

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

In the Matter of:)
)
 E Q) OAH No. 13-0273-MDS
) Agency No.
_____)

DECISION

I. Introduction

E Q was a recipient of services Medicaid Home and Community-Based Waiver Services (Choice Waiver) program administered by the Division of Senior and Disability Services.¹ The Division reassessed Mr. Q's functional abilities and determined that he was no longer eligible, on the ground that he did not need skilled or intermediate nursing care. Mr. Q filed an appeal.

The assigned administrative law judge conducted a telephonic hearing on May 21, 2013. Mr. Q participated and Gerry Johnson represented the Division. Based on the evidence and the testimony at the hearing, the Division established that Mr. Q is no longer in need of skilled or intermediate nursing care. The Division's decision is therefore sustained.

II. Facts

E Q is 43 year old man who lives by himself in a small apartment in No Name.² He weighs 394 pounds.³ He has frequently incontinent bowels⁴ and he suffers from a variety of ailments, including arthritis and osteoarthritis, hypertension, diabetes, and liver disease.⁵ However, he does not presently need care, on at least a weekly basis, that would normally be provided by or under the supervision of a registered professional nurse.⁶ In 2009, he was assessed for participation in the Choice Waiver program and found eligible.⁷ He was reassessed on October 19, 2012, by Michelle Moore, RN. Present at the time of the assessment were his care coordinator, K W, and his personal care attendant, S N.⁸

Ms. Moore used the Consumer Assessment Tool (CAT) to record the results of her assessment. Ms. Moore found that Mr. Q was either independent or in need of supervision (but

¹ See AS 47.07.045.

² Testimony of E. Q; Ex. E, p. 1 (describing residence as a motel).

³ Ex. E, p. 23.

⁴ Ex. E, p. 23.

⁵ Ex. E., pp. 3, 21.

⁶ See Ex. E, pp. 13-14.

⁷ See Ex. F, pp. 1-31 (2009 Assessment).

⁸ Ex. E, p. 2.

not assistance) in all but four categories of daily activities. For dressing,⁹ toileting,¹⁰ personal hygiene,¹¹ and bathing,¹² Ms. Moore scored him as needing limited assistance.

Mr. Q has a conservator, but at the time of the reassessment he was capable of making basic health care decisions.¹³ He requires assistance in many of his instrumental daily activities, including preparation of his meals, housework, managing his finances, shopping and laundry.¹⁴ He sleeps in a lift chair (recliner), and he uses a walker, gait belt, grab bars and lifeline.¹⁵

III. Discussion

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.¹⁶ The program pays for services normally provided in a nursing facility, which allows an eligible person to stay in his or her home.

The Division determines whether an applicant requires nursing facility level of care services by conducting an assessment.¹⁷ For an adult with a disability, the assessment is used to determine whether the applicant requires skilled¹⁸ or intermediate¹⁹ nursing care, incorporating the results of the Consumer Assessment Tool (CAT).²⁰ The CAT is a form created by the Department of Health and Social Services to evaluate an individual's ability to care for himself or herself.²¹ Once found eligible, an individual is deemed ineligible if, based on a subsequent assessment, he or she:

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.^[22]

One section of the CAT covers the individual's physical abilities with respect to specified self-care tasks (activities of daily living),²³ such as getting in and out of bed, moving about,

⁹ Ex. E, p. 8.

¹⁰ Ex. E, p. 9.

¹¹ Ex. E, p. 10.

¹² Ex. E, p. 11.

¹³ Testimony of E. Q; Ex. E, p. 34.

¹⁴ Ex. E, p. 26.

¹⁵ Testimony of E. Q; Ex. E, p. 27.

¹⁶ 7 AAC 130.205(d)(2).

¹⁷ 7 AAC 130.230.

¹⁸ See 7 AAC 140.515(b).

¹⁹ See 7 AAC 140.510(b).

²⁰ 7 AAC 130.230(b); 7 AAC 160.900(d)(6).

²¹ See generally, <http://dhss.alaska.gov/dsds/Documents/docs/cat-pcatOnlineFlyer.pdf> (accessed June 19, 2013). In addition to being used in assessments for eligibility for the Choice Waiver program, the CAT is used in determining eligibility for personal care attendant (PCA) services under other programs. *Id.*

²² AS 47.07.045(b)(3)(C).

dressing, eating, bathing, using a toilet, and grooming.²⁴ Individuals are given two scores reflecting their ability to perform these activities, one for their ability to perform the activity (self-performance), and the other for the degree of assistance they require (support). A score of two zeros indicates the individual performs the activity independently (self-performance) with no setup or physical help (support). Increasing inability to perform and need for assistance result in progressively higher scores of one to four.²⁵

An individual, who like Mr. Q, does not regularly need the services of a registered professional nurse, may still be found to need nursing facility level of care services, using the CAT, based on the individual's scores for five specific activities of daily living: bed mobility, transfers, locomotion, eating, and toilet use.²⁶ An individual will be considered in need of nursing facility level of care services if the individual is scored at three or higher on at least three of those five factors.²⁷

In his prior assessment, in 2009, Mr. Q was scored at three (self-performance) for each of three factors: bed mobility, transfers, and toileting.²⁸ In 2012, he was scored at zero for both bed mobility and transfers, and at two (self-performance and support) for toileting.²⁹ The central issue in the hearing was whether the 2012 scores on these three factors were in error. Mr. Q's personal care attendant and his care coordinator attended the assessment and provided input to the assessor. They also attended the hearing and provided testimony, as did Mr. Q. Both the care coordinator and the personal care attendant testified that because Mr. Q is seeking to maximize his independence, he at times tends to understate his needs, and they expressed concern that the assessment might have reflected that. However, neither they, nor Mr. Q, identified any specific aspect of the assessment with which they disagreed.

With respect to bed mobility factor, Ms. Moore's notes from the assessment state that Mr. Q denied needing assistance during the past week, and that when asked if he needed help he stated, "Not usually. A few times" and that his personal care attendant agreed. Scoring for this

²³ For purposes of the assisted living home program, "activities of daily living" are defined as "walking, eating dressing, bathing, toileting, and transfer between a bed and a chair." AS 47.33.990(1). The term is not defined for purposes of the Choice Waiver program. For purposes of personal care services provided by a personal care attendant, specific types of activities are described as activities of daily living. See 7 AAC 125.030(b)(1)-(8).

²⁴ See Ex. E, pp. 6-12, 18-19.

²⁵ A score of five indicates verbal assistance is provided; a score of eight indicates the activity did not occur within the past seven days.

²⁶ See Ex. E, p. 29.

²⁷ Ex. E, p. 29.

²⁸ Ex. F, pp. 18, 29, 40. Compare Ex. F, p. 12 (providing different scores for prior assessment).

²⁹ Ex. E, pp. 6, 9, 29; Ex. F, p. 40.

factor might warrant a two (limited assistance), but the evidence does not support scoring it at three (extensive assistance, including weight-bearing support or full staff or care provider assistance at least three times in the past seven days).³⁰

Similarly, for transfers (moving to or from a bed, seat, or standing position), Ms. Moore's notes state that Mr. Q denied any help in the past seven days, and that his personal care attendant agreed, indicating that he was able to roll off the couch, and that Ms. Moore observed him use his lift chair controls to stand on multiple occasions during the assessment.³¹ Mr. Q testified that he regularly sleeps in his lift chair, and that he can move from it to a standing position. The evidence, and testimony at the hearing, support the score of zero.

The primary point of concern raised at the hearing was that Mr. Q might not have openly expressed to the assessor the extent of his need for assistance with toileting. Ms. Moore's notes reflect that Mr. Q had denied needing assistance with toileting and that his personal care attendant disagreed.³² Ms. Moore's notes reflect that he is able to manage transfers to and from the toilet, but that he suffers from bowel incontinence. The score of two (limited assistance, *i.e.*, hygiene) reflects that, as Ms. Moore testified, she scored Mr. Q higher with respect to toileting than Mr. Q's own self-reported need. The evidence and the testimony do not support a score of three on this factor.

IV. Conclusion

Mr. Q's scores on his most recent assessment accurately reflect his current functional ability. Accordingly, the Division's decision that he is no longer eligible for the Choice Waiver program is sustained.

DATED June 20, 2013.

Signed

Andrew M. Hemenway
Administrative Law Judge

³⁰ Ex. E, p. 6.

³¹ Ex. E, p. 6.

³² Ex. E, p. 9.

Adoption

The undersigned by delegation from the Commissioner of Health and Social Services, adopts this decision as final under the authority of AS 44.64.060(e)(1).

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 11th day of July, 2013.

By: Signed
Signature
Andrew M. Hemenway
Name
Administrative Law Judge
Title

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