

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

In the Matter of )  
 )  
 B S ) OAH No. 14-0017-MDS  
 ) Division No.

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**DECISION**

**I. Introduction**

B S receives Medicaid Home and Community-Based Waiver program (“Waiver”) services. The Division of Senior and Disabilities Services (Division) notified Mr. S that he was no longer eligible for Waiver services, and that they would be discontinued.<sup>1</sup> Mr. S requested a hearing.<sup>2</sup>

Mr. S’s hearing was held on April 9, 2014. Mr. S was represented by his granddaughter N J, who holds his power of attorney. Angela Ybarra represented the Division.

Mr. S’s condition has materially improved since he was initially approved for Waiver services, and as a result, the Division’s decision terminating his Waiver services is affirmed.

**II. Facts**

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

Mr. S is 79 years old. He was found eligible for Waiver services in 2012, based upon an assessment that found he had open wounds, which required nursing care. That same assessment found that he did not require assistance with bed mobility; he required limited physical assistance with transfers and locomotion; and he required extensive physical assistance with toileting.<sup>3</sup> Mr. S is a diabetic with emphysema, coronary arteriosclerosis, chronic kidney disease, and mild dementia.<sup>4</sup>

Mr. S was reassessed on July 25, 2013 by Marianne Sullivan, a registered nurse employed by the Division, to determine whether he continued to be eligible for Waiver services. Ms. Sullivan documented the assessment on the Consumer Assessment Tool (CAT). The assessment found the following:

- Mr. S’s care needs with regard to bed mobility, transfers, locomotion, eating, and toileting were the same as in 2012. He did not require assistance with bed mobility or eating; he

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<sup>1</sup> Ex. D.  
<sup>2</sup> Ex. C.  
<sup>3</sup> Ex. F, pp. 6 – 7, 9, 13, 29.  
<sup>4</sup> Ex. E, p. 3; Ex. F, p. 57.

required limited physical assistance with transfers and locomotion; and he required extensive physical assistance with toileting.<sup>5</sup>

- Mr. S no longer had open wounds which required nursing care. He was not receiving any specialized treatments or physical therapy.<sup>6</sup>
- Mr. S displayed mild cognition issues (short term memory), but he was oriented to the current season, his location, and could recognize names and faces.<sup>7</sup>
- Mr. S did not have any behavior issues.<sup>8</sup>

Mr. S did not disagree with the assessment of his physical care needs with regard to bed mobility, transfers, locomotion, eating, or toileting. Mr. S continues to have sores that need bandaging and care. However, his daughter, who is not a nurse, takes care of that at home. Mr. S does not disagree that he knows his location and faces/names. However, his daughter testified that he does not know the season, except in general terms. She also testified that he forgets his meals and medications, and that he displays one problem behavior, which is urinating off the back porch. The evidence on this point was mixed. His daughter said at one point that the last time Mr. S urinated off the back porch was two to three weeks ago, but then stated that he urinated off the back porch one or twice a day.<sup>9</sup>

Mr. S was in an assisted living home for a respite stay beginning at the end of March 2013. He has had several emergency room visits, which included cardiac issues; had a hospital stay for a right ankle fracture; and a stay at St. Elias Hospital, all within the past calendar year.<sup>10</sup>

A registered nurse employed by Qualis Health, who was licensed in the State of the Alaska at the time of the review, performed a third-party document review of the Division's determination that Mr. S was no longer eligible for Waiver services. That review concurred with the Division's determination.<sup>11</sup>

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<sup>5</sup> Ex. E, pp. 6 – 7, 9.

<sup>6</sup> Ex. E, pp. 13 – 15.

<sup>7</sup> Ex. E, p. 16.

<sup>8</sup> Ex. E, p. 17.

<sup>9</sup> Ms. J's testimony, regarding the frequency of outside urination, changed after her mother, who was observing the hearing, spoke to her. Ms. J was told that her mother could not assist in her testimony, but would have to be called separately as a witness.

<sup>10</sup> Ex. F, pp. 51 – 139; Ms. J testimony.

<sup>11</sup> Ex. D, p. 2.

### 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.”<sup>12</sup> The nursing facility level of care<sup>13</sup> requirement is determined by an assessment which is documented by the CAT.<sup>14</sup> The CAT records an applicant’s needs for professional nursing services, therapies, and special treatments,<sup>15</sup> and whether an applicant has impaired cognition or displays problem behaviors.<sup>16</sup> 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.<sup>17</sup>

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.<sup>18</sup>

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).<sup>19</sup>

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 if they require either limited or extensive assistance with the five specified activities of daily living.<sup>20</sup>

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.<sup>21</sup>

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<sup>12</sup> 7 AAC 130.205(d)(4).

<sup>13</sup> See 7 AAC 130.205(d)(4); 7 AAC 130.215.

<sup>14</sup> 7 AAC 130.215(4)

<sup>15</sup> Ex. E, pp. 13 – 15.

<sup>16</sup> Ex. E, pp. 16 - 17.

<sup>17</sup> Ex. E, p. 29.

<sup>18</sup> Ex. E, p.18.

<sup>19</sup> Ex. E, p. 29.

<sup>20</sup> Ex. E, p. 29.

<sup>21</sup> Ex. E, p. 29.

***B. Eligibility***

Mr. S does not require professional nursing services, therapy from a qualified therapist, specialized treatment, or therapies. Although he had impaired cognition, the evidence showed that he was able to recall his location and names and faces and had a general sense of what the season was. He would therefore not qualify for a scoring point based upon his impaired cognition.<sup>22</sup>

Mr. S did have one socially inappropriate behavior issue, being urination off the back porch. If this happened four or more days per week, this could potentially contribute to Mr. S obtaining a scoring point on the CAT.<sup>23</sup> However, Mr. S's daughter's testimony contradicted itself. At one point, she said he last urinated off the porch two to three weeks ago, and then she said he did so once or twice daily. Due to the contradiction in that testimony, the weight of the evidence shows that it is more likely true than not true that Mr. S only displays the socially inappropriate behavior every several weeks. As a result, he would not qualify for a scoring point due to his behavior issues.

The only other way for Mr. S to retain his eligibility for Waiver services is if he is totally dependent (self-performance code of 4) or requires extensive one person physical assistance (self-performance code of 3, support code of 2) with any three of the five specified activities of daily living (bed mobility, transfers, locomotion within the home, eating, and toileting). As discussed above, Mr. S requires extensive one person physical assistance with only one of his ADLs: toileting. This does not satisfy the requirement that he require a minimum of extensive assistance with three ADLs to maintain his eligibility for Waiver services.

The fact that Mr. S's health condition has resulted in emergency room visits, hospital stays, and a stay in an assisted living home does not provide him with continued waiver benefits. Waiver eligibility is determined by the scoring on the CAT. The evidence at hearing, as discussed above, showed that it was more likely true than not true that the CAT was correctly scored. Even though Mr. S has substantial health issues, he does not have nursing care needs as measured by the CAT, does not receive any specialized treatments or therapies, and his physical functioning, impaired cognition, and behavior issues do not rise to the level necessary for him to score as qualifying on the CAT.

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<sup>22</sup> Ex. E, p. 16; Ex. E, p. 29, Scoring Question NF. 3.

<sup>23</sup> Ex. E, p. 17; Ex. E, p. 29, Scoring Question NF. 4.

**C. Termination of Waiver Services**

Before the Division may terminate Waiver services for a person who was previously approved for those services, Alaska Statute 47.07.045, enacted in 2006, requires that the Division must demonstrate that the recipient’s condition has materially improved to the point that the recipient “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>24</sup> As discussed above, Mr. S’s 2013 assessment shows that he is no longer eligible for Waiver Services, *i.e.*, his condition has materially improved, as the term is defined by statute.<sup>25</sup>

**IV. Conclusion**

Mr. S’s condition has materially improved to the point that he no longer qualifies for Medicaid Waiver services. The Division’s decision to terminate Mr. S’s Waiver services is upheld.

DATED this 21st day of April, 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 9<sup>th</sup> day of May, 2014.

By: *Signed* \_\_\_\_\_  
Name: Lawrence A. Pederson  
Title: Administrative Law Judge

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

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<sup>24</sup> AS 47.07.045(b)(1) and (b)(3)(C).

<sup>25</sup> AS 47.07.045 also requires that the Division’s assessment showing material improvement must be “reviewed by an independent qualified health care professional under contract with the department.” This was done. *See Ex. D, p. 2.*

