

On the date of the assessment, Mr. K did not have any open sores. He is independent in bed mobility, he can walk on his own with canes with his prosthetic legs, or he can use a wheel chair. He is able to stand and sit independently. Mr. K is independent in eating and toileting.² While Mr. K has some difficulties at times with some of these activities, he is still able to perform them without assistance from another person.

Mr. K was assessed by a Registered Nurse, Sam Cornell, on April 9, 2013.³ Nurse Cornell testified at the hearing about the contents of his assessment. There are really no significant disputes about Mr. K's condition. The disputes are centered on the scoring and characterization of Mr. K's condition on the assessment; specifically the problems that Mr. K is having because of problems with his current prosthetics, the frequency with which he falls when using those prosthetics, and the sores caused by his current prosthetics. Mr. K and Ms. E argued that Nurse Cornell's assessment tended to minimize these problems, which led to some underscoring. However, even with the scoring changes suggested by Mr. K and Ms. E, Mr. K would not be eligible for the Choice Waiver program. Furthermore, the assessment reflects Mr. K's condition at the time of the assessment. At that time Mr. K was not suffering from open sores. Also, Mr. K was not receiving ongoing physical therapy at the time of the assessment either because he was, and still is, working on getting his new prosthetic legs.

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 requires the level of care that is normally provided in a nursing facility.⁴ The program pays for services that allow an eligible person to stay in his 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.⁵ For adults with disabilities, this assessment looks at

² See also Exhibit E (Consumer Assessment Tool).

³ See Exhibit E.

⁴ 7 AAC 130.205(d)(2).

⁵ 7 AAC 130.230.

the nursing level services defined in 7 AAC 140.510 and 515,⁶ and incorporates the results of the Consumer Assessment Tool (CAT).⁷ 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).⁸

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?^[9]

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.

⁶ 7 AAC 130.230(b)(2)(A).

⁷ 7 AAC 130.230(b).

⁸ Adopting January 29, 2009 version of the CAT.

⁹ Exhibit E, page 29. The “shaded ADLs” are bed mobility, transfers, locomotion, eating, and toilet use.

C. Mr. K's CAT Assessment

Nurse Cornell's assessment of Mr. K scored him as not qualifying for the Choice Waiver program.¹⁰ At the hearing, Mr. K and Ms. E argued Nurse Cornell underscored this assessment. Ms. E argued that as a double amputee who had been out of the Hospital for little over six months, Mr. K should be considered a new amputee. Ms. E argued that Mr. K continues to need restorative service, because even though he is ambulatory in the sense of being able to move around with a wheel chair, he needs continued restorative services to learn to use his prosthetics and deal with the sores that these prosthetics cause.

Regarding page three of the assessment, Ms. E took issue with the comment regarding his participation in physical therapy, arguing that it was the need to get new prosthetics, rather than his living situation, that was limiting Mr. K's current participation in physical therapy.

Regarding page four of the assessment, Ms. E took issue with the comment that Mr. K's sores were not open at the time of the assessment. Ms. E explained that the condition of these sore varies from day to day based on his use of the prosthetics. On some days these sores are open lesions. Mr. K explained that the skin covering his stumps is paper thin in places. Ms. E also took issue with some of the other scores and comments in the assessment that she felt minimized Mr. K's condition.

At the hearing, Mr. Johnson went over page 29 of the assessment and explained how the scoring changes suggested by Ms. E would not result in Mr. K's eligibility. Ms. E admitted that that these changes would not affect the outcome in regards to eligibility as measured by the CAT.

While Mr. K did have ongoing problems with balance and sores with his current prosthetics at the time of the assessment, he had already achieved a level of independence beyond the level of those who qualify for the Choice Waiver program. Because of problems he has had with his current prosthetics, Mr. K may need additional physical therapy and rehabilitative services in the future. Although he does not presently qualify for the Choice Waiver program, Mr. K is free to reapply at any time if he believes might qualify.

¹⁰ Exhibit E.

IV. Conclusion

Mr. K is not eligible for the Choice Waiver program.

Dated this 18th day of June, 2013.

Signed

Mark T. Handley
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 22nd day of July, 2013.

By: *Signed*

Name: Mark T. Handley
Title: Administrative Law Judge

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