

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

In the Matter of	)	
	)	
S F	)	OAH No. 12-0881-MDS
_____	)	Division No.

**DECISION**

**I. Introduction**

S F receives Medicaid Home and Community-Based Waiver program (“Waiver”) services. The Division of Senior and Disabilities Services (Division) notified Mr. F that he was no longer eligible for Waiver services, and that they would be discontinued.<sup>1</sup> Mr. F requested a hearing.<sup>2</sup>

Mr. F’s hearing was held on April 15, 2013. Mr. F was represented by Tom Fernette from the Office of Public Advocacy. M T and S S testified on his behalf.

Assistant Attorney General Kimberly Allen represented the Division. Sam Cornell, RN, and Grace Ingram, RN, testified on the Division’s behalf.

Mr. F’s condition has materially improved since he was initially approved for Waiver services and as a result, the Division’s decision terminating his Waiver services is AFFIRMED.

**II. Facts**

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

Mr. F was found eligible for Waiver services in 2004. Mr. F was reassessed on July 11, 2012 by Cassie Buck, a registered nurse employed by the Division, to determine whether he continued to be eligible for Waiver services. Ms. Buck documented the assessment on the Consumer Assessment Tool (CAT) and determined that Mr. F did not require physical assistance with bed mobility, transfers, locomotion, eating, or toileting.<sup>3</sup> In addition, Mr. F does not require professional nursing services, therapy from a qualified therapist, specialized treatment, or therapies.<sup>4</sup> Consequently, the scoring on his 2012 CAT found that he was no longer eligible for Waiver services.<sup>5</sup>

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<sup>1</sup> Ex. D.  
<sup>2</sup> Ex. C.  
<sup>3</sup> Ex. E, pp. 6 – 7, 9, 18.  
<sup>4</sup> Ex. E, pp. 5, 13 – 15.  
<sup>5</sup> Ex. E, p. 29.

The 2012 CAT is an accurate assessment of Mr. F’s nursing needs and professional treatment needs. No evidence was presented that he has professional nursing needs, or is currently receiving physical or other therapies.

Mr. F has cognitive issues that the 2012 CAT does not reflect with the exception that his “Cognitive Skills for Daily Decision-Making” area is coded with a “1”, indicating “some difficulty in new situations only.”<sup>6</sup> His January 3, 2013 neuropsychological evaluation diagnosed him with dementia and classified him as being severely impaired in terms of adaptive functioning.<sup>7</sup> However, there is no evidence he requires professional nursing intervention to address memory or cognitive issues.

Mr. F demonstrates severe disturbed behavior patterns (acting socially inappropriately, or placing himself or others at risk), which were not reflected on the 2012 CAT, other than that he resists care between one to three days per week.<sup>8</sup> He will not bathe unless he has an appointment outside his assisted living home. He gets aggressive with others. He has assaulted a person at an adult day care, and assaulted another resident in his assisted living home. He has urinated in waste paper baskets and has defecated on the floor of his room. He has stopped up toilets by tearing up towels and plugging the toilet with pieces of the towels. He has wandered outside of his assisted living facility inappropriately dressed during the winter.<sup>9</sup> His behavior has resulted in him being placed in four different assisted living homes in the past 2.5 years. He has been in his current assisted living home since April 2012.<sup>10</sup> However, there is no evidence he requires professional nursing intervention to address his behavior patterns.

Mr. F has a seizure disorder.<sup>11</sup> He was hospitalized in 2012 due to his seizures.<sup>12</sup> These seizures occur “maybe once a month.”<sup>13</sup> However, as of January 28, 2013, he had been “seizure-free for almost 2 months.”<sup>14</sup>

A registered nurse employed by Qualis Health, who was licensed in the State of the Alaska at the time of the review, performed a third-party review of the Division’s determination that Mr.

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<sup>6</sup> Ex. E, p. 16.

<sup>7</sup> Ex. 5, p. 12.

<sup>8</sup> Ex. E, p. 17.

<sup>9</sup> T testimony; S testimony.

<sup>10</sup> T testimony.

<sup>11</sup> Ex. E, p. 3.

<sup>12</sup> Ex. E, pp. 3, 21.

<sup>13</sup> Ex. 5, p. 6.

<sup>14</sup> Ex. 3, p. 1.

F was no longer eligible for Waiver services. She concluded, based upon her review of the documents supplied by the Division, including the most current CAT, that its determination was correct.<sup>15</sup>

### III. Discussion

#### A. Method for Assessing Eligibility

The Alaska Medicaid program provides Waiver services to adults who experience physical disabilities and require “a level of care provided in a nursing facility.”<sup>16</sup> The purpose of these services is “to offer a choice between home and community-based waiver services and institutional care.”<sup>17</sup>

The nursing facility level of care<sup>18</sup> requirement is determined in part by an assessment which is documented by the CAT.<sup>19</sup> The CAT records an applicant’s needs for professional nursing services, therapies, and special treatments,<sup>20</sup> and whether an applicant experiences impaired cognition or problem behaviors.<sup>21</sup> Each of the assessed items is coded and contributes to a final numerical score. For instance, if an individual required 5 days or more of therapies (physical, speech/language, occupation, or respiratory therapy) per week, he or she would receive a score of 3.<sup>22</sup>

The CAT also records the degree of assistance an applicant requires for activities of daily living (ADL), which include five specific categories: bed mobility (moving within a bed), transfers (i.e., moving from the bed to a chair or a couch, etc.), locomotion (walking or movement when using a device such as a cane, walker, or wheelchair) within the home, eating, and toilet use, which includes transferring on and off the toilet and personal hygiene care.<sup>23</sup>

If a person has a self-performance code of 2 (limited assistance, which consists of non-weight bearing physical assistance three or more times during the last seven days, or limited assistance plus weight-bearing assistance one or two times during the last seven days) or 3 (extensive assistance, which consists of weight-bearing support three or more times during the

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<sup>15</sup> Ms. Ingram testimony; Exs. G – H.

<sup>16</sup> 7 AAC 130.205(d)(1)(B) and (d)(2).

<sup>17</sup> 7 AAC 130.200.

<sup>18</sup> See 7 AAC 130.205(d)(2); 7 AAC 130.230(b)(2)(A).

<sup>19</sup> 7 AAC 130.230(b)(2)(B).

<sup>20</sup> Ex. E, pp. 13 – 15.

<sup>21</sup> Ex. E, pp. 16 - 17.

<sup>22</sup> Ex. E, p. 29.

<sup>23</sup> Ex. E, p.18.

past seven days, or the caregiver provides complete performance of the activity during a portion of the past seven days), plus a support code of 2 (physical assistance from one person) or 3 (physical assistance from two or more persons), that person receives points toward his or his total eligibility score on the CAT. A person can also receive points for combinations of required nursing services, therapies, impaired cognition (memory/reasoning difficulties), or difficult behaviors (wandering, abusive behaviors, etc.), and required assistance with the five specified activities of daily living.<sup>24</sup>

In order for a person who only has physical assistance needs to score as eligible for Waiver services on the CAT, he or he would need a self-performance code of 3 (extensive assistance) or 4 (total dependence) and a support code of 2 or 3 for three or more of the five specified activities of daily living (bed mobility, transfers, locomotion within the home, eating, and toileting).<sup>25</sup>

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.<sup>26</sup>

**B. Eligibility**

The evidence in this case shows that Mr. F is not eligible for Waiver services. He does not require any professional nursing services, therapies from a qualified therapist, or special treatments. While he experiences a seizure disorder, his seizures are intermittent and do not qualify him for Waiver services because he does not require direct care for his seizure disorder at least once per week.<sup>27</sup> He does not require assistance with any of the five specified activities of daily living (bed mobility, transfer, locomotion within the home, eating, and toileting).

Mr. F does, however, experience impaired cognition and has a history of difficult behaviors. Neither of these conditions is adequately reflected on his 2012 CAT. Regardless, in order for him to qualify him for a score on the CAT,<sup>28</sup> he must also either require "professional nursing assessment, observation and management at least 3 days/week to manage" his impaired cognition OR experience greatly impaired cognition<sup>29</sup> AND require at least limited assistance with one of the five specified activities of daily living (bed mobility, transfers, locomotion within

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<sup>24</sup> Ex. E, p. 29.

<sup>25</sup> Ex. E, p. 29.

<sup>26</sup> Ex. E, p. 29.

<sup>27</sup> Ex. E, pp. 14, 29.

<sup>28</sup> This assumes that Mr. F has short term memory problems and difficulty recalling the current season, location of his room, names/face, or his location. See Ex. E, pp. 16, 29 - § NF. 3(a) and (b).

<sup>29</sup> This requires an impaired cognition score of 13 or greater. The 2012 CAT does not contain an impaired cognition score. (Ex. E, pp. 16, 29 - § NF. 3(d))

the home, eating, and toileting).<sup>30</sup> Because there is no evidence showing that Mr. F requires professional nursing care to manage his impaired cognition, his cognition problems do not qualify him for a point in the scoring portion of the CAT. The alternative method for Mr. F to obtain a point would be for him to have greatly impaired cognition, and to require limited assistance with at least one of the five specified activities of daily living. Because he does not require limited assistance with at least one of the five specified activities of daily living, he would not qualify for a point under this alternative scoring method.

Mr. F's difficult behaviors also do not qualify him for a score on the CAT. This is because he must display difficult behaviors (wandering, verbally abusive, physically abusive, or socially inappropriate behavior) at least four days a week AND require "professional nursing assessment, observation and management at least 3 days/week to manage" his difficult behaviors OR experience a great deal of difficult behaviors<sup>31</sup> AND require at least limited assistance with one of the five specified activities of daily living (bed mobility, transfers, locomotion within the home, eating, and toileting).<sup>32</sup> Even assuming that the CAT incorrectly recorded Mr. F's difficult behavior, because there is no evidence showing that Mr. F requires professional nursing care to manage his behavior, he does not qualify for a point in the scoring portion of the CAT. Even though the 2012 CAT does not measure the degree of Mr. F's difficult behavior, he does not qualify for a CAT scoring point on this alternative scoring method because he does not require limited assistance with at least one of the five specified activities of daily living.

It is noted that even if Mr. F qualified as scoring points on each of the areas of cognition and difficult behaviors, he would only have a total of two points on the scoring portion of the CAT. This would not qualify him for Waiver benefits because the minimum qualifying score is three.<sup>33</sup>

### **C. Termination of Waiver Services**

Before the Division may terminate Waiver services for a person who was previously approved for those services, Alaska Statute 47.07.045, enacted in 2006, requires that the Division must satisfy two conditions. First, it must conduct an assessment that shows the recipient's condition has materially improved to the point that the recipient "no longer has a functional

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<sup>30</sup> Ex. E, p. 29, § NF. 3(d).

<sup>31</sup> This requires difficult behavior score of 14 or greater. The 2012 CAT does not contain a difficult behavior score. (Ex. E, pp. 17, 29 - § NF. 4(b))

<sup>32</sup> Ex. E, p. 29, § NF. 4(b).

<sup>33</sup> Ex. E, p. 29.

limitation or cognitive impairment that would result in the need for nursing home placement, and is able to demonstrate the ability to function in a home setting without the need for waiver services.”<sup>34</sup> As discussed above, Mr. F’s 2012 assessment demonstrates that his condition has materially improved, as the term is defined by statute. Second, the Division’s assessment showing material improvement must be “reviewed by an independent qualified health care professional under contract with the department; for purposes of this paragraph [in the present context], ‘independent qualified health care professional’ means, . . . a registered nurse licensed under AS 08.68.”<sup>35</sup> The Division satisfied this condition by having an Alaska registered nurse, employed by Qualis Health, perform a third-party review. The reviewer agreed with the Division’s conclusion that Mr. F’s condition had materially improved.

#### **IV. Conclusion**

Mr. F’s condition has materially improved to the point that he no longer qualifies for Medicaid Waiver services. The Division’s decision to terminate Mr. F’s Waiver services is **AFFIRMED**.

DATED this 30<sup>th</sup> day of April, 2013.

*Signed*

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Lawrence A. Pederson  
Administrative Law Judge

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<sup>34</sup> AS 47.07.045(b)(1) and (b)(3)(C).

<sup>35</sup> AS 47.07.045(b)(2). AS 08.68 is the portion of the Alaska Statutes which requires that a person who practices professional nursing in the State of Alaska be licensed by the Alaska Board of Nursing. *See* AS 08.68.160 *et. seq.*

## Adoption

The undersigned, by delegation from 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 14<sup>th</sup> day of May, 2013.

By: Signed \_\_\_\_\_  
Name: Jeffrey A. Friedman  
Title: Administrative Law Judge

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