

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

In the Matter of	)	
	)	
P T	)	OAH No. 14-1872-MDS
_____	)	Division No.

**DECISION**

**I. Introduction**

P T was reassessed for Medicaid Home and Community-Based Waiver program (“Waiver”) services eligibility. The Division of Senior and Disabilities Services (Division) determined that there had been a material improvement in his level of functioning and that he no longer qualified for Waiver services.<sup>1</sup> Mr. T requested a hearing and filed additional medical records.<sup>2</sup>

Mr. T’s hearing was held on December 3, 2014. Mr. T represented himself, but he was assisted by his Care Coordinator, B M C. Victoria Cobo represented the Division. Sam Cornell, RN testified for the Division.

Mr. T experiences some physical impairments. However, the Division met its burden of proof to show that those impairments no longer rise to the level necessary to qualify him for Waiver services. As a result, the denial of his continued eligibility for Waiver services is upheld.

**I. Facts<sup>3</sup>**

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

Mr. T was 71 years old at the time that the Division conducted the reassessment on June 25, 2014. He has cardiovascular disease as well as lower back problems, which include chronic pain degenerative disc disease and lumber stenosis with neurogenic claudication.

Mr. T had been receiving Waiver services since May 9, 2013. When Mr. T was reassessed to determine his continuing eligibility for Waiver in 2014, he was at his home. Sam Cornell, RN performed the reassessment.

Nurse Cornell documented Mr. T’s assessment on the Consumer Assessment Tool (CAT). He found the following:

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<sup>1</sup> Exhibit. A, page 2.

<sup>2</sup> These medical records are marked as Exhibit 1.

<sup>3</sup> These facts are based upon Exhibit 1, Exhibits D & E and the testimonies of Ms. C and Nurse Cornell except as when indicated otherwise.

- Mr. T did not require physical assistance with bed mobility or eating.
- Mr. T required supervision only for bed and limited assistance for transfers.
- Mr. T required supervision only for locomotion (walking). He has balance issues and uses a cane and a wheeled walker.
- Mr. T required limited assistance for dressing.
- Mr. T requires limited assistance with toileting, personal hygiene and bathing.
- Mr. T did not require professional nursing services or specialized treatments.
- Mr. T's memory, both long term and short term, was adequate. Mr. T 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. T was living at home with his partner. Ms. C testified that she felt that the reassessment was aggressive and that she felt that having Mr. T stand by himself during the assessment was a safety risk. Ms. C also argued that the reassessment underestimated the limitations on Mr. T's functional abilities that were caused by his back problems.

The Division provided testimony of K E, who had observed Mr. T walking in the parking lot of Mr. T's doctor's office on June 23, 2014. Mr. E observed Mr. T using his walker and pushing it like a shopping cart very slowly, but after his appointment he walked much faster across the parking lot, put his walker away by himself and transferred himself into the vehicle without assistance. Based on his observations, Mr. E does not believe that Mr. T needs weight bearing assistance.

The medical records provided by Ms. C were consistent with the scoring in the reassessment. Having reviewed these records, Nurse Cornell explained that these records did not indicate that Mr. T needs nursing facility level of care.<sup>4</sup>

### **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

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<sup>4</sup> Exhibit 1.

<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)

CAT records an applicant's needs for professional nursing services, therapies, and special 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 individual 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***

Once an individual like Mr. T has qualified to participate in the Choice Waiver program, there are additional protections before she can be removed from that program. Specifically, he must have had an annual assessment, the assessment must have been reviewed by an independent qualified health professional, and the assessment must find that the individual has materially improved.<sup>15</sup> The qualified health professional must be a

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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.

<sup>15</sup> AS 47.07.045(b)(1) – (3).

registered nurse licensed in Alaska qualified to assess adults with physical disabilities.<sup>16</sup>

Material improvement for an adult with physical disabilities is defined as:

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>[17]</sup>

The same criteria used in determining whether a recipient no longer has a functional limitation or cognitive impairment are used in making the initial determination that he or she did have the limitation or impairment.<sup>18</sup> Based on this definition, a “material improvement” determination is focused on whether the individual currently qualifies for the Choice Waiver program rather than on any specific changes in functional limitation or cognitive impairment since a prior assessment.

In deciding whether a person is eligible, the division looks at the recipient’s level of care needs as of the date the Division notified the person of its determination.<sup>19</sup> The Division has the burden of proof in this appeal because the Division has determined that it needs to terminate Mr. T’s participation in the program.<sup>20</sup>

The minimum scoring necessary to be found eligible on the CAT is a 3. Mr. T does not require professional nursing services, specialized treatment, or therapies. Mr. T does not have behavior problems, nor does he have substantially impaired cognition.

As discussed above, Mr. T was not entitled to receive scoring points on the CAT that meet the minimum scoring necessary to be found eligible on the CAT.<sup>21</sup> As a result, Mr. T is not eligible for Waiver services.

#### **IV. Conclusion**

The Division had the burden of proof to demonstrate that Mr. T no longer qualified for Waiver services. The Division met its burden. The Division’s decision to deny his application is upheld.

DATED this 17<sup>th</sup> day of December, 2014.

Signed  
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Mark Handley  
Administrative Law Judge

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<sup>16</sup> AS 47.07.045(b)(2)(B).

<sup>17</sup> AS 47.07.045(b)(3)(C).

<sup>18</sup> 7 AAC 130.230(g).

<sup>19</sup> *In re T C*, OAH No. 13-0204-MDS (Commissioner of Health and Social Services 2013), page 7, available at <http://aws.state.ak.us/officeofadminhearings/Documents/MDS/HCW/MDS130204.pdf>.

<sup>20</sup> 7 AAC 49.135.

<sup>21</sup> Scoring Question NF. 7.

## 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 8<sup>th</sup> day of January, 2015.

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

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