there were no reports of verbal or physical abuse. She scored the Claimant with a 1 in awareness of needs/judgment because she was told the Claimant had be given directions between 1 and 3 times in the week before the assessment date. ([redacted] testimony)

g. The Claimant's husband told the assessor the Claimant required help in sitting up in bed. (Ex. E, p. 3; [redacted] testimony) The Claimant was given a rating of extensive (score of 3) one person (score of 2) assistance in the bed mobility activity of daily living. (Ex. E, pp. 2 -3)

h. The Claimant did not require any assistance in the activity of daily living categories of transferring (moving to and from a bed, couch, chair, etc.), locomotion (walking), dressing, eating, toilet use, bathing, and personal grooming. (Ex. E, pp. 3, 7; [redacted] testimony)

4. The March 27, 2008 HCB Waiver assessment states:

> Client has a very poor memory and relies on spouse throughout the day and night for cues, reminders, and supervision. Client has stuck her hand into a blender while motor was running. Client experiences fugue states regularly. Client cannot drive due to seizure disorder or maintain friendships due to memory loss. Last time client was in the ER for a seizure, she wandered off while spouse was filling out her paperwork. Client had forgotten spouse's name during assessment week. Client did not recognize CC during assessment.

(Ex. E, p. 4)

5. [redacted], the nurse who performed the Claimant's March 27, 2008 assessment, witnessed the Claimant being unable to recall her care coordinator's name. ([redacted] testimony) She was shown "two file cabinets full of medical documents." (Ex. E, p. 1) She reviewed some of these medical records. ([redacted] testimony)

6. On June 10, 2008, [redacted], a registered nurse employed by the Division, reviewed the March 27, 2008 assessment and compared it to the factors listed in the State of Alaska *Manual for Prior Authorization of Long Term Care Services* in order to determine whether the Claimant qualified for HCB Waiver services taking the *Manual* factors in account. Under the "Intermediate Level of Care Factors" category, she indicated the Claimant needed medication management and extensive assistance with bed mobility. (Ex. F, p. 2) [redacted] did not find any "Skilled Level of Care Factors" to be present, nor did she find any additional "Intermediate Level of Care Factors" to be present. (Ex. F, pp. 1 – 2)

7. [redacted], a registered nurse employed by the Division testified. She was not present at the March 27, 2008 assessment. She reviewed the assessment, the "Intermediate Level of Care Factors," and the "Skilled Level of Care Factors." (Exs. E and F) [redacted] concluded the Claimant did not qualify for the HCB Waiver program.

8. [redacted], the Claimant's care coordinator, testified as follows:

   a. She has been the Claimant's care coordinator for 6 to 7 months.

   b. The Claimant has a long history of grand mal and minor seizures. In 1981, she had a portion of her right temporal lobe removed in to prevent the seizures, which actually aggravated her seizure disorder.

   c. The Claimant's medications partially control the Claimant's grand mal seizure, which occur every month or two. The minor seizures are still frequent, occur unpredictably, and occur at a minimum monthly, but the frequency varies from several times per week to once a month. She had a minor seizure that occurred when she was in the kitchen and she stuck her

hand in the blender when the motor was running. The Claimant is very disoriented after minor seizures.

d. She was at the assessment and discussed both the grand mal and minor seizures with the assessor.

e. The Claimant has a substantially impaired memory and thought process. She appears normally functioning at first, but after speaking to her, you realize her speech, her long term and short term memory and cognitive functioning are severely affected. Her normal functioning is "incredibly interrupted." She becomes very confused, angry, and upset. This condition was present in March 2008.

f. The Claimant has a great deal of difficulty with her speech. She has a difficult time finding words and expressing herself. Her cognitive and motor skills in the speech area are very affected, and should have been scored as a 2 instead of a 1. This condition was present in March 2008.

g. The Claimant has a great deal of difficulty understanding her needs. She needs complete direction and explanation. This condition was present in March 2008.

h. The Claimant cannot be left alone. If the Claimant's husband was not taking continuous care of her, the Claimant would require nursing home placement.

9. The Claimant's husband testified as follows:

a. The Claimant experiences uncontrolled minor seizures. They occur approximately every other week. The minor seizures affect her memory and thought processes.

b. The Claimant can be fine until after a seizure. Depending on the severity of the seizure, she may be completely bedridden for the next week after a seizure. She may also be totally unaware of her surroundings, including her home, after a seizure.

c. The Claimant does not recognize her neighborhood.

d. The Claimant has wandered twice after seizures where she has been in dangerous situations, walking into a heavily trafficked roadway. The most recent incident occurred 2 to 3 years ago when she walked out of [redacted] [redacted]

10. [redacted], an advanced nurse practitioner, completed a medical certification form on July 23, 2008. (Ex. 1) That medical certification form diagnosed the

Claimant with a complex partial seizures intractable, status post right surgical lobectomy temporal lobe, and a mild cognitive impairment. *Id.*

PRINCIPLES OF LAW

This case involves the denial of an application for benefits. When an application is denied, the applicant has the burden of proof[2] by a preponderance of the evidence.[3]

An adult, with physical disabilities, who requires "a level of care provided in a nursing facility" is entitled to receive Medicaid Home and Community Based Waiver services. 7 AAC 43.1010(d)(1)(B) and (d)(2).[4] The Agency is required to perform a level of care assessment to determine eligibility:

> [T]he department will base a determination of eligibility under the paragraph on the level-of-care assessment under 7 AAC 43.1030(b), and will determine eligibility under
>
> (A) 7 AAC 43.180 – 7 AAC 43.190 if the applicant falls within the recipient category of
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> * * *
>
> (iii) older adults;

7 AAC 43.1010(d)(2).

> If the assessment is to determine if the applicant falls within the recipient category for
>
> * * *
>
> (2) adults with physical disabilities or older adults, the
>
> (A) Department will make a determination to determine whether the applicant requires skilled care under 7 AAC 43.180 or intermediate care under 7 AAC 43.185; and
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> (B) level of care determination under (A) of this paragraph must incorporate the results of the department's *Consumer Assessment Tool (CAT),* revised as of 2003 and adopted by reference.

7 AAC 43.1030(b).

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[2] "Ordinarily the party seeking a change in the status quo has the burden of proof." *State, Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985)

[3] Preponderance of the evidence is defined as follows:

> Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

Black's Law Dictionary 1064 (5th Ed. 1979)

[4] There are other eligibility criteria, however, those are not at issue in this case. *See* 7 AAC 43.1010(a) and (b).

State Medicaid regulation 7 AAC 43.180 defines skilled level of care as follows:

> (a) Skilled care is characterized by the need for skilled nursing or structured rehabilitation ordered by and under the direction of a physician; these services must be provided either directly by or under supervision of qualified technical or professional personnel, who must be on the premises at the time service is rendered; e.g., registered nurse, licensed practical nurse, physical therapist, licensed physical therapy assistant, occupational therapist, certified occupational therapy assistant, speech pathologist, and audiologist.

7 AAC 43.185 defines intermediate level of care as follows:

> (a) Intermediate care is characterized by the need for licensed nursing services ordered by and under the direction of a physician, provided in a certified ICF and not requiring care in a hospital or SNF.
> (d) Intermediate care may include therapy provided by an aide or orderly under the supervision of licensed nursing personnel or a therapist.

The acronyms "ICF" and "SNF" contained in 7 AAC 43.185 respectively refer to intermediate care facility and skilled nursing facility.

The Consumer Assessment Tool (CAT), referenced in 7 AAC 43.1030(b)(2)(B), is used to determine whether an applicant requires either skilled care or intermediate care. The CAT performs this determination by assessing an applicant's needs for professional nursing services, for special treatments and therapies, and whether or not an applicant experiences impaired cognition, or problem behaviors.

The CAT also assesses the degree of assistance an applicant requires for her activities of daily living, which specifically include bed mobility (moving within a bed), transfers (i.e. moving from the bed to a chair, or a couch, etc.), locomotion (walking), eating, and toilet use, which includes transferring on and off the toilet. (Ex. E, pp. 5 – 7) For instance, if an applicant receives a score of "3" in three or more of the scored activities of daily living, bed mobility, transfers, locomotion, eating, and toilet use, the applicant qualifies for the HCB Waiver program. Otherwise, the results of the assessment portion of the CAT are then scored. If an applicant's score is a 3 or higher, the applicant is medically eligible for Waiver services. (Ex. E, p. 14)

In addition to use of the CAT in its determination of an applicant's level of care, the Agency is also required to consider the factors contained in the *Manual for Prior Authorization of Long Term Care Services*:

> The division or the division's designee will make a level-of-care evaluation in accordance with the guidelines established in the Criteria for Placement section of the *Manual for Prior Authorization of Long Term*

> *Care Services*, prepared by the division of medical assistance, as revised October 1993, and adopted by reference. The division will make the final level-of-care decision based upon that evaluation.

7 AAC 43.190. *See Bogie v. State, Division of Senior and Disabilities Services*, Superior Court Case No. 3AN-05-10936 (Decision dated August 22, 2006); *Casey v. State, Dept. of Health & Social Services, Division of Senior and Disabilities Services*, Superior Court Case No. 3AN-06-6613 (Decision dated July 11, 2007).

ANALYSIS

A. Consumer Assessment Tool

The Claimant may qualify for the Medicaid HCB Waiver program if she meets the scoring requirements set out in the Consumer Assessment Tool. Claimant's position is that the March 27, 2008 assessment wrongly assessed the Claimant's level of care. The Claimant's evidence addressed her uncontrolled seizure disorder, her disorientation after seizures, her level of cognitive impairment, and her problem behaviors.

Activities of Daily Living

The Claimant did not address the scored activities of daily living, i.e. bed mobility, transfers, locomotion, eating, and toilet use. Accordingly, the scores in the assessment are accepted. The Division scored the Claimant with one "3" in the area of bed mobility, because of the extensive assistance the Claimant requires sitting up in bed after a seizure. If the Claimant had received scores of "3" in three of the scored activities of daily living, bed mobility, transfers, locomotion, eating, and toilet use, she would have qualified for the HCB Waiver program. (Ex. E, p. 14) However, because she only received one "3" in the area of bed mobility, she does not qualify for the HCB Waiver program based solely on her scored activities of daily living.

Uncontrolled Seizure Disorder

There is substantial evidence in the record, including the two medical certification forms (Exs. G, 1), and the hearing testimony of [redacted], the nurse assessor, [redacted], and the Claimant's husband, that the Claimant does experience an uncontrolled seizure disorder.

In order for the Claimant to qualify for the HCB Waiver program solely on the basis of an uncontrolled seizure disorder, the Claimant would need to have had a seizure within the 7 days immediately preceding the assessment. (Ex. E, pp. 5, 14) The Claimant's case shows that she has frequent uncontrolled minor seizures that vary in frequency from twice per week to once a month. There is no evidence in the record establishing the Claimant had a seizure in the week prior to her March 27, 2008 assessment.

The Claimant's assessment shows her last seizure was two months before the assessment. The Claimant therefore did not factually establish she had an uncontrolled seizure in the week immediately preceding the assessment. Because the Claimant had the burden of proof on this issue and did not meet it, she does not qualify for the HCB Waiver program solely on the basis of having an uncontrolled seizure disorder.

Because the Claimant did not qualify for the HCB Waiver program based upon either her seizure disorder or her scored activities of daily living, she requires a score of 3 overall on the Consumer Assessment Tool. (Ex. E, p. 14) She received one point in the Nursing Facility 2 (NF 2) "Professional Nursing Services" section because of the fact she was found to require medication management. *See* Finding of Fact 3(b). She also received another point in Nursing Facility 6 (NF 6) "Physical Functioning/Structural Problems" section because she had been scored with a "3" in the bed mobility activity of daily living. This comes to a total overall score of 2 overall for the Consumer Assessment Tool. In order to qualify for the HCB Waiver program, she therefore required one additional point from either the Nursing Facility 3 (NF 3) "Impaired Cognition" or the Nursing Facility 4 (NF 4) "Behavior Problems" sections. These are addressed below.

Impaired Cognition

The Division did not provide the Claimant with a point in the Consumer Assessment Tool in the "Impaired Cognition", Nursing Facility 3, section. As is discussed below, the Division's scoring in this section was correct.

In order for the Claimant to receive an additional point from the "Impaired Cognition" section, she required either that she be found to (a) have impaired cognition and (b) require professional nursing services to manage her impaired cognitive behavior three or more days per week. (Ex. E, pp. 6, 14) It is undisputed the Claimant has impaired cognition. However, the assessor did not find the Claimant required professional nursing services to manage her impaired cognitive behavior three or more days per week, nor did the Claimant present any evidence that professional nursing services were required to manage her impaired cognitive behavior.

Alternatively, the Claimant could qualify for her additional "Impaired Cognition" point by having a total impaired cognition score of 13 or more because of the fact she had been scored with a "3" in the bed mobility activity of daily living. (Ex. E, p. 14) There was considerable testimony about the Claimant's cognitive abilities. The Division scored her with a total of 10 due to memory for events (score of 2), memory and use of information (score of 3), global confusion - being periodically confused (score of 2), spatial orientation - getting lost in her neighborhood (score of 2), and some minor verbal communication difficulties (score of 1). (Ex. E, p. 7) *See* Finding of Fact 3(c) and (d).

[redacted] argued the cognition score should be increased to a total of 15: memory of events (3), remembering and using information (4), global confusion (3), spatial orientation (3), verbal communication (2). Again, this is based on events occurring in the 7 days preceding the assessment.

A review of the testimony and the assessment shows the Claimant forgot her husband's name in the week prior to her assessment. This falls within memory problems and is more properly scored as a 3, rather than as a 2.[5] (Ex. E, p. 7).

In order to qualify for a score of 4 rather than a 3 in the memory and use of information question, the Claimant must be unable to "remember of use information" rather that have "difficulty remembering and using information." (Ex. E, p. 7) The evidence presented in the hearing showed the Claimant had difficulty remembering and using information rather than an inability to remember and use information. The score of 3 for memory and use of information, as found in the assessment, was therefore appropriate.

In order to qualify for a score of 3 rather than 2 in the global confusion question, the Claimant must be "[n]early always confused" rather than experiencing "[p]eriodic confusion during daytime." (Ex. E, p. 7) The evidence showed the Claimant most likely qualifies for a 3 score in the period following a seizure. However, the assessment scoring requires that the Claimant's condition assessed for the 7 day period before the assessment date. There was no evidence presented that the Claimant had a seizure in the 7 day period before the assessment date, and there was no evidence presented the Claimant was "[n]early always confused" in the week preceding the assessment. The score of 2 for the global confusion question was therefore appropriate.

In order to qualify for a score of 3 rather than 2 in the spatial orientation question, the Claimant must get lost in her "own home or present environment" rather than get lost "when walking neighborhood." There was testimony the Claimant did not recognize her neighborhood, but no evidence presented the Claimant got lost in her "own home or present environment" in the week preceding the assessment. The score of 2 for the spatial orientation question was therefore appropriate.

In order to qualify for a score of 2 rather than 1 in the verbal communication question, the Claimant must be "[a]ble to carry out only simple conversations" rather than having "[m]inor difficulty with speech or word-finding difficulties." (Ex. E, p. 7) ████████'s testimony was that the Claimant had difficulty communicating but was able to carry on a simple conversation, so she scored the Claimant with a 1 in the verbal communication category. The ability to carry on a simple conversation does not rule out a score of 2. The scoring options for the verbal communication question indicates that one may be able to carry on a simple conversation and still qualify for a score of 2, rather than 1. ███ ██████████'s testimony supports a finding the Claimant consistently has more than minor difficulties communicating, yet is able to carry on a simple conversation. The evidence supports a score of 2 in the area of verbal communication rather than the score of 1 made by the assessor.

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[5] A score of 2 is appropriate, if within the 7 day period before the assessment, the Claimant "[c]annot recall entire events (e.g. recent outings, visits of relative or friends) or names of close friends or relatives without prompting." A score of 3 is appropriate, if within the 7 day period for the assessment, the Claimant "[c]annot recall entire events or name of spouse or other living partner even with prompting." (Ex. E, p. 7)

This raises the Claimant's Impaired Cognition score from a 10 to a 12 (memory for events - 3, memory and use of information – 3 global confusion - 2 spatial orientation – 2, and verbal communication - 2). However, in order for the Claimant to receive an Impaired Cognition point on the scoring, she required an Impaired Cognition score of 13. The Division was therefore correct to not provide the Claimant with a point in the Consumer Assessment Tool Impaired Cognition section – Nursing Facility section 3.

Problem Behaviors

The problem behaviors section of the assessment measures if an applicant has the behavioral problems of wandering, verbally abusive, physically abusive, or socially inappropriate behaviors. (Ex. E, pp. 6, 14) These behaviors are measured on whether or not they occurred in the week before the assessment. (Ex. E, p. 6) The Division did not provide the Claimant with a point in the Consumer Assessment Tool "Problem Behaviors" Nursing Facility 4 section. As is discussed below, the Division's scoring in this section was correct.

In order for the Claimant to receive an additional point from the "Problem Behaviors" section, she required either that she be found to (a) have problems behaviors and (b) require professional nursing services to manage her problem behaviors three or more days per week. (Ex. E, pp. 6, 14) It is undisputed the Claimant has a problem behavior, wandering. However, the assessor did not find the Claimant required professional nursing services to manage her impaired cognitive behavior three or more days per week, nor did the Claimant present any evidence that professional nursing services were required to manage her impaired cognitive behavior.

Alternatively, the Claimant could qualify for her additional "Problem Behaviors" point by having a total problem behavior score of 14 or more because of the fact she had been scored with a "3" in the bed mobility activity of daily living. (Ex. E, p. 14) *See* Finding of Fact 3(c) and (d). However, the assessment scored the Claimant with a behavior score of 9, due to restless sleep patterns (score of 3), wandering that did not jeopardize her health or safety (score of 2), difficult behavioral demands on other people (score of 3), danger to herself or others (score of 0), and occasional difficulties in understanding her needs (score of 1). (Ex. E, p. 7) *See* Finding of Fact 3(e) and (f).

The Claimant only disputed two of those scores, the wandering score of 2, and the awareness of needs/judgment score of 1. [redacted] argued the Claimant should get a higher score for wandering because of the fact she had wandered into a high traffic area in the past that had placed her in danger. However, the Claimant's husband's testimony established the last time this happened was from between 2 to 3 years ago, when the Claimant left Alaska Regional Hospital. Because this did not happen in the 7 day period preceding the assessment date, the Claimant did not establish the assessment score of 2 for wandering was incorrect.

[redacted] argued the Claimant should get a higher score on the awareness of needs/judgment question because she required continual reminding. The March 27, 2008

assessment also stated "[c]lient has a very poor memory and requires continual supervision. Spouse reports that he needs to supervise client." (Ex. E, p. 4) Both of these are consistent with a score of 2 on the awareness of needs/judgment question: "[f]requently (4 or more time (sic) during the last 7 days) has difficulty understanding those needs that must be met but will cooperate when given direction or explanation." (Ex. E, p. 7) Evidence was not presented that showed the Claimant qualified for a score of 3, which required the Claimant "not understand those needs that must be met for self care and will not cooperate even though given direction or explanation." (Ex. E, p. 7) Accordingly, the Claimant's score on the awareness of needs/judgment question should have been a 2 rather than the 1 provided in the assessment.

This raises the Claimant's Problem Behavior score from a 9 to a 10 (sleep patterns –3, wandering – 2, behavioral demands on others – 3, danger to self and others – 0, and awareness of needs/judgment – 2). However, in order for the Claimant to receive a Behavior Problem point on the scoring, she required a Problem Behavior score of 14. The Division was therefore correct to not provide the Claimant with a point in the Consumer Assessment Tool Behavior Problem section – Nursing Facility section 4.

While the Division underscored the Claimant's on the Consumer Assessment Tool for her Impaired Cognition questions and her Problem Behaviors questions, those scores were not raised high enough to qualify the Claimant for an additional point in either category. The Claimant only had a total score of 2 on the Consumer Assessment Tool when the Consumer Assessment Tool required a total score of 3 to qualify for the Medicaid HCB Waiver program. As a result, the Division was correct to deny the Claimant's application for the Medicaid HCB Waiver program because she did not score high enough on the Consumer Assessment Tool.

B. Manual Factors

The Claimant may also qualify for Medicaid HCB Waiver services if she satisfies the factors listed in the *Manual for Prior Authorization of Long Term Care Services.* A review of the *Manual for Prior Authorization of Long Term Care Services* demonstrates the only factors that could have potentially qualified the Claimant were her need for medication management, extensive assistance with bed mobility, and monitoring her wandering. *See* Exs. B, p. 50; F, p. 2. However, the *Manual* specifically states "[a]dmission to intermediate care will not be authorized solely to provide supervision, protective custody, routine medication management, or assistance with personal services." Ex. B, p. 49. These all fall under "supervision . . . routine medication management, or assistance with personal services." There is insufficient evidence in this case to support a conclusion the Claimant, as of her March 27, 2008 assessment, required the degree of care that would have qualified her for HCB Waiver services under the factors contained in the *Manual for Prior Authorization of Long Term Care Services.*

C. Conclusion

The Claimant had the burden of proof in this case by a preponderance of the evidence. She did not establish either that she qualified for the Medicaid HCB Waiver program based upon either the Consumer Assessment Tool or the factors contained in the *Manual for Prior Authorization of Long Term Care Services.* Consequently, she did not satisfy her burden of proof as to her qualification for HCB Waiver services at the time of the March 27, 2008 assessment.

The Division was correct when it denied the Claimant's application for HCB Waiver services, based upon the August 24, 2007 assessment.

CONCLUSIONS OF LAW

1. The Claimant, as of her March 27, 2008 assessment, did not require either a skilled nursing facility or intermediate care facility level of care.

2. The Claimant therefore did not qualify for Medicaid Home and Community Based Waiver services.

DECISION

Based upon a preponderance of the evidence, the Agency was correct to deny the claimant's application for Medicaid Home and Community Based Waiver services on June 13, 2008.

APPEAL RIGHTS

If for any reason the Claimant is not satisfied with this decision, the Claimant has the right to appeal by requesting a review by the Director. To do this, send a written request directly to:

Director of the Division of Senior and Disabilities Services
Department of Health and Social Services
PO Box 110680
Juneau, AK 99811-0680

If the Claimant appeals, the request must be sent within 15 days from the date of receipt of this Decision. Filing an appeal with the Director could result in the reversal of this Decision.

DATED this 29th day of October, 2008.

Larry Pederson
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 29th day of October, 2008, true and correct copies of the foregoing were sent to:

Claimant Certified Mail, Return Receipt Requested.
[redacted], Division Hearing Representative
[redacted], Acting Director
[redacted], Policy & Program Development
[redacted], Staff Development & Training

____
Al Levitre, Law Office Assistant I