

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

In the Matter of _____)
)
D X) OAH No. 17-0417-MDS
) Agency No.

DECISION

I. Introduction

D X applied for the Medicaid Home and Community-Based Waiver Services (waiver) program administered by the Division of Senior and Disability Services.¹ The Division assessed Mr. X’s functional, cognitive and behavioral condition and determined that he was ineligible for the program. K X, Mr. X’ brother and guardian, filed an appeal on his behalf.

Because the evidence presented at the hearing did not establish that Mr. X is eligible to participate in the waiver program, the Division’s decision is affirmed.

II. Facts

D X is 67 years old.² He lives alone in a senior housing apartment in No Name City, Alaska.³ Mr. X experienced a stroke in 2011 and underwent hip replacement surgery in 2015.⁴ Since his stroke, Mr. X experiences numbness on his right side. Mr. X displays cognition difficulties, mixes up words, and does not follow conversations well or answer questions appropriately. He has memory loss, hearing and vision loss, and is disoriented to time and purpose.⁵ Mr. X also lacks safety awareness.⁶ For example, he failed to realize that he burned himself while cooking.⁷ Mr. K X makes all his financial and medical decisions.

Mr. X attends physical therapy once a week and speech therapy twice per week, but does not require regular professional nursing assistance. In addition, Mr. X is to complete range of motion exercises four times per week, with assistance.⁸ He also takes blood thinners, which require monitoring by regular blood tests.⁹

¹ See AS 47.07.045.
² Ex. E1.
³ See Ex. E1.
⁴ K X testimony; Ex. 2, speech pathology notes.
⁵ Ex. 1, neuropsych evaluation; CAT cognition scoring page.
⁶ Ex. 4, physical therapy notes.
⁷ K X testimony.
⁸ Ex. 6, p. 17.
⁹ K X testimony.

Mr. X can move from a sitting to standing position without the aid of another person. He uses his arms to push himself up off furniture.¹⁰ Mr. X' gait is unsteady; he is "wobbly" on his feet, and he uses a walker to ambulate.¹¹ Mr. X is able to feed himself. Mr. X reports that he can dress himself.¹² However, he is supposed to wear compression socks, which he cannot put on himself.¹³ Mr. X needs a good deal of assistance with meal preparation, routine housework, shopping and similar chores.¹⁴ Mr. X also needs medication reminders, and accidentally overdosed on his medications in April 2017.¹⁵

Mr. X has a high fall risk and a history of falls.¹⁶ In November 2016, Mr. X fell off his bicycle, broke his hip and ended up in the hospital, and then a nursing facility for three and a half months.¹⁷ Mr. X thought it would be a good idea to ride his bike because it was too slippery to walk.¹⁸

Mr. X received waiver services and lived in an assisted living home following his 2011 stroke.¹⁹ According to K X, Mr. X' values his independence very much. Although Mr. X condition continues to decline, he does not want to live in an assisted living home. To this end, he may over report his abilities in order to remain independent. For example, Mr. X will deny falls, even when witnessed by his brother.

Robin Platt assessed Mr. X on March 10, 2017. K X, care coordinator J T, and Dr. S W, Mr. X' doctor, attended the assessment. Dr. W explained to Ms. Platt that Mr. X was a very high fall risk.²⁰

Ms. Platt observed Mr. X and scored him as independent in bed mobility, transfers, locomotion, eating, and toilet use.²¹ Mr. X' independent scores are underrated. Mr. X high fall risk more accurately correspond with a score of 1/1, supervision and set up help.

Ms. Platt scored Mr. X as needing extensive assistance with dressing and bathing.²² These scores are appropriate, particularly given concerns with body odor and cleanliness, and

¹⁰ Ex. E6.

¹¹ Ex. 5, p. 23 – 25, gait test; Platt testimony.

¹² Ex. E8.

¹³ Ex. E8.

¹⁴ Ex. E27; K X testimony.

¹⁵ Ex. 3, p. 38 of 43.

¹⁶ See Ex. 3, Emergency Room Visits,

¹⁷ K X testimony; Ex. 3.

¹⁸ K X testimony.

¹⁹ K X testimony.

²⁰ K X testimony.

²¹ Ex. E19.

²² Ex. E19 – 20.

Mr. X' inability to don his compression socks.²³ Mr. X' cognition score (13) indicates a high level of impairment.²⁴ Mr. X does not display problem behaviors, other than those associated with his lack of understanding and ability in terms of self-care.²⁵

The Division notified Mr. X that he did not qualify for the wavier program on March 17, 2017.²⁶ He appealed and his hearing was held on June 5, 2017. K X and Ms. T testified on Mr. X' behalf. Victoria Cobo presented the Division's position, and Ms. Platt testified on its behalf. Mr. K X testified that his brother needed more help with activities of daily living and may soon need to move to an assisted living home. Ms. Platt testified that Mr. X condition continues to decline.

Mr. X provided a number of medical records, including emergency room visits, primary care provider, physical therapy, speech therapy, occupational therapy, and neuropsychologist reports.²⁷ These records generally support Ms. Platt's assessment. Namely, Mr. X has serious cognitive impairments, but does not require hands on physical assistance with toileting, eating, bed mobility, transfers, or locomotion.²⁸

III. Discussion

The Choice Waiver program is designed to permit persons who would otherwise require services available in a nursing facility to choose to receive home and community-based services as an alternative to institutional care.²⁹ Under the program, an older adult may be provided such services as transportation, assistance with household chores, respite care for unpaid care providers, adult day services, and meals.³⁰

The Division determines whether a person is eligible for Choice Waiver services by conducting an assessment.³¹ The assessment is conducted using the Consumer Assessment Tool (CAT).³² For a person who, like Mr. X, does not require professional nursing assistance or extensive assistance with self-care (other than assistance with such things as meal preparation, routine housework, and so on), eligibility for participation in the Choice Waiver program depends on the person's cognitive and behavioral condition.

²³ Platt testimony; Ex. E8.

²⁴ CAT Cognition scoring page.

²⁵ CAT Behavior scoring page.

²⁶ Ex. D.

²⁷ See Ex. 1 – 7.

²⁸ See, for example, Ex. 5, p. 23 -25; Ex. 6, p. 5;

²⁹ See 7 AAC 130.200.

³⁰ See generally, 7 AAC 130.245-.300.

³¹ 7 AAC 130.215(4).

³² 7 AAC 125.020(b); 7 AAC 160.900(d)(6).

Mr. X was provided an evidentiary hearing, and submitted additional documentation. However, this evidence did not demonstrate a need for physical assistance with the activities of bed mobility, transfers, locomotion, eating or toilet use – also known as the “shaded ADLs”. For each of those activities, Mr. X had been scored on the CAT as not requiring physical assistance. Even after adjusting Mr. X’ transfers and locomotion scores to 1/1, he still does not qualify for waiver services. A person who does not require physical assistance with the shaded ADLs is ineligible for Choice Waiver services under the CAT, regardless of the scores provided for cognitive and behavioral conditions.³³

Mr. X demonstrates greatly impaired cognition and a need for greater supervision. These needs, as serious as they are, do not meet the requirements for the waiver program.

IV. Conclusion

Mr. X did not establish, by a preponderance of the evidence, that he meets the requirements for eligibility for the Choice Waiver program. The Division’s decision is therefore affirmed.

DATED June 7, 2017

Signed

Bride Seifert
Administrative Law Judge

Adoption

The undersigned adopts this decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 25th day of July, 2017.

By: Signed

Signature
Bride Seifert

Name
Administrative Law Judge

Title

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

³³ See Ex. E, p. 31.