

The following facts relate to Ms. F's qualification for Waiver eligibility.

1. *Nursing services and therapies*

Ms. F is not receiving any nursing services.¹⁰ Ms. F attends physical therapy for her shoulder twice weekly, but this was slated to end shortly after hearing.¹¹

2. *Bed Mobility*

Ms. F is able to move from lying to sitting in bed, and reposition her body without assistance.¹²

3. *Transfer*

Ms. F is able to move from sitting to standing without assistance.¹³

4. *Locomotion*

The assessor observed Ms. F walk down the hall to the dining area using her cane.¹⁴ She also has a walker, but does not use it. The assessor scored Ms. F as needing supervision and setup help only with locomotion.¹⁵

5. *Eating*

Ms. F is able to feed herself and take medications without assistance. She eats stews, noodles, and soft foods.¹⁶ The assessor scored Ms. F as needing setup help only with eating.¹⁷

6. *Toilet Use*

Ms. F wears poise pulls ups and toilets without assistance.¹⁸

7. *Cognition*

Ms. F did not display cognitive deficits during the assessment.¹⁹

8. *Behavior*

Ms. F did not display, nor did ALH staff report any problem behaviors.²⁰

Based on Nurse Perius's 2015 evaluation and Ms. F's medical records, the Division determined that Ms. F was no longer eligible for the Waiver program.²¹ Ms. F's primary physician submitted the Division's level of care verification request stating that Ms. F does

¹⁰ Exhibit E15-17.

¹¹ F testimony; Facility X notes; Exhibit E5.

¹² Exhibit E8.

¹³ Exhibit E8.

¹⁴ Exhibit E9.

¹⁵ Exhibit E9; E20.

¹⁶ Exhibit E11.

¹⁷ Exhibit E11; E20.

¹⁸ Exhibit E11.

¹⁹ Exhibit E1; E6; E18.

²⁰ Exhibit E2; E20.

²¹ Exhibit D.

not have intermediate nursing needs and that he would not admit her to a skilled nursing facility.²² The Division notified Ms. F of its decision to terminate Waiver services on August 16, 2015.²³

III. Discussion

A. Medicaid Home and Community-Based Waiver Program

An adult with a physical disability is eligible to receive benefits under the Waiver program if he or she meets the eligibility requirements, including requiring the level of care that is normally provided in a nursing facility.²⁴ If eligible, the program pays for services that allow the recipient to stay in his or her home, or in an assisted living home, rather than move into a nursing facility. The level of care may that is provided in a nursing facility is described by regulation.²⁵

The Division determines whether an applicant requires nursing facility level of care services by conducting an assessment.²⁶ For older adults or adults with disabilities, this assessment looks at nursing level services definitions and incorporates the results of the Consumer Assessment Tool (CAT).²⁷ 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).

Once an individual has qualified to participate in the Waiver program, certain requirements must be met before he or she can be removed from that program. Specifically, the individual must have had an annual assessment, the assessment must find that the individual has materially improved, and the assessment must have been reviewed by an independent qualified health professional.²⁸ For adults with disabilities, the qualified health professional must be a registered nurse licensed in Alaska and qualified to assess adults with physical disabilities.²⁹ The Division must also review relevant medical information of

²² Exhibit F55.

²³ Exhibit D.

²⁴ 7 AAC 130.205(d)(2).

²⁵ Skilled nursing facility services are defined in 7 AAC 140.515. Intermediate care facility services are defined in 7 AAC 140.510.

²⁶ 7 AAC 130.213.

²⁷ See 7 AAC 130.213(4)(A) & (B); 7 AAC 140.510; 7 AAC 140.515.

²⁸ AS 47.07.045(b)(1) – (3).

²⁹ AS 47.07.045(b)(2)(B).

which it is aware.³⁰ 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.³¹

Based on this definition, a “material improvement” determination is focused on whether the individual currently qualifies for the Waiver program rather than on any specific changes in functional limitation or cognitive impairment since a prior assessment.³² 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.³³ Because the Division seeks to terminate Ms. F’s participation in the program, it has the burden of proof.³⁴

B. Ms. F’s Material Improvement

As noted above, the Division’s assessment incorporates the results of the CAT evaluation. There are several different ways in which the scoring on the CAT will indicate that a person qualifies for the Waiver program. The nurse’s evaluation is summarized on the scoring page.³⁵

Ms. F would qualify for the program if she had certain skilled nursing needs listed in section NF1 of the summary sheet. She does not have skilled nursing needs.³⁶ Ms. F would also qualify if she needed at least extensive assistance with three or more of the “shaded” activities of daily living (ADLs). The shaded ADLs are Bed Mobility, Transfers, Locomotion, Eating, and Toilet Use.³⁷ Bathing and Dressing scores are not used to determine Waiver eligibility. Extensive assistance is defined as needing weight-bearing support to perform the task three or more times during a week, or being totally dependent on a caretaker to perform the task during some, but not all, of the prior week.³⁸

Based on her observations during the CAT evaluation, Nurse Perius concluded that Ms. F did not need extensive assistance with any of her shaded ADLs. Nurse Perius scored

³⁰ *Krone v. Dept. of Health and Soc. Services*, 3AN-05-10283 CI, Order Clarifying Final Judgment (October 1, 2014, Alaska Superior Ct.)

³¹ AS 47.07.045(b)(3)(C).

³² *In re E H*, OAH No. 13-1000-MDS, at 3 (Comm’r of Health & Soc. Serv. 2013).

³³ *In re T C*, OAH No. 13-0204-MDS, at 7 (Comm’r of Health & Soc. Serv. 2013).

³⁴ 7 AAC 49.135.

³⁵ Exhibit E31 – 32.

³⁶ Exhibit. E15-17.

³⁷ Exhibit E20.

³⁸ See Exhibit E20.

Ms. F as independent or needing supervision and setup help only with all of the shaded ADLs. Ms. F's testimony did not contradict the 2015 CAT findings. Ms. F's care coordinator did not present evidence to contradict Nurse Perious's findings either.

Ms. F could also be found eligible for the Waiver program if she has sufficiently severe cognitive deficits or problems behaviors, or receives nursing services or therapies at least three days per week, and needs at least limited assistance with two or more of the shaded ADLs.³⁹ Ms. F only attends physical therapy two days per week and does not need limited assistance with any of the shaded ADLs. Overall, the record supports the Division's determination that Ms. F is no longer eligible for Waiver.

IV. Conclusion

Ms. F previously qualified for the Waiver program because she needed limited assistance with shaded ADLs and attended physical therapy three times per week. Ms. F's functional abilities have improved and her physical therapy sessions do not qualify her for Waiver. Accordingly, the Division's decision is affirmed. Ms. F may reapply if her condition declines.

Dated: October 30, 2015.

Signed
Bride Seifert
Administrative Law Judge

Adoption

The undersigned, by delegation from of 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 November, 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.]

³⁹ See Exhibit E33.