

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

In the Matter of	)	
	)	
F C	)	OAH No. 16-1274-MDS
_____	)	Division No.

**DECISION**

**I. Introduction**

F C applied for Medicaid Home and Community-Based Waiver (“Waiver”) services. The Division of Senior and Disabilities Services (Division) denied his application. Mr. C requested a hearing to challenge the denial.<sup>1</sup>

Mr. C’s hearing was held on February 8, 2017. Mr. C represented himself. Victoria Cobo represented the Division. The record was held open after the hearing for additional medical information.

Mr. C’s physical mobility is impaired from a stroke. The Division agreed that he requires extensive assistance with toileting and transfers. The evidence also demonstrates that he requires extensive assistance with bed mobility. Because he requires extensive assistance with toileting, transfers, and bed mobility, Mr. C proved, by a preponderance of the evidence, that he qualifies for Medicaid Waiver services. The Division’s denial of his application is reversed.

**II. Background Facts**

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

Mr. C is 63 years old. He has hypertension, hemiplegia, and hemiparesis following a stroke. He lives in an assisted living home (ALH).<sup>2</sup>

Natasha Fromm works for the Division. She assessed Mr. C on October 19, 2016 to determine if he was eligible for Waiver services. The assessment found Mr. C’s medical care needs and physical mobility issues were not severe enough for him to qualify for Waiver services.<sup>3</sup> The Division notified Mr. C that his Waiver application was denied on October 28, 2016.<sup>4</sup>

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<sup>1</sup> Ex. C.  
<sup>2</sup> Ex. E, pp. 3, 5.  
<sup>3</sup> Ms. Fromm’s testimony; Ex. E, pp. 8 - 11, 31.  
<sup>4</sup> Ex. D.

### III. Discussion

#### A. Method for Assessing Eligibility

An applicant must require a nursing facility level of care to qualify for Medicaid Waiver benefits. That level of care<sup>5</sup> requirement is determined by an assessment which is documented by the Consumer Assessment Tool (CAT).<sup>6</sup> The assessment measures an applicant's medical care needs, and his or her ability to function physically: it records an applicant's needs for professional nursing services, therapies, and special treatments,<sup>7</sup> whether an applicant has substantially impaired cognition or problem behaviors,<sup>8</sup> and the applicant's ability to perform specific measured activities of daily living (ADLs), and what type of assistance he or she needs, if any, with those activities.<sup>9</sup> Each of the assessed items 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> Alternatively, if a person requires extensive physical assistance (self-performance code of 3) or is completely dependent (self-performance code of 4) with three or more of five specified ADLs (bed mobility, transfers, locomotion within the home, eating, and toileting), that person would also receive a score of 3.<sup>11</sup>

A person can also receive points for combinations of required nursing services, therapies, substantially 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>12</sup> If an applicant's score is a 3 or higher, the applicant is medically eligible for Waiver services.<sup>13</sup>

#### B. Eligibility

An applicant for Waiver services has the burden of proof by a preponderance of the evidence.<sup>14</sup> The relevant date for purposes of assessing the state of the facts is, in general, the date of the agency's decision under review.<sup>15</sup>

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<sup>5</sup> See 7 AAC 130.205(d)(4); 7 AAC 130.215.

<sup>6</sup> 7 AAC 130.215(4).

<sup>7</sup> Ex. E, pp. 15 - 17.

<sup>8</sup> Ex. E, pp. 18 - 19.

<sup>9</sup> Ex. E, pp. 8 - 9, 11, 20.

<sup>10</sup> Ex. E, p. 31.

<sup>11</sup> Ex. E, pp. 20, 31.

<sup>12</sup> Ex. E, p. 31.

<sup>13</sup> Ex. E, p. 31.

<sup>14</sup> 7 AAC 49.135.

Mr. C does not have any documented nursing needs, substantial mental or behavioral impairments, no specialized medical care, and does not receive any therapies, such as occupational or physical therapy, three or more days per week.<sup>16</sup> Accordingly, his only path to Waiver eligibility is if he requires a minimum of extensive assistance with three or more of the scored ADLs (bed mobility, transfers, locomotion, eating, and toileting).

Mr. C's assessment shows a need for extensive assistance with toileting. At hearing, Ms. Fromm, the Division's assessor, agreed that he requires extensive assistance with transfers.<sup>17</sup> To qualify for Waiver benefits, Mr. C would also require extensive assistance with at least one of the ADLs of bed mobility, locomotion, and eating. Mr. C can locomote independently using a wheelchair and does not require assistance with eating.<sup>18</sup> He, however, contends that he requires extensive assistance with bed mobility. Accordingly, the only factual issue to resolve is whether Mr. C requires extensive assistance with bed mobility.

Bed mobility is defined as "[h]ow a person moves to and from lying position, turns side to side, and positions body while in bed."<sup>19</sup> The assessor's notes on the assessment provide that Mr. C told her that he can turn on one side but not the other, and that he cannot sit up in bed from a lying position without assistance. The ALH staff told the assessor that they pull him up in bed. The assessor's observations provide that "ALH staff helps him to sit up after he lies back in bed."<sup>20</sup>

D S is the administrator at the ALH. At the time of the hearing, Mr. C had been residing at the ALH for approximately 8 months, and she was familiar with his care needs. She testified that Mr. C needs help turning on one side approximately once per day. She also said that he had to put his right arm around a person's neck and had to be physically lifted to a sitting position in bed. She described him as being "dead weight" approximately once daily when he needs to be moved in bed.<sup>21</sup> Ms. S was a credible witness, based upon her overall testimony regarding Mr. C's care needs.

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<sup>15</sup> See 7 AAC 49.170; *In re T.C.*, OAH No. 13-0204-MDS (Commissioner of Health & Soc. Serv. 2013) (<http://aws.state.ak.us/officeofadminhearings/Documents/MDS/HCW/MDS130204.pdf>).

<sup>16</sup> Ex. E, pp. 1 - 2, 15 - 19.

<sup>17</sup> Ms. Fromm's testimony.

<sup>18</sup> Ms. S's testimony.

<sup>19</sup> Ex. E, p. 8.

<sup>20</sup> Ex. E, p. 8.

<sup>21</sup> Ms. S's testimony.

Dr. J, Mr. C's physician, wrote a letter on November 17, 2016, only weeks after the Division denied his application on October 28, which stated that Mr. C could not "[t]urn himself in bed" on his own.<sup>22</sup> Dr. J's clinical notes from November 17, 2016 similarly state "[c]annot turn self in bed. He is getting [physical therapy]."<sup>23</sup> Mr. C's physical therapist emailed Dr. J on December 6, 2016, that Mr. C's care coordinator told him that Mr. C needed moderate assistance with transfers from lying to sitting, and to keep himself in midline while sitting on the edge of the bed. The physical therapist's email further stated he found "that hard to believe, but will wait until I start treating him to fully assess what he can/cannot do."<sup>24</sup> The physical therapy notes from February 13, 2017 state that he can turn from side to side in bed, but that he required moderate assistance for moving from a lying to a sitting position: "once supine, he requires assistance to sit up as he needs trunk support to lift trunk up. He is Mod A for TF supine to sit."<sup>25</sup>

Based upon the evidence as a whole, it is therefore more likely true than not true that Mr. C can turn from side to side in bed, but that he needs moderate assistance to sit up in bed. Based upon Ms. S's credible testimony, he requires weight-bearing assistance in doing so at least once a day, because he becomes "dead weight." In order to qualify as requiring extensive assistance with bed mobility, he would need weight-bearing support three or more times weekly. Once daily weight-bearing assistance satisfies this requirement.

Because Mr. C undisputedly requires extensive assistance with transfers and toileting, and because he showed that he also requires extensive assistance with bed mobility, he qualifies for Medicaid Waiver benefits.

#### **IV. Conclusion**

The Division's denial of Mr. C's application for Medicaid Waiver benefits is reversed.

DATED this 1<sup>st</sup> day of March, 2017.

*Signed* \_\_\_\_\_  
Lawrence A. Pederson  
Administrative Law Judge

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<sup>22</sup> November 17, 2016 letter from Dr. K J.

<sup>23</sup> Clinic notes from November 17, 2016.

<sup>24</sup> December 6, 2016 email from G M to Dr. J.

<sup>25</sup> Physical therapy notes from February 13, 2017.

## 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 15<sup>th</sup> day of March, 2017.

By: *Signed*  
Name: Lawrence A. Pederson  
Title/Agency: Admin. Law Judge/OAH

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