

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

In the Matter of)	
)	
W H)	OAH No. 13-1734-MDS
_____)	Division No.

DECISION

I. Introduction

W H applied for Medicaid Home and Community-Based Waiver program (“Waiver”) services. The Division of Senior and Disabilities Services (Division) denied his application.¹ Mr. H requested a hearing.²

Mr. H’s hearing was held on January 6, 2014. Mr. H was represented by his daughter J N, who also holds his power of attorney. Anita Halterman represented the Division

Mr. H experiences substantial mental and physical impairments. However, those impairments do not rise to the level necessary to qualify him for Waiver services. As a result, the denial of his application for Waiver services is upheld.

I. Facts³

The following facts were established by a preponderance of the evidence.

Mr. H is 88 years old. He was living on his own during the summer of 2013 and not doing well, which included hearing voices and seeing things that were not actually present. He moved in with his daughter and her husband in August 2013. His documented medical diagnoses consist of peripheral vascular disease, hypertension, other cardiovascular disease, asthma, and myelodysplastic syndrome. He is also a borderline diabetic and is developing prostate problems.⁴

Mr. H was assessed to determine his eligibility for Waiver services on August 23, 2013. The assessor, Amanda McCrary, RN, spent somewhere between one hour and an hour and a half with him performing the assessment. She documented the assessment on the Consumer Assessment Tool (CAT). The assessment found the following:

¹ Ex. D.
² Ex. C.
³ These facts are based upon Ex. E and the testimonies of J N, Amanda McCrary, RN, and D J-X.
⁴ Ex. E, pp. 3, 22.

- Mr. H did not require physical assistance with bed mobility or eating.⁵
- Mr. H required supervision for locomotion (walking). He uses either a walker or a cane within the home.⁶
- Mr. H has balance problems and required limited one person physical assistance for transfers and toileting. He is able to use his cane to help him transfer. He has frequent urinary incontinence.⁷
- Mr. H did not require professional nursing services, therapy from a qualified therapist, specialized treatment, or therapies.⁸
- Mr. H's short term memory was impaired and he had a slight degree of difficulty in making his own decisions. However, he was able to recall the current season, location of his room, names/faces, and where he was. Mr. H did not display any behavior issues that would provide him with eligibility such as wandering, being verbally or physically abusive, or socially inappropriate behavior.⁹

J N did not generally disagree with the assessment of Mr. H's physical care needs. However, she said that it was painful for him to move in bed, and that he was very shaky, which makes it difficult for him to walk. She stated that he had a considerable mental decline since he moved into her house in August 2013. She described him as just sometimes not knowing how to get into bed or not being able to use his cane. He thinks that there are holes in his stomach, where urine and feces come out. He is often fearful and thinks her husband is saying bad things to him at times when her husband is asleep.

There is no evidence that Mr. H requires professional nursing intervention to address his cognitive issues patterns, nor that he was not able to recall any of the following: current season, location of his room, names/faces, and where he was. There is also no evidence that Mr. H requires professional nursing services, therapy from a qualified therapist, specialized treatment, or therapies.

⁵ Ex. E, pp. 6, 9.

⁶ Ex. E, pp. 6 – 7, 9, 24.

⁷ Ex. E, p. 9.

⁸ Ex. E, pp. 13 – 15.

⁹ Ex. E, pp. 16 – 17. Although Ms. N testified that her father would stop eating, that behavior would not provide him with a qualifying point on the CAT. See Ex. E, p. 30, NF 4(a).

III. Discussion

A. Method for Assessing Eligibility

The Alaska Medicaid program provides Waiver services to adults with physical disabilities who require “a level of care provided in a nursing facility.”¹⁰ The purpose of these services is “to offer a choice between home and community-based waiver services and institutional care.”¹¹

The nursing facility level of care¹² requirement is determined in part by an assessment which is documented by the CAT.¹³ The CAT records an applicant’s needs for professional nursing services, therapies, and special treatments,¹⁴ and whether an applicant has impaired cognition or displays problem behaviors.¹⁵ Each of the assessed items is coded and contributes to a final numerical score. For instance, if an individual required 5 days or more of therapies (physical, speech/language, occupation, or respiratory therapy) per week, he or she would receive a score of 3.¹⁶

The CAT also records the degree of assistance an applicant requires for activities of daily living (ADL), which include five specific categories: bed mobility (moving within a bed), transfers (i.e., moving from the bed to a chair or a couch, etc.), locomotion (walking or movement when using a device such as a cane, walker, or wheelchair) within the home, eating, and toilet use, which includes transferring on and off the toilet and personal hygiene care.¹⁷

If a person has a self-performance code of 2 (limited assistance, which consists of non-weight bearing physical assistance three or more times during the last seven days, or limited assistance plus weight-bearing assistance one or two times during the last seven days) or 3 (extensive assistance, which consists of weight-bearing support three or more times during the past seven days, or the caregiver provides complete performance of the activity during a portion of the past seven days), plus a support code of 2 (physical assistance from one person) or 3 (physical assistance from two or more persons), that person receives points toward his or her total eligibility score on the CAT.

¹⁰ 7 AAC 130.205(d)(1)(B) and (d)(2).

¹¹ 7 AAC 130.200.

¹² See 7 AAC 130.205(d)(2); 7 AAC 130.230(b)(2)(A).

¹³ 7 AAC 130.230(b)(2)(B).

¹⁴ Ex. E, pp. 13 – 15.

¹⁵ Ex. E, pp. 16 - 17.

¹⁶ Ex. E, p. 30.

¹⁷ Ex. E, p.18.

A person can also receive points for combinations of required nursing services, therapies, impaired cognition (memory/reasoning difficulties), or difficult behaviors (wandering, abusive behaviors, etc.), and required assistance with the five specified activities of daily living.¹⁸

In order for a person who only has physical assistance needs to score as eligible for Waiver services on the CAT, he or she would need a self-performance code of 3 (extensive assistance) or 4 (total dependence) and a support code of 2 or 3 for three or more of the five specified activities of daily living (bed mobility, transfers, locomotion within the home, eating, and toileting).¹⁹

The results of the assessment portion of the CAT are then scored. If an applicant's score is a 3 or higher, the applicant is medically eligible for Waiver services.²⁰

B. Eligibility

It is undisputed that Mr. H does not require professional nursing services, therapy from a qualified therapist, specialized treatment, or therapies. It is undisputed that he does not require professional nursing intervention to manage either his impaired cognition or his behavioral problems. There was no evidence showing that he is either totally dependent (self-performance code of 4) for or that he requires extensive one person physical assistance (self-performance code of 3, support code of 2) with any of the five specified activities of daily living (bed mobility, transfers, locomotion within the home, eating, and toileting). Mr. H's occasional inability to know how to get into bed or use his cane would not score him as either requiring either extensive assistance or being totally dependent for these activities unless he could not be assisted (cued, coaxed, reminded, or steered into getting into bed or using his cane for locomotion), and required either extensive assistance (weight bearing support) or was totally dependent. As a result, Mr. H does not qualify for Waiver services based solely upon medical care or his physical care needs.

It is undisputed that Mr. H requires limited one person physical assistance with two of the five specified activities of daily living, transfers and toileting. The evidence did not show that he required that level of assistance with locomotion, just supervision due to his shakiness. While his need for limited assistance in transfers and toileting would not by themselves qualify him for Waiver services, it would qualify him if he also had a high degree of cognitive impairment. In order to meet the standards for cognitive impairment, he would have to have, in addition to other factors, an inability to recall less than three of the following: current season, location of his

¹⁸ Ex. E, p. 30.

¹⁹ Ex. E, p. 30.

²⁰ Ex. E, p. 30.

room, names/faces, and where he was.²¹ Mr. H unquestionably exhibits substantially impaired cognition. However, the only evidence regarding his ability to recall the current season, location of his room, names/faces, and where he was, is contained in the assessment, which found he was able to recall them all. This means that he was not entitled to receive a scoring point on the CAT, regardless of his auditory and visual hallucinations or his occasional inability to know how to get into bed or how to use his cane.

As discussed above, Mr. H was not entitled to receive a scoring point on the CAT for either his physical care needs or his cognitive impairment. This means his total score on the CAT was 0. The minimum scoring necessary to be found eligible on the CAT is a 3.²² As a result, Mr. H is not eligible for Waiver services.

IV. Conclusion

Mr. H had the burden of proof to demonstrate that he qualified for Waiver services. He has not done so, and the Division's decision to deny his application is upheld.

DATED this 27th day of January, 2014.

Signed _____

Lawrence A. Pederson
Administrative Law Judge

Adoption

The undersigned, by delegation from 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 11th day of February, 2014.

By: *Signed* _____

Name: Lawrence A. Pederson

Title/Agency: Admin. Law Judge, DOA/OAH

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

²¹ Ex. E, p. 30 – Scoring Questions NF. 3 – 7.

²² Scoring Question NF. 7. See Ex. E, p. 31.