

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of)	
)	OAH No. 12-0471-MDS
E J)	Division No.
_____)	

DECISION

I. Introduction

E J requested Nursing Oversight and Case Management (nursing) services be included in his Medicaid Home and Community-based Waiver (Waiver) plan of care. The Department of Health and Social Services Division of Senior and Disabilities Services (Division) denied that request. Mr. J requested a hearing.

Mr. J’s hearing was held on November 8, 2012. Mr. J, a disabled adult, attended the hearing but did not actively participate. M J, his mother and legal guardian, represented him and testified on his behalf. M H, his care coordinator, and Linda Knott, a nurse practitioner, testified on his behalf. Gerry Johnson, a Medical Assistance Administrator employed by the Department of Health and Social Services, represented the Division. Theresa Rosso, a Health Program Manager employed by the Division, and Jan Bragwell, a nurse employed by the Division, testified on its behalf.

The evidence does not show that Mr. J requires nursing services in order to avoid institutionalization. Consequently, the Division’s decision denying him those services is **AFFIRMED**.

II. Facts

The following facts were established by a preponderance of the evidence.

Mr. J is a disabled adult, who lives with his mother in her home.¹ He has limited communication skills and his speech is very difficult to understand.² His diagnoses include mental retardation, Downs Syndrome, and attention deficit/hyperactivity disorder (ADHD). He experiences a urethral stricture, high blood pressure, congenital heart disease, and he has a pacemaker.³

¹ Ex. E, p. 8.

² This finding is based upon physical observation of and interaction with Mr. J at his hearing.

³ Ex. E, p. 4

Mr. J receives Waiver services under the Intermediate Care Facility/Mental Retardation (ICF/MR) category.⁴ He applied to renew his Waiver plan of care for the plan year starting May 11, 2012 and ending May 10, 2013. His proposed plan of care included a request for a new item: nursing services for two hours per month. The justification for the nursing services was Mr. J's pacemaker was approaching the end of its useful life and could fail at any time, so that a nurse was needed to provide observation, education and training services: "[t]he nurse will have face-to-face visits, telephone contact and e-mail contact with [Mr. J], his family, his care coordinator, and others as indicated in this plan of care."⁵

Mr. J is on his third pacemaker, which was implanted in April 2003.⁶ His previous pacemaker needed to be replaced without warning: during an appointment with his pediatric cardiologist, the cardiologist made the determination that his pacemaker needed to be replaced immediately.⁷

Mr. J used to have a way to check his pacemaker's function at home. However, that method is no longer available to him.⁸ He has to go to the clinic to have his pacemaker checked. Mr. J's most recent medical records are from August 20 and 21, 2012. His pacemaker was tested on August 20 and he met with a cardiologist on August 21. He was not displaying any cardiac symptoms, his pacemaker battery had an estimated life of 17 months, and his pacemaker was being checked every two months. The cardiologist thought the pacemaker should be checked in another two months and that he should have another cardiology appointment in six months.⁹

III. Discussion

The Medicaid program has a number of coverage categories. One of those coverage categories is the Waiver program.¹⁰ The Waiver program pays for specified individual services to Waiver recipients, if each of those services is "of sufficient, duration, and scope to prevent institutionalization."¹¹ The Division must approve each specific service as part of the Waiver recipient's plan of care.¹²

⁴ Ex. D., p. 1.

⁵ Ex. E, pp. 25 – 26.

⁶ Ex. F, pp. 6, 8.

⁷ Ms. J testimony.

⁸ Ms. J testimony.

⁹ Ex. F, pp. 5 - 6, 9.

¹⁰ 7 AAC 100.002(d)(8); 7 AAC 100.502(d).

¹¹ 7 AAC 130.230(f)(1).

¹² 7 AAC 130.230(f).

Mr. J requested that two hours of nursing oversight, training, and consultation per month be included in his Waiver plan of care. He argued that his pacemaker is approaching the end of its functional life and could fail suddenly. He argued there was a resultant need to monitor his condition for signs that his pacemaker is failing and that he might not be able to communicate if he experienced difficulties.

The most recent medical evidence in the record shows that, as of August 20 and 21, 2012, Mr. J's pacemaker battery had an expected life of 17 months, which date would fall in January 2014, that he was not exhibiting any cardiac symptoms, and that his pacemaker was being checked every two months. Because Mr. J is not experiencing any cardiac symptoms and because his pacemaker is being checked at regular intervals, he has not shown that he requires the requested nursing services in order to prevent his being institutionalized. Additionally, there is no medical opinion in the record that he requires the requested nursing services in order to avoid institutionalization. Mr. J is therefore not eligible to receive those nursing services. As a result, the Division correctly determined that he was not eligible to have the requested nursing services included in his Waiver plan of care.

IV. Conclusion

The Division's decision to deny Mr. J's request for the inclusion of nursing services in his Waiver plan of care is AFFIRMED.

DATED this 4th day of December, 2012

Signed

Lawrence A. Pederson
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 18th day of December, 2012

By: *Signed* _____
Name: Lawrence A. Pederson
Title: Administrative Law Judge

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