

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

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|-------------------|---|---------------------|
| In the Matter of: |) | |
| |) | OAH No. 12-0913-MDS |
| E N |) | HCS Case No. |
| _____ |) | Medicaid ID No. |

DECISION

I. Introduction

The issue in this case is whether E N continues to require skilled or intermediate level nursing care. The Division of Senior and Disability Services (DSDS or Division) conducted an assessment on August 31, 2012 and subsequently determined that Mr. N no longer requires either skilled or intermediate level nursing care.¹ This decision concludes that Mr. N does not currently require either skilled or intermediate level nursing care, and that Mr. N does not otherwise qualify for waiver services based on the level of his need for assistance with activities of daily living. As a result, Mr. N is not presently eligible to participate in the Medicaid Home and Community-Based Waiver Services Program ("Waiver Services program"). The Division's determination that Mr. N is not currently eligible for the Waiver Services program is therefore affirmed.

II. Facts

A. Mr. N's Recent Medical History and Current Diagnoses

Mr. N is a 42-year-old man who lives in an assisted living home.² He has lived in the same assisted living facility since 2011 or before.³ His recent diagnoses include colon cancer, rectal cancer, pancreatic cancer, chronic pancreatitis, acute hepatitis C, thrombocytopenia, anemia, diabetes mellitus, cellulitis, familial adenomatous polyposis, and a history of blood clots.⁴ His surgical history includes repair of damage to his left leg caused by a boat propeller, abdominal surgery, colon surgery, colectomy, colostomy, cholecystectomy, and proctectomy.⁵

¹ Exs. D, E.

² Ex. E1.

³ Ex. F10.

⁴ Exs. E3, I4, I5, I10, I11, I14, I22, I25, I26, I31, I34, I40, I44, J6, J27, J28, J33, J42, L1, L5, L8, L11, L12, L16, L20, L23, L28.

⁵ Exs. E4, I5, I11, I15, I17, I18, I19, I22, I23, I26, I31, I35, I40, I45, J6, J22, J28, J33, J38, J42, L2, L6, L12, L17, L20, L24, L29.

The scope of these surgeries was such that Mr. N required extensive plastic / reconstructive surgery.⁶

During 2012 Mr. N made numerous visits to hospital emergency departments due to abdominal pain, back pain, dental pain, and other ailments.⁷ In August 2012 Mr. N spent four days in the hospital due to an infection and abscess in his abdominal wall.⁸

On January 9, 2013 X M, M.D. (one of several physicians who had previously treated Mr. N) completed a form, sent to him by the Division, regarding his opinion as to Mr. N's need for nursing services.⁹ Dr. M wrote that Mr. N did not have any skilled nursing needs as of that date, and that he would not admit Mr. N to a skilled nursing facility.

B. Mr. N's Care Needs and Functional Abilities as Determined by the CAT

Mr. N was previously assessed and found eligible for the Waiver Services program in September 2011.¹⁰ Mr. N's current assessment was performed by Sue Todd, R.N., of DSDS on August 31, 2012.¹¹ Ms. Todd used the Consumer Assessment Tool or "CAT" (a system for scoring disabilities that is described in detail in Part III) to record the results of the assessment. The scores mentioned below are the CAT scores assigned by Ms. Todd. She reported in the CAT that Mr. N has the following care needs and the following abilities and limitations with regard to his Activities of Daily Living (ADLs):¹²

Therapies: Mr. N is not currently receiving any therapies from a qualified therapist.¹³

Prescriptions for assistance: Mr. N does not currently have any prescriptions for hands-on assistance from a PCA.¹⁴

Bed Mobility: Ms. Todd reported she was told that Mr. N is independent as to bed mobility, and that her observations were consistent with this report (scored 0/0; frequency 0/0).¹⁵

⁶ Exs. L3, L4.
⁷ Exs. I, J, K, L.
⁸ Exs. I43, J1 - J20.
⁹ Ex. G2.
¹⁰ Ex. F.
¹¹ Ex. E.
¹² Exs. E1 - E25.
¹³ Ex. E5.
¹⁴ Ex. E5.
¹⁵ Ex. E6.

Transfers: Ms. Todd reported she was told by Mr. N that he sometimes needs support to stand up. She reported that she observed Mr. N stand and sit independently (scored 2/2; frequency 3/7).¹⁶

Locomotion: Ms. Todd reported she was told by Mr. N that he requires assistance about twice each week in order to walk. Ms. Todd reported that she observed Mr. N moving using a walker (scored 2/2; frequency 1/2).¹⁷

Dressing: Ms. Todd reported she was told by Mr. N that he can dress himself, except that he needs help to put his shoes on. Ms. Todd did not actually observe Mr. N dressing or undressing (scored 2/2; frequency 1/7).¹⁸

Eating: Ms. Todd reported she was told by Mr. N that he can feed himself. Ms. Todd did not observe Mr. N eating (scored 0/0; frequency 0/0).¹⁹

Toileting: Ms. Todd reported she was told by Mr. N that he needs help with transfers or locomotion in order to get to the bathroom about twice per day (scored 2/2; frequency 2/7).²⁰

Personal Hygiene: Ms. Todd reported she was told by Mr. N that he receives some help with personal hygiene. Ms. Todd reported that she observed Mr. N to have a weak grasp (scored 2/2; frequency 1/7).²¹

Bathing: Ms. Todd reported she was told by Mr. N that the assisted living home's staff help him bathe. Ms. Todd reported that she observed Mr. N to be weak / deconditioned (scored 3/2; frequency 1/7).²²

Ms. Todd found that Mr. N has no current need for professional nursing services.²³ Ms. Todd found that Mr. N is currently receiving no injections, intravenous feedings, suctioning or tracheotomy care, oxygen, or treatments for open lesions, ulcers, burns, or surgical sites.²⁴ Ms. Todd found that Mr. N does not currently have any unstable medical conditions, and specifically that he is not currently comatose, does not have an uncontrolled

¹⁶ Ex. E6.

¹⁷ Ex. E7.

¹⁸ Ex. E8.

¹⁹ Ex. E9.

²⁰ Ex. E9.

²¹ Ex. E10.

²² Ex. E11.

²³ Ex. E13.

²⁴ Ex. E13.

seizure disorder, and does not use a catheter or ventilator / respirator.²⁵ Ms. Todd found that Mr. N does not receive medications via tube, does not require tracheostomy care, does not use a urinary catheter, and does not require venipuncture, injections, barrier dressings for ulcers, oxygen therapy, or chest physical therapy by a registered nurse.²⁶ Ms. Todd found that Mr. N does not currently undergo chemotherapy, radiation therapy, hemodialysis, or peritoneal dialysis.²⁷

Ms. Todd found that Mr. N does not currently have any memory problems, behavioral problems, or other cognitive difficulties,²⁸ and that he does not currently have any mood problems or problems with his sleep cycle.²⁹

Ms. Todd found that Mr. N has adequate vision, adequate hearing, is usually able to understand others, and is usually able to make himself understood.³⁰

Ms. Todd noted that Mr. N occasionally has bladder incontinence, and uses an ostomy.³¹ She also noted that he uses a commode, a hand-held shower, bath / shower bars, a hospital bed, a stair glide, and a walker.³²

The assessment also scored Mr. N with regard to Instrumental Activities of Daily Living (IADLs):³³ Ms. Todd scored Mr. N's need for assistance with IADLs as follows: Meal Preparation (light) 3/4; Meal Preparation (main) 3/4; Telephone 0/0; Light Housework 3/4; Managing Finances 0/0; Routine Housework 3/4; Grocery Shopping 3/4; and Laundry 3/4.

Based on the foregoing CAT scores, Ms. Todd found that Mr. N does not currently require skilled level or intermediate level nursing care.³⁴

C. Relevant Procedural History

Mr. N was previously assessed for Choice Waiver eligibility on September 19, 2011.³⁵ At that time he was found eligible for waiver services based primarily on his need for assistance with his ADLs.³⁶

²⁵ Ex. E14.
²⁶ Ex. E15.
²⁷ Ex. E15.
²⁸ Exs. E16, E17.
²⁹ Ex. E25.
³⁰ Ex. E22.
³¹ Ex. E23.
³² Ex. E27.
³³ Ex. E26; *see* 7 AAC 125.199(6).
³⁴ Exs. E29, E30.
³⁵ Exs. F10 - F38.
³⁶ Ex. F38.

Based on the August 31, 2012 assessment detailed above, the nurse-assessor concluded that Mr. N was no longer eligible for participation in the Waiver Services program.³⁷ On November 9, 2012 the Division mailed a notice to Mr. N advising that it was terminating payment for Waiver Services on the basis of the nurse-assessor's finding that Mr. N no longer required either skilled or intermediate-level nursing care.³⁸ Mr. N requested a hearing, which was held on February 7 and February 12, 2013. Mr. N participated in the hearing by phone, represented himself, and testified on his own behalf, assisted by Z S-L, his Care Coordinator. The Division, which was represented at hearing by Gerry Johnson, presented testimony from Jan Bragwell (a registered nurse employed by the Division) and Deon Westmorland of Qualis Health. The record was left open for post-hearing filings. Mr. N was given through March 1, 2013 to submit a post-hearing filing, and the Division was given through March 7, 2013 to file a response. Mr. N did not submit a post-hearing filing, and so the record was closed on March 1, 2013.

III. Discussion

A. Relevant Alaska Medicaid Statutes and Regulations

Alaska's Medicaid Waiver Services Program provides eligible Alaskans with a choice between home and community based care, and institutional care.³⁹ An applicant who otherwise satisfies the eligibility criteria is eligible for Waiver Services if he or she requires the level of care specified in 7 AAC 130.230(b).⁴⁰ For older adults and adults with disabilities (such as Mr. N), that level of care must be either "intermediate care" as defined by 7 AAC 140.510, or "skilled care" as defined by 7 AAC 140.515.⁴¹ In determining whether an applicant requires either intermediate care or skilled care, the Division must incorporate the results of the Consumer Assessment Tool (CAT) into its decision-making process.⁴²

DHSS Medicaid regulation 7 AAC 140.510, titled "Intermediate Care Facility Services," provides in relevant part as follows:

- (a) The department will pay an intermediate care facility for providing the services described in (b) and (c) of this section if those services are

³⁷ Exhibits E29, E30.

³⁸ Exhibit D. The Division's termination notice cited A.S.47.07.045, and state Medicaid regulations 7 AAC 130.205, 7 AAC 130.210, 7 AAC 130.230, 7 AAC 140.505, 7 AAC 140.510, and 7 AAC 140.515, in support of its determination.

³⁹ 7 AAC 130.200.

⁴⁰ 7 AAC 130.205(d)(2).

⁴¹ 7 AAC 130.230(b)(2).

⁴² 7 AAC 130.230(b)(2)(B).

- (1) needed to treat a stable condition;
- (2) ordered by and under the direction of a physician, except as provided in (c) of this section; and
- (3) provided to a recipient who does not require the level of care provided by a skilled nursing facility.

(b) Intermediate nursing services are the observation, assessment, and treatment of a recipient with a long-term illness or disability whose condition is relatively stable and where the emphasis is on maintenance rather than rehabilitation, or care for a recipient nearing recovery and discharge whose condition is relatively stable but who continues to require professional medical or nursing supervision.

Thus, in order to qualify for an intermediate level of care under 7 AAC 140.510, the applicant must generally require professional medical or nursing supervision.

B. The Consumer Assessment Tool (CAT)

Under state Medicaid regulation 7 AAC 130.230(b)(2)(B), level of care determinations for Waiver Services applicants seeking services under the "adults with physical disabilities" or "older adults" categories must incorporate the results of the Department's Consumer Assessment Tool (CAT). The CAT is adopted by regulation at 7 AAC 160.900(d)(6).

The CAT numerical coding system has two components. The first component is the *self-performance code*. These codes rate how capable a person is of performing a particular activity of daily living (ADL).⁴³ The possible codes are **0** (the person is independent and requires no help or oversight); **1** (the person requires supervision); **2** (the person requires limited assistance); **3** (the person requires extensive assistance); **4** (the person is totally dependent). There are also codes that are not treated as numerical scores for purposes of calculating a service level: **5** (the person requires cueing); and **8** (the activity did not occur during the past seven days).⁴⁴

The second component of the CAT scoring system is the *support code*. These codes rate the degree of assistance that a person requires for a particular activity of daily living (ADL). The possible codes are **0** (no setup or physical help required); **1** (only setup help required); **2** (one person physical assist required); **3** (two or more person physical assist required). Again, there are

⁴³ According to the federal Medicaid statutes, the term "activities of daily living" includes tasks such as eating, toileting, grooming, dressing, bathing, and transferring. See 42 USC § 1396n(k)(6)(A). In Alaska, pursuant to AS § 47.33.990(1), "activities of daily living" means "walking, eating, dressing, bathing, toileting, and transfer between a bed and a chair."

⁴⁴ See, for example, Ex. E at page 6.

additional codes that do not add to the service level: **5** (cueing required); and **8** (the activity did not occur during the past seven days).⁴⁵

The ADLs coded or scored by the CAT are body mobility, transfers (non-mechanical), transfers (mechanical), locomotion (in room), locomotion (between levels), locomotion (to access apartment or living quarters), dressing, eating, toilet use, personal hygiene, personal hygiene-shampooing, and bathing. In addition, the CAT codes or scores five other ADL-like activities which are not technically ADLs. These are medication, vital signs/glucose levels, dressings/bandages/oxygen, sterile wound care, and documentation.

The CAT also codes or scores certain activities known as "instrumental activities of daily living" (IADLs).⁴⁶ These are light meal preparation, main meal preparation, light housekeeping, laundry (in-home), laundry (out-of-home), and shopping. Finally, the CAT codes or scores one other IADL-like activity which is not technically an IADL (oxygen maintenance).

C. Alaska Case Law Relevant to Determination of Level of Care

Alaska Superior Court decisions exist which emphasize that a level of care determination may not be based solely on an applicant's CAT score, and that other relevant factors, including any testimony by the applicant or recipient's physician, must be considered.⁴⁷ While these decisions are not binding here, they are persuasive because they allow the qualifying criteria expressed in the Division's regulation to be harmonized with the qualifying criteria expressed in the CAT.

D. Does Mr. N Require Intermediate Care as Defined by Alaska Medicaid Regulation 7 AAC 140.510?

Based on the regulations and the CAT, there are three ways in which a Waiver Services applicant or recipient can qualify for (or remain qualified for) Waiver Services. The first way, under both the regulations and the CAT, is to demonstrate a need for either skilled nursing care or intermediate level nursing care.⁴⁸ Because skilled care is a higher level of care than

⁴⁵ See, for example, Ex. E at page 6.

⁴⁶ The federal Medicaid statutes state that "instrumental activities of daily living" include, but are not limited to, meal planning and preparation, managing finances, shopping for food, clothing, and other essential items, performing essential household chores, communicating by phone or other media, and traveling around and participating in the community. See 42 USC § 1396n(k)(6)(F). In Alaska, pursuant to AS § 47.33.990(11), "instrumental activities of daily living" means "doing laundry, cleaning of living areas, food preparation, managing money and conducting business affairs, using public transportation, writing letters, obtaining appointments, using the telephone, and engaging in recreational or leisure activities."

⁴⁷ See *Bogie v. State, Division of Senior and Disabilities Services*, Superior Court Case No. 3AN-05-10936 (August 22, 2006); *Casey v. State, Division of Senior and Disabilities Services*, Superior Court Case No. 3AN-06-6613 (July 11, 2007).

⁴⁸ 7 AAC 140.510, 7 AAC 140.515

intermediate care, the minimum level of care for which Mr. N must demonstrate a need, in order to remain eligible for Waiver Services, is intermediate care.

Alternatively, under the CAT an individual may qualify for Waiver Services, without demonstrating a need for skilled or intermediate level nursing care, if the individual's requirements for physical assistance with his or her activities of daily living (ADLs) are sufficiently high.⁴⁹

Finally, under the CAT an individual may qualify for Waiver Services by having a certain minimum level of nursing needs, *combined with* a certain minimum level of need for physical assistance with his or her ADLs.⁵⁰

Under 7 AAC 140.510 (discussed in Section IIIB, above), Mr. N is eligible for the Choice Waiver Program if he requires intermediate level nursing care. The evidence in the record indicates, however, that Mr. N does not currently receive the types of services which would demonstrate a need for intermediate level care under 7 AAC 140.510. He does not receive any therapy provided by a qualified therapist.⁵¹ He does not have any prescriptions requiring hands-on PCA assistance.⁵² He does not require injections, intravenous feeding, any type of feeding tube, nasopharyngeal suctioning, tracheotomy care, treatment or dressing of wounds, or the administration of oxygen.⁵³ He is not comatose, he does not have an uncontrolled seizure disorder, he is not on a respirator or ventilator, and he does not use catheters.⁵⁴ He does not require veni-puncture by a registered nurse and is not receiving chemotherapy, radiation therapy, hemodialysis, or peritoneal dialysis.⁵⁵ He is not cognitively impaired and has no mood or behavioral problems.⁵⁶ In short, it is not currently necessary for a nurse or another medical professional to review or monitor the provision of services to Mr. N, and this was not disputed by Mr. N.⁵⁷

Because Mr. N does not require professional medical or nursing supervision, he does not satisfy the intermediate level of care criteria as stated in 7 AAC 140.510. However, this does not end the inquiry because, under the CAT, it is possible to qualify for Waiver Services,

⁴⁹ Ex. E29.

⁵⁰ Ex. E29.

⁵¹ Exs. E5, E14, E15.

⁵² Ex. E5.

⁵³ Exs. E13, E15.

⁵⁴ Exs. E14, E15.

⁵⁵ Ex. E15.

⁵⁶ Exs. E16, E17, E25.

⁵⁷ See hearing testimony of Ms. Bragwell and Mr. N.

based on an elevated need for assistance with multiple ADLs, without requiring professional medical or nursing supervision.

E. Does Mr. N Qualify for Waiver Services Based on the Consumer Assessment Tool (CAT)?

The Consumer Assessment Tool's scoring summary is located at page 29 of the CAT.⁵⁸ As indicated by that scoring summary, there are numerous scoring combinations through which one may demonstrate a need for a Nursing Facility Level of Care (NFLOC) or otherwise qualify for waiver services. Some of these combinations (discussed below) allow a person to meet NFLOC, without showing a need for professional nursing services, based on the level of assistance which the person requires in order to perform their ADLs. The CAT divides these possible combinations into six different areas, designated "NF1" through "NF6."

1. NF1

There are five different ways to meet NFLOC under NF1. The first way (under NF1(a)) is to require nursing services seven days per week. As discussed in the preceding section, Mr. N does not require these services. The second way (under NF1(b)) is to require use of a ventilator or respirator at least three days per week. As discussed in the preceding section, Mr. N does not use a ventilator or respirator. The third way (under NF1(c)) is to require care due to uncontrolled seizures at least once per week. As discussed in the preceding section, Mr. N does not have uncontrolled seizures. The fourth way (under NF1(d)) is to receive some form of therapy at least five days per week. As discussed in the preceding section, Mr. N does not receive such therapy. The fifth/last way to meet NFLOC under NF1, under NF1(e), is to score a three (extensive assistance required) or a four (completely dependent) in the self-performance portion of three or more of the five "shaded" ADLs listed at page 18 of the CAT.⁵⁹ The "shaded" ADLs are bed mobility, transfers, locomotion, eating, and toilet use.

The CAT codes which the Division assigned to Mr. N with regard to the "shaded" ADLs are: bed mobility: 0/0; transfers: 2/2; locomotion: 2/2; eating: 0/0; and toilet use: 2/2.⁶⁰ Sue Todd, the nurse who performed the assessment, was not present and did not testify at hearing in support of these scores. However, Mr. N did not directly challenge the scores that she assigned regarding his ability to perform his ADLs. Rather, his testimony concerned how he felt and his ability to perform *IADLs*. Accordingly, a preponderance of the evidence

⁵⁸ Ex. E29.

⁵⁹ Exs. E18, E19.

⁶⁰ Exs. E18, E19.

indicates that Mr. N *does not require extensive assistance* as to any of the "shaded" ADLs. Because Mr. N does not require extensive assistance with regard to any of the "shaded" ADLs, he does not meet NFLOC under NF1(e).

2. NF2

An applicant cannot meet NFLOC under NF2 alone. However, under NF2 an applicant can obtain points towards qualifying for NFLOC which, when added to points obtained under *other* subsections of NF1 - NF6, can qualify the applicant for NFLOC. The first way (under NF2(a)) is to obtain a score of two or three with regard to injections and/or IV hookups, feeding tubes, tracheotomy care or nasopharyngeal suctioning, applying treatments or dressings, administering oxygen, observing, assessing, and managing unstable conditions, catheter management, and/or care required due to a comatose condition. The record does not show that Mr. N requires any of these services, so he scores no points under NF2(a).

The second way to obtain points (under NF2(b)) is to require speech therapy, respiratory therapy, physical therapy, and/or occupational therapy at least three days per week. However, the record does not show that Mr. N requires any of these therapies, so he receives no points under NF2(b).

The third way to obtain points (under NF2(c)) is to require medications via tube, tracheotomy care, urinary catheter changes or irrigation, veni-puncture, or barrier dressings for ulcers, at least three days per week. Again, the record does not show that Mr. N requires any of these procedures, so no points are awarded under NF2(c).

The fourth/last way to obtain points (under NF2(d)) is to require chemotherapy, radiation therapy, hemodialysis, and/or peritoneal dialysis, at least three days per week. Again, the record does not show that Mr. N requires any of these treatments, so he gets no points under NF2(d).

3. NF3

An applicant cannot meet NFLOC under NF3 alone. However, under NF3 an applicant can obtain points towards qualifying for NFLOC which, when added to points obtained under *other* subsections of NF1 - NF6, can qualify the applicant for NFLOC. The first way (under NF3(a)) is to have short-term memory problems. Mr. N has no short-term memory problems,⁶¹ so Mr. N receives no points under NF3(a).

⁶¹ Ex. E16.

The second way to obtain points (under NF3(b)) is to be generally unable to recall names and faces, the season of the year, where you are, and the location of your room. The evidence shows that Mr. N is generally able to recall these items. Accordingly, Mr. N gets no points under NF3(b).

The third way to obtain points (under NF3(c)) is to be moderately or severely impaired in one's cognitive skills for daily decision-making. Ms. Todd found that Mr. N's cognitive abilities are sufficient for daily decision-making.⁶² Accordingly, Mr. N gets no points under NF3(c).

The fourth/last way to obtain points (under NF3(d)) is to require *either* professional nursing care due to cognitive problems, *or both* (1) score at least a 2/2 as to any shaded ADL, *and* (2) score 13 or more on a designated portion of the Division's Supplemental Screening Tool (SST). Mr. N does not require professional nursing care due to any cognitive problems, and although he scored 2/2s on three of the five shaded ADLs, he did not receive a score on the SST. Accordingly, Mr. N receives no points under NF3(d).

Under NF3, an applicant must receive a score of one *on all four subsections* in order to receive a single "overall" point at the conclusion of NF3. Here, Mr. N received no points under any of the four subsections. Accordingly, Mr. N receives an overall score of zero on NF3.

4. NF4

An applicant cannot meet NFLOC under NF4 alone. However, under NF4 an applicant can obtain one point towards qualifying for NFLOC which, when added to points obtained under other subsections of NF1 - NF6, can qualify the applicant for NFLOC.

There are two subsections to NF4, and an applicant must qualify under *both* of these subsections in order to receive the one point available under NF4. Under NF4(a), an applicant must either wander, engage in socially inappropriate or disruptive behavior, be verbally abusive, or be physically abusive, at least four days per week. Mr. N exhibits none of these problem behaviors. Accordingly, Mr. N gets no points under NF4(a).

Under NF4(b), an applicant must *either* require professional nursing care as a result of problem behaviors, *or both* (1) score at least 2/2 as to any shaded ADL, *and* (2) score 14 or more on a designated portion of the Division's Supplemental Screening Tool (SST). Here, Mr. N does not require professional nursing care due to any behavioral problems, and although he

⁶² Ex. E16.

received scores of 2/2 with regard to three shaded ADLs, he had no behavioral problems and so did not receive a score on the SST. Accordingly, Mr. N gets no points under NF4(b).

5. NF5

At NF5, the total scores from NF2, NF3, and NF4 are added together. If an applicant receives a score of one or more, then the analysis proceeds to NF6, below. However, Mr. N's overall score as to NF2, NF3, and NF4 is zero. Accordingly, in this case, the analysis ends here and does not proceed to NF6 or NF7.

In summary, Mr. N does not require an intermediate level of care as defined under the relevant regulations and/or under the Consumer Assessment Tool. Further, his scores on the five "shaded" ADLs are too high to qualify for waiver services on that basis.

IV. Conclusion

The Division correctly determined that Mr. N does not require intermediate level nursing services as defined by 7 AAC 140.510 or by the Consumer Assessment Tool (CAT). The Division also correctly concluded that Mr. N does not qualify for waiver services, under the CAT, based on the level of his need for assistance with ADLs. Accordingly, the Division's decision that Mr. N is no longer eligible for the Waiver Services program is affirmed.

Dated this 6th day of March, 2013.

Signed
Jay Durych
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 15th day of March, 2013.

By: Signed
Name: Jay D. Durych
Title: Administrative Law Judge

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