



Mr. X was assessed by a Registered Nurse, Cassie Buck, on September 26, 2012.<sup>3</sup> Ms. Buck is no longer employed by the division, and was not available to testify at the hearing. Her supervisor, Susan Findley, did testify as to the contents of the assessment.

### **III. Discussion**

#### **A. Home and Community-Based Waiver Program**

An adult with a physical disability is eligible to receive benefits under the Choice Waiver program if he or she requires the level of care that is normally provided in a nursing facility.<sup>4</sup> The program pays for services that allow an eligible person to stay in his or her home rather than move into a nursing facility. The level of care that is provided in a nursing facility is described by regulation. Skilled nursing facility services are defined in 7 AAC 140.515. Intermediate care facility services are defined in 7 AAC 140.510.

The division determines whether an applicant requires nursing facility level of care services by conducting an assessment.<sup>5</sup> For adults with disabilities, this assessment looks at the nursing level services defined in 7 AAC 140.510 and 515,<sup>6</sup> and incorporates the results of the Consumer Assessment Tool (CAT).<sup>7</sup> The CAT is an evaluation tool created by the Department of Health and Social Services, and is adopted by reference in 7 AAC 160.900(d)(6).<sup>8</sup>

Once an individual has qualified to participate in the Choice Waiver program, there are additional protections before he or she can be removed from that program. Specifically, the individual must have had an annual assessment, the assessment must have been reviewed by an independent qualified health professional,<sup>9</sup> and the assessment must find that the individual has materially improved.<sup>10</sup> For adults with disabilities, the qualified health professional must be a registered nurse licensed in Alaska qualified to assess adults with physical disabilities.<sup>11</sup> Material improvement for an adult with physical disabilities is defined as:

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<sup>3</sup> See Exhibit E.

<sup>4</sup> 7 AAC 130.205(d)(2).

<sup>5</sup> 7 AAC 130.230.

<sup>6</sup> 7 AAC 130.230(b)(2)(A).

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

<sup>8</sup> Adopting January 29, 2009 version of the CAT.

<sup>9</sup> There was testimony that this review did occur; whether the review occurred was not disputed at the hearing.

<sup>10</sup> AS 47.07.045(b)(1) – (3).

<sup>11</sup> AS 47.07.045(b)(2)(B).

no longer has a functional 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>[12]</sup>

The same criteria used in determining whether a recipient no longer has a functional limitation or cognitive impairment are used in making the initial determination that he or she did have the limitation or impairment.<sup>13</sup>

***B. Scoring the CAT Assessment***

There are a variety of ways in which the CAT may show that a person is eligible for the Choice Waiver program. This can be best seen by reviewing the summary page shown in Exhibit E at page 29. Section NF 1 of this page lists five questions:

- a. In Section A, items 1-8 (Nursing Services) did you code any of the responses with a 4 (i.e. services needed 7 days/wk)?
- b. In Section A, items 9 (Ventilator/Respirator) did you code this response with a 2, 3 or 4 (treatment needed at least 3 days/wk)?
- c. In Section A, item 10 (Uncontrolled seizure), did you code this response with a 1, 2, 3, or 4 (care needed at least once/wk)?
- d. In Section A, item 11 (Therapies), was the total number of days of therapy 5 or more days/wk?
- e. In section E, (Physical Functioning/Structural Problems), were 3 or more shaded ADLs coded with a 3 (extensive assistance) or 4 (dependent) in self performance?<sup>[14]</sup>

A person who receives a “yes” answer to any one of these questions is presumed to be eligible for nursing facility level of care, and thus qualifies for the Choice Waiver program.

If a person does not qualify under section NF 1, scores are established in sections NF 2 (nursing services and therapies), NF 3 (cognitive ability), and NF 4 (inappropriate behavior). Section NF 5 states that if the total score for sections 2, 3, and 4 is zero, the individual does not qualify for nursing facility care. If the score is greater than zero, Section NF 6 is considered. Section NF 6 asks how many of the shaded Activities of Daily Living (ADL) were scored with a 2 or higher in self-performance and given a support score of 2 or 3. In other words, it asks how many of these ADLs received a score of 2/2 or higher.

Under Section NF 7, the score in section NF 5 is added to the score in section NF 6. An individual with a score of 3 or higher is eligible for the Choice Waiver program.

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<sup>12</sup> AS 47.07.045(b)(3)(C).

<sup>13</sup> 7 AAC 130.230(g).

<sup>14</sup> Exhibit E, page 29. The “shaded ADLs” are bed mobility, transfers, locomotion, eating, and toilet use.

Based on Ms. Buck's assessment of Mr. X, he did not have any nursing needs and was independent with his Activities of Daily Living.<sup>15</sup> As a result, the assessment scored him as not qualifying for the Choice Waiver program. Mr. X did not dispute the scoring of this assessment.

Although he does not presently qualify for the Choice Waiver program, Mr. X is free to reapply at any time if he believes his condition has changed. In addition, as discussed during the hearing, there may be other programs that he qualifies for that can provide the same or similar services as were being provided through the Choice Waiver program.

#### **IV. Conclusion**

Mr. X is independent in his Activities of Daily Living, and does not need any skilled or intermediate level nursing services. Accordingly, the division correctly determined that he had materially improved and was no longer eligible for the Choice Waiver program.

Dated this 21<sup>st</sup> day of March, 2013.

*Signed* \_\_\_\_\_  
Jeffrey A. Friedman  
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 4<sup>th</sup> day of April, 2013.

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

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

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<sup>15</sup> Exhibit E.