

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

In the Matter of: )  
 )  
 J X ) OAH No. 12-1045-MDS  
 ) HCS Case No.  
 \_\_\_\_\_ ) Medicaid ID No.

**DECISION**

**I. Introduction**

The issue in this case is whether J X continues to require skilled or intermediate level nursing care. The Division of Senior and Disability Services (DSDS or Division) conducted an assessment on September 12, 2012 and subsequently determined that Mr. X no longer requires either skilled or intermediate level nursing care.<sup>1</sup> This decision concludes that Mr. X does not currently require either skilled or intermediate level nursing care. As a result, Mr. X 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. X is not currently eligible for the Waiver Services program is therefore affirmed.

**II. Facts**

**A. Mr. X's Recent Medical History and Current Diagnoses**

Mr. X is a 60-year-old man who lives in an assisted living home.<sup>2</sup> He was diagnosed with rheumatoid arthritis while in his early 50's.<sup>3</sup> In 2008 Mr. X fell while riding his bicycle and sustained a traumatic brain injury; this and a stroke from a brain aneurism left him with residual weakness in the left side of his body.<sup>4</sup> He broke a leg in August 2011 and had a rod inserted in his left hip.<sup>5</sup> He is wheelchair-dependent.<sup>6</sup> He was admitted to his current assisted living home in September 2011.<sup>7</sup> His current diagnoses are hypertension, joint pain, major depressive disorder, rheumatoid arthritis, schizoid personality disorder, and sub-arachnoid hemorrhage.<sup>8</sup>

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<sup>1</sup> Exs. D, E.  
<sup>2</sup> Exs. E1, E21.  
<sup>3</sup> Exs. E3, E21.  
<sup>4</sup> Exs. E3 and E21; J X hearing testimony.  
<sup>5</sup> Exs. E3, E21.  
<sup>6</sup> Ex. E27, J X hearing testimony.  
<sup>7</sup> Exs. E3, E21.  
<sup>8</sup> Exs. E3, F34 - F37.

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

Mr. X was originally assessed and found eligible for the Waiver Services program in September 2008.<sup>9</sup> Mr. X's current assessment was performed by Susan Findley, R.N., of DSDS on September 12, 2012.<sup>10</sup> Ms. Findley 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. Findley. She reported in the CAT that Mr. X has the following nursing needs and the following abilities and limitations with regard to his Activities of Daily Living (ADLs):<sup>11</sup>

Therapies: Mr. X is not currently receiving any therapies from a qualified therapist.<sup>12</sup>

Prescriptions for assistance: Mr. X does not currently have any prescriptions for hands-on assistance from a PCA.<sup>13</sup>

Bed Mobility: Ms. Findley reported she was told by Mr. X that he sleeps in a hospital bed, can operate the controls by himself, can reposition himself in his bed or while seated as needed, and has no bed sores. Ms. Findley reported that she observed Mr. X reposition himself in his wheelchair during the assessment (scored 0/0; frequency 0/0).<sup>14</sup>

Transfers: Ms. Findley reported she was told by Mr. X that he can transfer himself in and out of his bed and wheelchair. She reported that she observed Mr. X lock his wheelchair, stand, and perform a pivot transfer (scored 1/1; frequency 0/0).<sup>15</sup>

Locomotion: Ms. Findley reported she was told by Mr. X that he can propel himself in his wheelchair, does not need to be pushed, and is able to go to Fred Myers by himself. Ms. Findley reported that she observed Mr. X propelling himself in his manual wheelchair (scored 0/0; frequency 0/0).

Dressing:<sup>16</sup> Ms. Findley reported she was told by Mr. X that he can dress himself and take his left arm / wrist brace on and off. Ms. Findley reported that she observed that Mr. X has weakness in his left side, that he is unable to flex all the way forward, and that he might need assistance (scored 0/1; frequency 0/0).

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<sup>9</sup> Exs. F11 - F29.

<sup>10</sup> Ex. E.

<sup>11</sup> Exs. E1 - E25.

<sup>12</sup> Ex. E5.

<sup>13</sup> Ex. E5.

<sup>14</sup> Ex. E6.

<sup>15</sup> Ex. E6.

<sup>16</sup> Ex. E8.

Eating:<sup>17</sup> Ms. Findley reported she was told by Mr. X that he can feed himself and take his medications by himself. Ms. Findley reported that she observed Mr. X feed himself (scored 0/0; frequency 0/0).

Toileting:<sup>18</sup> Ms. Findley reported she was told by Mr. X that he is continent and independent with toileting. Ms. Findley reported that she observed Mr. X move in his wheelchair and perform transfers by himself (scored 0/0; frequency 0/0).

Personal Hygiene:<sup>19</sup> Ms. Findley reported she was told by Mr. X that he can generally perform his own personal hygiene, but requires assistance with nail care every week or two. Ms. Findley reported that she observed Mr. X to have left-sided weakness (scored 2/2; frequency 1/1).

Bathing:<sup>20</sup> Ms. Findley reported she was told by Mr. X that he showers three days per week and needs help to wash his right side due to weakness on his left side. Ms. Findley reported that she observed Mr. X to require assistance with showering due to left side paresis (scored 3/2; frequency 1/3).

With regard to Mr. X's need for professional nursing services, Ms. Findley found that Mr. X has no current need for professional nursing services.<sup>21</sup>

Ms. Findley found that Mr. X is currently receiving no therapies<sup>22</sup> and that he is not currently being treated for any chronic conditions.<sup>23</sup>

Ms. Findley found that Mr. X does not currently have any memory problems, behavioral problems, or other cognitive difficulties,<sup>24</sup> and that he does not currently have any mood problems or problems with his sleep cycle.<sup>25</sup>

Ms. Findley found that Mr. X has adequate vision, adequate hearing, is usually able to understand others, and is usually able to make himself understood.<sup>26</sup>

The assessment also scored Mr. X with regard to Instrumental Activities of Daily Living (IADLs).<sup>27</sup> Ms. Findley scored Mr. X's need for assistance with IADLs as follows: Meal

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<sup>17</sup> Exs. E9, E20.  
<sup>18</sup> Exs. E9, E23.  
<sup>19</sup> Ex. E10.  
<sup>20</sup> Ex. E11.  
<sup>21</sup> Ex. E13.  
<sup>22</sup> Ex. E14.  
<sup>23</sup> Ex. E15.  
<sup>24</sup> Exs. E16, E17.  
<sup>25</sup> Ex. E25.  
<sup>26</sup> Ex. E22.  
<sup>27</sup> Ex. E26; *see* 7 AAC 125.199(6).

Preparation (light) 1/3; Meal Preparation (main) 1/3; Telephone 0/0; Light Housework 2/3; Managing Finances 1/3; Routine Housework 2/3; Grocery Shopping 2/3; and Laundry 2/3.

Based on the foregoing CAT scores, Ms. Findley found that Mr. X does not currently require skilled level or intermediate level nursing care.<sup>28</sup>

**C. Relevant Procedural History**

Mr. X was originally assessed for Choice Waiver eligibility on September 24, 2008.<sup>29</sup> At that time he was found eligible for waiver services, based primarily on his need for assistance with his ADLs.<sup>30</sup>

Mr. X was reassessed for Choice Waiver eligibility on September 29, 2011.<sup>31</sup> At that time he was found *ineligible* for waiver services.<sup>32</sup> However, Mr. X's waiver services were not terminated at that time for reasons that do not appear in the record.<sup>33</sup>

Mr. X was most recently assessed for Choice Waiver eligibility on September 12, 2012.<sup>34</sup> This assessment found that Mr. X does not require a nursing facility level of care or significant assistance with his ADLs.<sup>35</sup> For this reason, the nurse-assessor concluded that Mr. X is no longer eligible for participation in the Waiver Services program.<sup>36</sup>

On December 20, 2012 the Division mailed a notice to Mr. X advising that it was terminating payment for Waiver Services, effective January 20, 2013, on the basis of the nurse-assessor's finding that Mr. X no longer requires either skilled or intermediate-level nursing care.<sup>37</sup> Mr. X requested a hearing on December 27, 2012 to contest the Division's termination of his waiver services.<sup>38</sup>

Mr. X's hearing was held on February 4, 2013. Mr. X attended the hearing, represented himself, and testified on his own behalf. N J, Mr. X's Care Coordinator, attended the hearing and assisted in representing Mr. X. The Division was represented at hearing by Shelly Boyer-Wood. Susan Findley, a registered nurse employed by the Division, attended the hearing and testified on behalf of the Division. Deon Westmorland and Eric Wall, M.D. of Qualis Health

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<sup>28</sup> Ex. E30.

<sup>29</sup> Exs. F11 - F29.

<sup>30</sup> Ex. F26.

<sup>31</sup> Exs. F38 - F68.

<sup>32</sup> Ex. 67.

<sup>33</sup> Ex. F67.

<sup>34</sup> Exhibit E.

<sup>35</sup> Ex. E.

<sup>36</sup> Exhibit E30.

<sup>37</sup> 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 140.505, 7 AAC 140.510, and 7 AAC 140.515, in support of its determination.

<sup>38</sup> Exhibit C.

participated in the hearing by phone and testified on behalf of the Division. The hearing concluded, and the record closed, on February 4, 2013.

### **III. Discussion**

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.<sup>39</sup> Because skilled care is a higher level of care than intermediate care, the minimum level of care for which Mr. X 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.<sup>40</sup>

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.<sup>41</sup>

#### **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.<sup>42</sup> 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).<sup>43</sup> For older adults and adults with disabilities such as Mr. X, 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.<sup>44</sup> 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.<sup>45</sup>

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

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<sup>39</sup> 7 AAC 140.510, 7 AAC 140.515

<sup>40</sup> Ex. E29.

<sup>41</sup> Ex. E29.

<sup>42</sup> 7 AAC 130.200.

<sup>43</sup> 7 AAC 130.205(d)(2).

<sup>44</sup> 7 AAC 130.230(b)(2).

<sup>45</sup> 7 AAC 130.230(b)(2)(B).

(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

- (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).<sup>46</sup> 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).<sup>47</sup>

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); and **3** (physical assist by two or more persons required). Again, there are

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<sup>46</sup> 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."

<sup>47</sup> 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).<sup>48</sup>

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).<sup>49</sup> 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.<sup>50</sup> 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. X Require Intermediate Care as Defined by Alaska Medicaid Regulation 7 AAC 140.510?**

Under 7 AAC 140.510 (discussed in Section IIIB, above), Mr. X is eligible for the Choice Waiver Program if he requires intermediate level nursing care. The evidence in the record indicates, however, that Mr. X does not currently receive the types of services which would demonstrate an intermediate level of care under 7 AAC 140.510. He does not receive any therapy provided by a qualified therapist.<sup>51</sup> He does not have any prescriptions requiring

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<sup>48</sup> See, for example, Ex. E at page 6.

<sup>49</sup> 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."

<sup>50</sup> 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, Division of Senior and Disabilities Services*, Superior Court Case No. 3AN-06-6613 (decision dated July 11, 2007).

<sup>51</sup> Exs. E5, E14.

hands-on PCA assistance.<sup>52</sup> 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.<sup>53</sup> 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.<sup>54</sup> He is not receiving chemotherapy, radiation therapy, hemodialysis, or peritoneal dialysis.<sup>55</sup> He is not cognitively impaired and has no behavioral problems.<sup>56</sup> In short, it is not currently necessary for a nurse or another medical professional to review or monitor the provision of services to Mr. X, and this was not disputed by Mr. X.<sup>57</sup>

Because Mr. X 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 a nursing facility level of care without requiring professional medical or nursing supervision.

***E. Does Mr. X Require Intermediate Care Based on the Consumer Assessment Tool (CAT)?***

The Consumer Assessment Tool's scoring summary is located at page 29 of the CAT.<sup>58</sup> 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. Some of these combinations (discussed below) allow a person to meet the Nursing Facility Level of Care (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. X 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. X 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. X

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<sup>52</sup> Ex. E5.

<sup>53</sup> Exs. E13, E15.

<sup>54</sup> Exs. E14, E15.

<sup>55</sup> Ex. E15.

<sup>56</sup> Exs. E16, E17.

<sup>57</sup> See hearing testimony of Ms. Findley and Mr. X.

<sup>58</sup> Ex. E29.



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. X 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.<sup>59</sup> The "shaded" ADLs are bed mobility, transfers, locomotion, eating, and toilet use.

The CAT codes which the Division assigned to Mr. X with regard to the "shaded" ADLs are: bed mobility: 0/0; transfers: 1/1; locomotion: 0/0; eating: 0/0; and toileting: 0/0.<sup>60</sup> Susan Findley, the nurse who performed the assessment, was present and testified at hearing. Her testimony was credible, and Mr. X did not challenge the scores that she assigned regarding his ability to performance his ADLs. Accordingly, a preponderance of the evidence indicates that Mr. X *does not require extensive assistance* as to any of the "shaded" ADLs. Because Mr. X 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. X 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. X 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

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<sup>59</sup> Exs. E18, E19.

<sup>60</sup> Exs. E18, E19.

ulcers, at least three days per week. Again, however, the record does not show that Mr. X 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, however, the record does not show that Mr. X 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. The parties agree that Mr. X has short-term memory problems, and Mr. X received the maximum score (one) in this category.

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. Although Mr. X has recall problems, there is no evidence in the record that he is generally unable to recall any of these specific items. Accordingly, Mr. X 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. Mr. X makes his own medical and financial decisions, and Ms. Findley found that his cognitive abilities are sufficient for daily decision-making.<sup>61</sup> Accordingly, Mr. X 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. X does not require professional nursing care due to any cognitive problems. Accordingly, Mr. X 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. X received one point under NF3(a). However, because of the way the Division has structured the CAT, Mr. X receives an overall score of zero on NF3 because he did not obtain points on the other three of the four subsections.

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<sup>61</sup> Exs. E4, E16.

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. X exhibits none of these problem behaviors. Accordingly, Mr. X 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 of 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. X does not require professional nursing care due to any behavioral problems. Further, although Mr. X received a score of 3/2 with regard to one shaded ADL (bathing), he had no behavioral problems and so did not receive a score on the SST. Accordingly, Mr. X 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, they meet NFLOC. However, Mr. X's overall score as to NF2, NF3, and NF4 is zero. Accordingly, Mr. X does not meet NFLOC at NF5.

6. NF6

At NF6, the CAT totals the number of "shaded" ADLs which received self-performance scores of two, three, or four, and support codes of two or three. Mr. X did not have any of his "shaded ADLs" coded as requiring limited assistance (self-performance code of two) or extensive assistance (self-performance code of three). Accordingly, Mr. X receives an "overall" score of zero under NF6.

7. NF7

At NF7, the scores from NF5 and NF6, above, are totaled. If the applicant's total score is three or more, the applicant is considered to meet NFLOC. Mr. X's overall score (from NF6) is zero. Consequently, he does not require an intermediate level of care under the CAT.

#### **IV. Conclusion**

The Division correctly determined that Mr. X does not require intermediate level nursing services as defined by 7 AAC 140.510 or by the Consumer Assessment Tool (CAT). Accordingly, the Division's decision that Mr. X is no longer eligible for the Waiver Services program is affirmed.

Dated this 19th day of February, 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 5<sup>th</sup> 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.]