

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

In the Matter of)
)
 M T)
_____)

OAH No. 15-0340-MDS
Agency No. 15-SDS-0141

DECISION

I. Introduction

M T applied for Medicaid Choice Waiver services (Waiver). The Division of Senior and Disabilities Services (division) denied her application. The Waiver program pays for services that allow an eligible person to stay in his or her home (or an assisted living home) rather than move into a nursing facility.¹ The level of care that is provided in a nursing facility is either “intermediate care” as defined by 7 AAC 140.510 or “skilled care” as defined in 7 AAC 140.515.

II. The Assessment

The division determines whether an applicant requires nursing facility level of care services by conducting an assessment.² For adults with disabilities, this assessment looks at the nursing level services defined in 7 AAC 140.510 and .515,³ and incorporates the results of the consumer assessment tool (CAT).⁴ The CAT is an evaluation tool created by the Department of Health and Social Services, and is adopted by reference in 7 AAC 160.900(d)(6). The division also looks at medical records and assessments, such as those done by physical therapists or occupational therapists.

III. Facts

Ms. T suffers from bipolar disorder, Parkinson’s disease, infection of knee replacement, degenerative disc disease, and sleep apnea.⁵ She has had multiple knee replacements that have been unsuccessful. She is expected to undergo an above the knee amputation on May 6, 2015.

Ms. T’s unchallenged testimony established that she is in a great deal of pain and could benefit from some assistance. She is very unhappy in her current living situation. She explained that her present living situation is less than ideal, as she is not getting the support or assistance that would make her life easier. Without assistance, she is forced to take care

¹ 7 AAC 130.205(d)(2).
² 7 AAC 130.230.
³ 7 AAC 130.230(b)(2)(A).
⁴ 7 AAC 130.230(b).
⁵ See Verification of Diagnosis dated January 13, 2015.

of herself, which increases her pain. She testified that she would fall in the bathroom because no one was there to help guide her.

On February 5, 2015, Ms. T's treating physician wrote that she is a fall risk and has fallen in the past. He noted that Ms. T can toilet independently, but that she needs assistance with bathing and transferring. She is unable to bear weight on her left leg.⁶ These appear to be his conclusions based upon a combination of his examination and what Ms. T told him.

On April 6, 2015 Ms. T underwent an occupational therapy incidental assessment.⁷ Part of the assessment included an assessment of ADL status. The assessment noted that Ms. T was independent with toileting, transfers, locomotion, and eating. Ms. T can use a walker, although due to problems with her arm, it is unreliable and she uses a wheelchair.

Ms. T testified that she agreed she could perform all of the ADLs without assistance but that it would be easier if she had assistance. Also, Ms. T explained that if she had waiver, her providers would be paid at a higher rate which in turn would allow her to move to a new home.

IV. Discussion

Ms. T is eligible for the program if she needs at least extensive assistance⁸ with at least three "shaded" ADLs.⁹ The shaded ADLs are Bed Mobility, Transfers, Locomotion, Eating, and Toilet use.¹⁰ For these ADLs, extensive assistance is defined as

help of the following type(s) provided 3 or more times [in the past week]:
Weight-bearing support [or] full staff/caregiver performance during part (but not all) of last 7 days.^[11]

Determining the level of assistance needed frequently requires more than just observing whether a person is capable of a particular activity during the assessor's visit to the home. For extensive assistance, the question is whether the applicant needed full staff or caregiver performance of the activity at least once in the last seven days, or weight-bearing support at least three times in the last seven days.

⁶ See February 5, 2015 Letter from M H, P.A.C.

⁷ See April 6, 2014 occupational assessment.

⁸ The level of assistance is rated on a 0 – 4 scale, with 0 being independent, and 4 being total dependence.

⁹ Exhibit E 31.

¹⁰ Exhibit E 20.

¹¹ See e.g., Exhibit E 9.

Ms. T's unchallenged testimony established that she is in pain and could use physical assistance, but she does not require weight bearing assistance to reasonably complete any of the activities of daily living.

V. Conclusion

There are several different ways in which the CAT can indicate that a person needs nursing facility level of care, and therefore is eligible for the Waiver program. The occupational evaluation completed on April 6, 2015 is given the most weight because it is recent and is an objective evaluation of her needs based upon her ability to complete certain tasks in an evaluative environment. Based on that evaluation and Ms. T's own testimony, she does not have any specific nursing or therapy needs at this time. The medical evidence submitted for hearing establishes that Ms. T does not require assistance with activities of daily living (ADL).

Therefore, the division's denial of Ms. T's application for waiver services is affirmed.

DATED this 6th day of May, 2015.

Signed

Rebecca L. Pauli
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 16th day of June, 2015.

By: Signed

Name: Jared C. Kosin, J.D., M.B.A.
Title: Executive Director
Agency: Office of Rate Review, DHSS

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