

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

In the Matter of)
)
 G Q)
_____)

OAH No. 15-0318-MDS
Agency No.

DECISION

I. Introduction

A. Procedural Background

G Q qualified for Medicaid Home and Community-Based Waiver program (Waiver) services in February 2013. She was reassessed for eligibility on November 12, 2014. On March 5, 2015, the Division of Senior and Disabilities Services (Division) notified Ms. Q that she was no longer eligible for Waiver services and those services would be discontinued.¹ Ms. Q requested a hearing.²

Ms. Q's hearing was held on June 23, 2015. Ms. Q represented herself. Victoria Cobo represented the Division. Scott Chow, R. N., testified on behalf of the Division.

B. Summary of Decision

Eligibility for the Waiver program is determined by the scoring on the Consumer Assessment Tool (CAT). Ms. Q qualified for Waiver services in 2013 due to her need for extensive assistance with bed mobility, transfers and toilet use.³ Based on the evidence from Ms. Q's reassessment between November 2014 and March 2015, it is more likely true than not true that Ms. Q requires extensive assistance with bed mobility and transfers. However, she now requires limited assistance with toilet use. She requires supervision with locomotion, and she is independent in her ability to eat. For purposes of Waiver eligibility, this means Ms. Q's condition has materially improved since she first qualified for Waiver services in February 2013.

Ms. Q clearly has significant ongoing health issues, but the Division has shown that her physical needs do not rise to the nursing facility level of care that is necessary for the Waiver program. The Division's decision terminating Ms. Q's Waiver services is affirmed.

¹ Ex. D.
² Ex. C.
³ Ex. D, p. 2.

II. Facts

The following facts were established by a preponderance of the evidence:⁴

Ms. Q is 69 years old. Her medical diagnoses include poorly controlled diabetes, chronic airway obstruction, peripheral vascular disease, hypertension, recurrent urinary tract infections, osteoporosis, arthritis and chronic pain. She experiences severe back pain, which causes lower extremity weakness and resulting deconditioning.⁵ She also experiences persistent stage one pressure ulcers and daily urinary incontinence. Her right hand grip is weak, but her left grip is strong. She uses a powered wheelchair to get from place to place.

Ms. Q was found eligible for Waiver services in February 2013 based on an assessment that found she required extensive assistance with three activities of daily living (ADL): bed mobility, transfers and toilet use (self-performance code 3, support code 2). The nurse-assessor in 2013 did not observe Ms. Q perform these ADLs during her visit. She assumed extensive assistance was needed based on her discussion with Ms. Q. At that time, Ms. Q was wheelchair-bound, and no one was available to assist and ensure safety while Ms. Q demonstrated her body mobility or her transfers (including transfers on and off the toilet).⁶

Ms. Q was reassessed in November 2014 to determine if she meets the eligibility criteria for Waiver services. The reassessment found that she no longer qualifies, because her upper extremity range of motion and her overall functional abilities have significantly improved. Regarding the five activities of daily living that are assessed for Waiver eligibility, it concluded that Ms. Q can eat independently; she requires supervision for bed mobility, locomotion and toilet use, and she requires limited assistance to transfer.⁷

The reassessment did not document any other nursing needs, therapies, behavioral issues, or cognitive problems.⁸ Accordingly, the Division notified Ms. Q that her Waiver services would be terminated.⁹ A registered nurse employed by Qualis Health, and licensed in the State of Alaska at the time of the review, performed a third-party document review of the Division's

⁴ These facts are based upon Division Ex. D (denial letter); Ex. E (reassessment); Ex. F (prior assessment and medical records); Ex. G (Qualis Health affidavit and third party review); Claimant Ex. 1 (letter from Dr. K M); and Exs. 2 - 4 (medical records).

⁵ Ex. 1 (letter from Dr. M, dated April 2, 2015); Ex. D, p. 3; Ex. E, p. 3.

⁶ Ex. F, p. 6, 9.

⁷ Ex. E, p. 18 (shaded areas).

⁸ Ex. E, pp. 13 – 17.

⁹ Ex. D.

Waiver eligibility determination.¹⁰ The Qualis review noted that the 2014 reassessment likely underscored Ms. Q's need for assistance with bed mobility.¹¹ However, it concurred with the Division's determination that Ms. Q has made material functional gain, and she no longer has the limitations that would result in nursing home placement.¹²

Ms. Q is cognitively sharp, well-oriented, and capable of managing her own affairs. She does not exhibit problem behaviors. During the reassessment and the hearing, Ms. Q readily acknowledged her relative independence in a number of areas. She presents as a highly credible witness regarding her abilities and her needs.

Ms. Q does not currently require any professional nursing services, therapies or special treatments. However, she testified that she plans to begin physical therapy in the near future. The Division acknowledged that this could affect her Waiver eligibility, and Ms. Q was encouraged to keep the Division apprised if her doctor orders new therapy.

Dr. K M, Ms. Q's primary physician, wrote that Ms. Q has been working to increase her mobility and decrease her wheelchair dependence. However, her progress with physical therapy has been limited because of her severe back pain. Dr. M indicated that Ms. Q has been referred to other specialists for further evaluation and for pain management. She continues to be wheelchair dependent, though she is able to stand for 30 seconds to one minute. Dr. M concluded that Ms. Q will need ongoing assistance with chores and house cleaning until she becomes more mobile.¹³ In a separate letter, Dr. M indicated that assisted living facility placement may be appropriate to help Ms. Q better manage her diabetes and other health concerns.¹⁴

Ms. Q disputes the reassessment's conclusions regarding her eligibility for Waiver services.

III. Discussion

A. Burden of Proof, 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 requires the Division to demonstrate that the recipient's condition has materially improved to the point that the recipient "no longer has a

¹⁰ Ex. G (Qualis Health review); Ex. D, pp. 2-4.

¹¹ Ex. G, p. 6; Ex. D, p. 3.

¹² Ex. G; Ex. D, pp. 2-4.

¹³ Ex. 1.

¹⁴ Ex. F, p. 32 (Level of Care verification, dated November 24, 2014).

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.”¹⁵ The Division’s burden of proof is to make this showing by a preponderance of the evidence.¹⁶ It can meet this burden using any evidence on which reasonable people might rely in the conduct of serious affairs.¹⁷

B. 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.”¹⁸ The nursing facility level of care¹⁹ requirement is determined by an assessment which is documented by the CAT.²⁰ The CAT records an applicant’s needs for professional nursing services, therapies, and special treatments,²¹ and whether an applicant has impaired cognition or displays problem behaviors.²² 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 3.²³

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.²⁴

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).²⁵

¹⁵ AS 47.07.045(b)(1) and (b)(3)(C).

¹⁶ 7 AAC 49.135.

¹⁷ 2 AAC 64.290(a)(2).

¹⁸ 7 AAC 130.205(d)(4).

¹⁹ See 7 AAC 130.205(d)(4); 7 AAC 130.215.

²⁰ 7 AAC 130.215(4).

²¹ Ex. E, pp. 13 - 15.

²² Ex. E, pp. 16 - 17.

²³ Ex. E, p. 29.

²⁴ Ex. E, p. 18.

²⁵ Ex. E, p. 29.

A person also can receive points for combinations of required nursing services, therapies, impaired cognition (memory/reasoning difficulties), difficult behaviors (wandering, abusive behaviors, etc.), and the need for either limited or extensive assistance with the five specified activities of daily living.²⁶

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.²⁷

C. Eligibility

Ms. Q does not require professional nursing services, therapy from a qualified therapist, or specialized treatment. She has done some physical therapy, but it was discontinued until her pain could be better controlled.²⁸ She may begin physical therapy again in the near future, and she has been advised to provide the Division with documentation if and when that happens. Ms. Q does not need intervention to manage cognitive or behavioral problems. As a result, the only way she could qualify for Waiver services is if she requires extensive one person physical assistance (self-performance code 3, support code 2), or a higher level of assistance, to perform three or more of the five ADLs that are assessed for Waiver eligibility.²⁹ Extensive assistance means she requires weight-bearing assistance at least three times a week to perform the ADL in question.³⁰ Her functional ability with the five ADLs is discussed below:

Eating: For purposes of the CAT, eating refers to how a person eats and drinks, not including food preparation or cooking.³¹ The reassessment rated Ms. Q independent with this activity. However, she requires setup help because of her poor right hand fine motor skills and weak grip (self-performance code 0, support code 1). Ms. Q does not dispute this conclusion.

Locomotion: Locomotion pertains to how someone moves between locations in her room and to other areas on the same floor of her residence. The assessment indicates that Ms. Q requires supervision and setup help, since she has difficulty maneuvering her power wheelchair through the narrow bathroom entrance.

During the hearing, Ms. Q confirmed that she generally is able to maneuver around her home in her electric wheelchair without help. The entrance to her bathroom is narrow, however,

²⁶ Ex. E, p. 29.

²⁷ Ex. E, p. 29.

²⁸ Ex. 1.

²⁹ Ex. E, p. 29 (CAT Scoring).

³⁰ Ex. E, p. 18.

³¹ Ex. E, p. 9.

and she often bumps into the bathroom door or door jamb. Even when that happens, she stated that she typically can back up without help and start again. As a result, the assessment appropriately concluded that Ms. Q requires supervision and setup help for locomotion (self-performance score 1, support score 1).

Bed Mobility: Bed mobility refers to how a person moves to and from a lying position, turns side to side, and positions her body while in bed. The assessment indicates that Ms. Q requires supervision and setup help to manage her bed mobility needs (self-performance code 1, support code 1).³² This was based on the nurse-assessor's observation that Ms. Q could reposition herself while seated, though she displayed some limitations to her right leg range of motion and weakness with her right grip. During the assessment visit, the nurse-assessor did not observe Ms. Q lie down or attempt to roll over in her bed. Ms. Q indicated during the visit that she can turn and shift her weight in bed, but she needs some help repositioning her right leg, since she cannot raise it while lying down.

At hearing, Ms. Q confirmed that she can manage many of her bed mobility needs on her own. She uses the grab bar nightly to help herself reposition in bed. Sometimes she is able to turn herself over without help. However, she reiterated that she sometimes needs another person to lift and move her right leg while she turns over during the night. Ms. Q testified that she needs this kind of help approximately three or four times per week. She stated that she typically lies in bed one way, and she doesn't turn over because she can't swing her right leg into place. When she needs help to turn, she calls for her son or granddaughter to physically move her leg while she uses the grab bar to move the rest of her body.

Because the narrative description in the assessment indicates that Ms. Q requires physical help to move her right leg when she is lying down, the third party reviewer from Qualis Health questioned the assessment's bed mobility rating. The reviewer stated that Ms. Q's needs for this ADL appear "higher than she is scored for."³³ It also noted that Ms. Q continues to have stage one pressure ulcers.

The assessment narrative corroborates Ms. Q's statements about her need for hands-on help to lift and reposition her right leg when she turns over during the night. Lifting her right leg would count as weight-bearing assistance. Ms. Q has consistently and specifically described this

³² Ex. E, p. 6.

³³ Ex. G, p. 6; Ex. D, p. 3.

need for weight-bearing assistance, and she credibly indicated that she requires this assistance three or four times per week. This evidence supports the conclusion that she requires extensive assistance with bed mobility (self-performance code 3, support code 2).

Transfers: Transfers refers to how a person moves to and from a bed or chair to a standing position. It does not include transfers to and from the toilet; that activity is assessed as part of the toilet use ADL. The assessment concludes that Ms. Q requires limited assistance from one person to transfer (self-performance code 2, support code 2).³⁴ During the reassessment visit, Ms. Q indicated that her son had installed grab bars around the house, and they have helped her transfer more independently, especially in the bathroom. The assessing nurse observed Ms. Q independently pull herself up from her wheelchair to a standing position at the kitchen sink. He did not observe her rise from lower surfaces such as other chairs, a couch, or her bed, but he recognized that she would need hands-on help to rise from those surfaces.³⁵

At hearing, Ms. Q stated that she has strong arms, and she can pull herself from a sitting position to a standing position as long as she has a grab bar, a high sink, or something to steady herself while she pulls up. She clarified that she is able to stand up without help when she is getting up from her wheelchair, because her wheelchair seat is already fairly high. She also indicated that she can pull herself up at the kitchen sink because it is high enough for her to pull on; however, she cannot pull herself up using lower sinks. Ms. Q reiterated that she needs help from another person to stand up from lower surfaces like her bed, her couch, and other chairs.

When asked to describe the help her personal care assistant (PCA) provides as she rises from lower surfaces, Ms. Q indicated that he both steadies her and pulls her up. He puts his arms under her arms, and he physically helps lift her up. Because Ms. Q rises from her bed daily, and she is likely to need regular physical assistance rising from other surfaces, she more likely than not requires extensive one person assistance for her transferring ADL (self-performance code 3, support code 2).

Toilet Use: Under the CAT, toileting refers to use of the toilet, including transfers on/off, cleansing, changing pads and adjusting clothing.³⁶ Bathing or showering is not included. The reassessment indicates that Ms. Q requires supervision and setup help to manage her toilet use needs (self-performance code 1, support code 1).³⁷ The nurse-assessor observed Ms. Q

³⁴ Ex. E, p. 6.

³⁵ Ex. E, p. 6.

³⁶ Ex. E, p. 9.

demonstrate how she enters the bathroom, uses the grab bar to stand and transfer onto the toilet, and then stand and transfer back to her wheelchair without help. The assessor noted that her upper body range of motion is adequate to manage cleansing and other toilet use needs without help.

Ms. Q told the assessor during his visit, and she confirmed at the hearing, that she can manage the transfer to and from the toilet on her own. She is able to stand momentarily on her left foot while she holds the bathroom grab bar, and she pivots around her foot to position herself on the toilet. She reverses the move to pivot from the toilet back to her wheelchair. However, she stated that she cannot stand for very long, and she must hold the grab bars to maintain her balance while she is standing. As a result, she sometimes needs assistance to arrange her clothing or her incontinence protection when she is getting back up off the toilet. She experiences urinary incontinence multiple times daily, so she is often managing toileting hygiene. When she is feeling good, she can hold the grab bar with one hand and pull up her undergarments with the other. When she is tired, however, she testified that someone else must help pull up her clothing while she uses both hands to hold the grab bar. She stated that her PCA usually helps her with this. Ms. Q also testified that she sometimes has trouble managing self-care on the toilet, and she sometimes needs help from someone else for this activity as well.

This evidence supports the conclusion that Ms. Q regularly requires hands-on help with her toilet use tasks. Specifically, she requires nonweight-bearing assistance to manage her hygiene or her clothing three or more times per week. The CAT defines this type of hands-on help as limited assistance (self-performance code 2, support code 2).³⁸

The Division has shown by a preponderance of the evidence that, as of the time of the November 2014 to March 2015 reassessment, Ms. Q did not require extensive assistance (self-performance code 3) with three of the five ADLs that pertain to Waiver eligibility. It encouraged Ms. Q to keep the Division informed if her doctor orders new therapies, however, as this could alter its Waiver eligibility determination.

³⁷ Ex. E, p. 9.

³⁸ Limited assistance includes receiving physical help in the guided maneuvering of limbs or other nonweight-bearing physical assistance three or more times per week, or it may include those actions plus weight-bearing assistance 1 or 2 times per week. Ex. E, p. 9.

IV. Conclusion

The preceding discussion examines Ms. Q's reassessment and concludes that Ms. Q requires extensive assistance with bed mobility and transfers. She requires limited assistance with toilet use. As a result, her condition has materially improved as defined by statute, and she no longer qualifies for Waiver Services.

Ms. Q continues to require varying degrees of assistance with some activities of daily living, and she clearly experiences significant chronic health challenges. The question for Waiver eligibility, however, is whether her physical health care needs require a nursing home level of care. The Division satisfied its burden to show that Ms. Q did not meet this standard at the time of her reassessment, and its decision to terminate her Medicaid Waiver services is upheld.

DATED this 7th day of July, 2015.

Signed

Kathryn A. Swiderski
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 22nd day of July, 2015.

By: *Signed*

Name: Lawrence A. Pederson

Title/Agency: Administrative Law Judge/OAH

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