

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

In the Matter of )  
 )  
 M C )  
\_\_\_\_\_ )

OAH No. 14-0158-MDS  
Division No.

**DECISION**

**I. Introduction**

M C applied for Medicaid Home and Community-Based Waiver program (“Waiver”) services. The Division of Senior and Disabilities Services (Division) denied his application.<sup>1</sup> Mr. C requested a hearing.<sup>2</sup>

Mr. C’s hearing was held on February 18, 2014. Mr. C represented himself. Anita Halterman represented the Division. Angela Hanley, RN testified for the Division.

Mr. C experiences substantial 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. Facts<sup>3</sup>**

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

Mr. C is 57 years old. He has Hydrocephalus, an abnormal accumulation of cerebrospinal fluid in the brain. He has had this condition since he was a child; it is treated by a shunt which drains the fluid from his brain into another part of the body. The shunt “has resulted in diminished reflexes and strength on his left side.”<sup>4</sup> Mr. C’s other medical conditions include diabetes, hyperlipidemia, varicose veins, lower extremity edema, neurogenic bladder, and B-12 deficiency. He has an indwelling catheter to relieve his neurogenic bladder.

Mr. C applied for Waiver services. Mr. C was assessed to determine his eligibility for Waiver services on December 12, 2013. At the time of his assessment, Mr. C was not living in his own home. He was actually an in-patient at the No Name Medical Center. He was admitted there, at his own request, on November 21, 2013, due to generalized weakness and an inability to

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<sup>1</sup> Ex. D.

<sup>2</sup> Ex. C.

<sup>3</sup> These facts are based upon Ex. E, Ex. G (Mr. C’s records from the No Name Medical Center), and the testimonies of Mr. C and Ms. Hanley.

<sup>4</sup> Ex. G, p. 1.

fully care for himself. At the time his wife was also an in-patient at the No Name Medical Center. They have both been discharged and are living in their home.

The assessor, Angela Hanley, RN, documented Mr. C's assessment on the Consumer Assessment Tool (CAT). She found the following:

- Mr. C did not require physical assistance with bed mobility or eating.
- Mr. C required supervision for transfers.
- Mr. C required limited assistance for locomotion (walking). He has balance issues and uses a walker.
- Mr. C requires extensive assistance with toileting due to his indwelling catheter, and hygiene issues.
- Mr. C did not require professional nursing services or specialized treatments. At the time of the assessment, he was receiving physical therapy two days per week. His catheter was changed once monthly.
- Mr. C's memory, both long term and short term, was adequate. He was able to recall the current season, location of his room, names/faces, and where he was. However, his ability to make his own decisions was impaired. Mr. C did not display any behavior issues that would provide him with eligibility such as wandering, being verbally or physically abusive or socially inappropriate behavior.

Mr. C is living back at home with his wife. He did not disagree with the Division's assessment of his physical functioning. He and his wife have some limited assistance with household tasks, such as bringing firewood into the home, but need more assistance with household tasks.

### **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>5</sup> The nursing facility level of care<sup>6</sup> requirement is determined in part by an assessment which is documented by the CAT.<sup>7</sup> The CAT records an applicant's needs for professional nursing services, therapies, and special

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<sup>5</sup> 7 AAC 130.205(d)(4).

<sup>6</sup> See 7 AAC 130.205(d)(4); 7 AAC 130.215.

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

treatments,<sup>8</sup> and whether an applicant has impaired cognition or displays problem behaviors.<sup>9</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>10</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>11</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>12</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>13</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>14</sup>

**B. Eligibility**

It is undisputed that Mr. C does not require professional nursing services, specialized treatment, or therapies. He was receiving physical therapy twice weekly at the time of his assessment. It is undisputed that he does not have behavior problems, nor does he have substantially impaired cognition. He requires extensive physical assistance with toileting. He requires limited physical assistance with locomotion.

Mr. C's need for extensive assistance with toileting and his need for limited assistance with locomotion do not by themselves qualify him for Waiver services. While he was receiving

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<sup>8</sup> Ex. E, pp. 13 – 15.

<sup>9</sup> Ex. E, pp. 16 - 17.

<sup>10</sup> Ex. E, p. 29.

<sup>11</sup> Ex. E, p.18.

<sup>12</sup> Ex. E, p. 29.

<sup>13</sup> Ex. E, p. 29.

<sup>14</sup> Ex. E, p. 29.

physical therapy twice weekly at the time of assessment, it does not qualify him for Waiver services, because he would need to receive the physical therapy five days per week.<sup>15</sup> His indwelling catheter similarly does not qualify him for Waiver services because he only needs to have it changed out once per month.<sup>16</sup> 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 room, names/faces, and where he was. 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 physical assistance needs.

As discussed above, Mr. C was not entitled to receive a scoring point on the CAT for his physical therapy, his catheter care, his physical care needs, or his impaired decision making. This means his total score on the CAT was 0. The minimum scoring necessary to be found eligible on the CAT is a 3.<sup>17</sup> As a result, Mr. C is not eligible for Waiver services.

#### **IV. Conclusion**

Mr. C 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 21st day of April, 2014.

*Signed*

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Mark Handley  
Administrative Law Judge

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<sup>15</sup> Scoring Question NF 1, Ex. E, p. 29.

<sup>16</sup> Scoring Question NF 2, Ex. E, p. 29.

<sup>17</sup> Scoring Question NF. 7. *See* Ex. E, p. 29.

## 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 16<sup>th</sup> day of May, 2014.

By: Signed  
Name: Mark T. Handley  
Title: Administrative Law Judge

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