

**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. 14-1731-MDS
Division No.

DECISION

I. Introduction

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

Mr. C’s hearing was held on January 20, 2015. Mr. C represented himself. His care coordinator, Q N, assisted him and testified on his behalf. Angela Ybarra represented the Division. Marianne Sullivan, R. N., testified on behalf of the Division.

Mr. C is no longer experiencing the chemotherapy and radiation treatments, and the associated physical weakness, which made him eligible for Waiver services in 2012. This means his condition has materially improved and no longer qualifies him for Waiver services. The Division’s decision terminating Mr. C’s Waiver services is affirmed.

II. Facts

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

Mr. C is 69 years old. His diagnoses include lung cancer and chronic obstructive pulmonary disease.³ He was found eligible for Waiver services in 2012, based upon an assessment that found he required both radiation and chemotherapy treatments for cancer three or more days per week, and that he required limited assistance with transfers, locomotion, and toileting.⁴ His need for limited assistance with the transfers, locomotion, and toileting was caused by weakness from the cancer and the treatments.⁵

¹ Division Ex. D.

² Division Ex. C.

³ Mr. C’s Ex. C, pp. 3 – 5; Division Ex. E, p. 3.

⁴ Division Ex. F, pp. 7 – 8, 10, 16, 19, 30; Marianne Sullivan’s testimony.

⁵ Division Ex. F, pp. 7 – 8, 10.

Mr. C was reassessed in February 2014 to determine if he was still eligible for Waiver services. The February 2014 assessment found that Mr. C no longer qualified for Waiver services because he was no longer receiving ongoing chemotherapy or radiation, and he did not need any hands-on physical help with bed mobility (positioning or moving in the bed), transferring, locomotion, eating or toileting, although he did rely on his walker for locomotion and transferring.⁶ The assessment did not show any other nursing needs, therapies, behavioral issues, and only very mild cognitive issues (short-term memory and slight difficulty in new situations).⁷ It resulted in the Division notifying Mr. C that his Waiver services would be terminated.⁸ A registered nurse employed by Qualis Health, who was licensed in the State of Alaska at the time of the review, performed a third-party document review of the Division's determination that Mr. C was no longer eligible for Waiver services. That review concurred with the Division's determination.⁹

In November 2014, Mr. C's oncologist, Dr. T, wrote that he still has "non-small cell lung cancer and requires regular follow-up visits and diagnostic scans in order to monitor his disease."¹⁰ In response to a Division inquiry in March 2014, Dr. P responded that Mr. C had intermediate nursing needs, and that "he is very weak and gets confused quite easily."¹¹

Mr. C testified that he is no longer receiving weekly treatments for his cancer, and is not receiving any specialized therapies or nursing services. He agreed that he has some memory problems, but they are not extensive enough that he cannot remember people who are close to him. He sees his doctor every six months for CT scans and X-Rays to monitor his cancer. While transferring is slow, and he occasionally loses his balance and gets tired while walking, he does not need hands-on physical assistance from another person and can perform those tasks himself using his walker. Similarly, he does not need hands-on physical assistance with bed mobility, eating, or toileting.¹² Q N, who is Mr. C's care coordinator and who sees him every month, stated that he is very independent, has a lot of pain, but that his testimony was accurate.¹³

⁶ Division Ex. E, pp. 6 – 7, 9, 15, 29.

⁷ Division Ex. E, pp. 13 – 17.

⁸ Division Ex. D.

⁹ Division Ex. D, p. 2; Division Ex. G.

¹⁰ Mr. C's Ex. C, p. 2 (Dr. T's letter dated November 12, 2014).

¹¹ Mr. C's Ex. C, p. 1.

¹² Mr. C's testimony.

¹³ Ms. N's testimony.

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.”¹⁴ The nursing facility level of care¹⁵ requirement is determined by an assessment which is documented by the CAT.¹⁶ The CAT records an applicant’s needs for professional nursing services, therapies, and special treatments,¹⁷ and whether an applicant has impaired cognition or displays problem behaviors.¹⁸ 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 3.¹⁹

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.²⁰

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).²¹

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.²²

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.²³

¹⁴ 7 AAC 130.205(d)(4).

¹⁵ See 7 AAC 130.205(d)(4); 7 AAC 130.215.

¹⁶ 7 AAC 130.215(4)

¹⁷ Division Ex. E, pp. 13 - 15.

¹⁸ Division Ex. E, pp. 16 - 17.

¹⁹ Division Ex. E, p. 29.

²⁰ Division Ex. E, p.18.

²¹ Division Ex. E, p. 29.

²² Division Ex. E, p. 29.

²³ Division Ex. E, p. 29.

B. Eligibility

Mr. C does not require professional nursing services, therapy from a qualified therapist, or specialized treatment. While he required chemotherapy and radiation therapy in 2012, he no longer requires those treatments. Although he had some memory issues, they were not severe. He would therefore not qualify for a scoring point based upon a need for professional nursing services, therapy, specialized treatment or therapies, or impaired cognition.²⁴ He does not have any behavioral issues.

The only other way for Mr. C 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. C does not dispute that he is essentially independent with these activities, although they might be difficult or painful for him. This does not satisfy the requirement that he require a minimum of extensive assistance with three ADLs to maintain his eligibility for Waiver services.

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. C 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 needs and limited impaired cognition do not rise to the level necessary for him to score as qualifying on the CAT.

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."²⁵ While Mr. C qualified for Waiver services in 2012 due to a combination of his receipt of chemotherapy, radiation therapy, and a need for

²⁴ Division Ex. E, pp. 13 - 16; Division Ex. E, p. 29, Scoring Questions NF 2 and 3.

²⁵ AS 47.07.045(b)(1) and (b)(3)(C).

physical hands-on assistance with locomotion, transfers, and toileting, those factors are no longer present. Consequently, Mr. C's 2014 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.²⁶

IV. Conclusion

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

DATED this 9th day of February, 2015.

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 24th day of February, 2015.

By: *Signed*

Name: Christopher Kennedy
Title: Administrative Law Judge, DOA/OAH

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

²⁶ 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; Ex. G.