

- Ms. B could transfer on and off the toilet herself, had some difficulty reaching her backside, but could clean herself. She used pads for urinary incontinence, which she can change herself.⁹
- Ms. B did not require professional nursing services, therapy from a qualified therapist, specialized treatment, or therapies.¹⁰
- Ms. B did not have cognitive or behavior problems.¹¹

Ms. B testified convincingly, and the Division did not dispute, that her health and living situation has declined since the assessment visit. Ms. B now uses a walker, has more difficulty transferring and walking, and cannot dress herself because of her shoulder injury. Her shoulder injury also makes bed mobility more challenging. She has to spend much of the day with her legs elevated to combat the swelling.

After the assessment visit, Ms. B submitted December 2013 medical records from Dr. Favali and Dr. Ross. The basis for both appointments was knee pain. Dr. Ross notes that Ms. B's knee symptoms are adversely affecting her activities of daily living and quality of life. Ms. Bartlett testified that she and Susan Findley, a nursing supervisor, reviewed the records and that the information did not alter the Division's denial.

On April 9, 2014, the day before the hearing, Ms. B submitted an April 4, 2014 letter from Dr. McIntosh. The letter states that in her opinion, Ms. B should be admitted to the Waiver program. The letter also states that Ms. B has difficulty getting up, walking, and moving her shoulders, and that she is facing knee replacement surgery.

The Division spoke with E F, medical assistant to Dr. McIntosh. Ms. F told the Division that Dr. McIntosh had not ordered any intermediate or skilled nursing services for Ms. B and that she would not recommend Ms. B for placement in a nursing home. Dr. McIntosh testified at the hearing and confirmed this. Dr. McIntosh stated that Ms. B needs help in her home or else she would need to be in an assisted living home. Dr. McIntosh also testified that Ms. B will need nursing level of care immediately following her surgery, but that no surgery was scheduled.

Dr. McIntosh stated that she believes Ms. B needs help with shopping, housework, food preparation, walking, and range of motion.¹² Dr. McIntosh described that Ms. B needs help in

⁹ Ex. E, p. 6-7.

¹⁰ Ex. E, pp. 13 – 15.

¹¹ Ex. E, pp. 16 – 17.

the mornings and needs help “getting up and going.” She stated Ms. B has a great deal of difficulty ambulating and getting up, but does not have someone holding on to her while walking. She recommended a power mobility device.

There is no evidence that Ms. B requires professional nursing services, therapy from a qualified therapist, specialized treatment, or therapies.

III. Discussion

A. Method for Assessing Eligibility

Because this is an initial application for services, Ms. B has the burden of showing, by a preponderance of the evidence, that the Division’s denial was inaccurate.¹³

The Alaska Medicaid program provides Waiver services to adults with physical disabilities who require “a level of care provided in a nursing facility.”¹⁴ A person can qualify if he or she requires intermediate¹⁵ or skilled¹⁶ level of nursing care. The purpose of these services is “to offer a choice between home and community-based waiver services and institutional care.”¹⁷

The nursing facility level of care¹⁸ requirement is determined in part by an assessment, which is documented by the CAT.¹⁹ The CAT records an applicant’s needs for professional nursing services, therapies, and special treatments,²⁰ and whether an applicant has impaired cognition or displays problem behaviors.²¹ 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 3.²² If an applicant’s score is a 3 or higher, the applicant is medically eligible for Waiver services.²³

¹² Dr. McIntosh initially included toileting. Later, Dr. McIntosh stated she did not know how Ms. B uses the bathroom. Ms. B did not challenge the toileting score and no other evidence was submitted regarding any change to toileting needs since the assessment visit.

¹³ 7 AAC 49.135.

¹⁴ 7 AAC 130.205(d)(1)(B) and (d)(2).

¹⁵ 7 AAC 140.510.

¹⁶ 7 AAC 140.515.

¹⁷ 7 AAC 130.200.

¹⁸ See 7 AAC 130.205(d)(4); 7 AAC 130.230(b)(2)(A).

¹⁹ 7 AAC 130.215(4).

²⁰ Ex. E, pp. 13 – 15.

²¹ Ex. E, pp. 16 - 17.

²² Ex. E, p. 30.

²³ Ex. E, p. 30.

A person can 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 five specified activities of daily living (ADL), commonly called the “shaded” ADLs.²⁴

The shaded ADLs are: 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 toileting.²⁵

The CAT includes ADL self-performance and support scores. Self-performance codes range from 0 (the person is independent and requires no help or oversight) to 4 (the person is totally dependent).²⁶ Support scores range from 0 (no setup or physical assist from staff) to 3 (two+ persons physical assist).²⁷

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.²⁸ A person who is scored as needing extensive assistance or total dependence in three of the five shaded ADLs receives a score of 3, thus qualifying for Waiver services.

B. Eligibility

It is undisputed that Ms. B does not require professional nursing services, therapy from a qualified therapist, specialized treatment, or therapies. She has no cognitive²⁹ or behavioral³⁰ impairment. The only way Ms. B could qualify for Waiver is through ADL scoring. There was no evidence showing that she is either totally dependent (self-performance code of 4) for or that she requires extensive one person physical assistance (self-performance code of 3, support code of 2) with at least three of the five shaded ADLs (bed mobility, transfers, locomotion within the home, eating, and toileting). While Ms. B does have difficulty with transfers and locomotion,

²⁴ Ex. E, p. 30.

²⁵ Ex. E, p. 18.

²⁶ See Ex. E, p. 6, See also 7 AAC 125.020, There are also codes 5 (cueing) and 8 (the activity did not occur during the past 7 days). These are not used to determine waiver eligibility.

²⁷ See Ex. E, p. 6. There are also codes 5 (cueing support required 7 days a week) and 8 (activity did not occur during the past 7 days).

²⁸ Ex. E, NF 1(e), p. 30.

²⁹ Ex. E, NF 3, p. 30.

³⁰ Ex/ E, NF 4, p. 30.

the level of difficulty would not score her as requiring either extensive assistance or being totally dependent for these activities. This may change in the future, at which time Ms. B could reapply for services.

At the time of the assessment, Ms. B scored independent, 0/0, in bed mobility and eating. She scored as needing supervision only, 1/0, with transfers, locomotion, and toilet use. According to Ms. B and Dr. McIntosh's testimony, Ms. B, if reassessed now, might score as needing limited assistance, 2/2, in bed mobility, transfers, and locomotion.³¹ These scores would not allow Ms. B to qualify for Waiver. Assistance needed with other ADLs, including dressing, is not a basis for qualifying.

This decision is based on Ms. B's condition on February 12, 2014, the Division's denial date. It takes into consideration Ms. B's post-assessment decline. Dr. McIntosh and Ms. B's testimony clearly indicate a need for assistance with ADLs and a decline in Ms. B's ability to care for herself in her home. The Division agrees that Ms. B needs assistance with ADLs and does not dispute Ms. B's decline.³² However, the evidence does not support the level of care required to qualify for Waiver.

Ms. B's total score on the CAT was 0. The minimum scoring necessary to be found eligible on the CAT is a 3.³³ As a result, Ms. B is not eligible for Waiver services.

IV. Conclusion

Ms. B had the burden of proof to demonstrate that she qualified for Waiver services. She has not done so, and the Division's decision to deny her application is upheld.

Dated this 15th day of May, 2014.

Signed

Bride A. Seifert
Administrative Law Judge

³¹ The record does not contain adequate evidence to support a change in the toileting score. However, even if Ms. B's toileting score was raised to a 2/2, it would not qualify her for Waiver.

³² The Division stated that Ms. B currently appears over income for the PCA program. The Division offered to assist Ms. B in exploring whether establishing an income qualifying trust may help her qualify for PCA services.

³³ Ex. E, p. 29.

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 2nd day of June, 2014.

By: Signed
Name: Bride Seifert
Title/Division: ALJ/OAH

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