

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

In the Matter of )  
 )  
W O ) OAH No. 17-0641-MDS  
 ) Agency No.  
\_\_\_\_\_ )

**DECISION**

**I. Introduction**

W O receives services through the Medicaid waiver program. The Division of Senior and Disabilities Services reassessed Ms. O's condition in 2016, and concluded that it had materially improved. As result, it found that Ms. O no longer met the level of care standard for the waiver program, and notified her that her waiver services would end. Ms. O requested a hearing.

Ms. O no longer meets the specific level of care requirements for the Medicaid waiver program and can function in a home setting with family support and personal care services. The division's termination of Ms. O's waiver benefits is affirmed.

**II. Facts**

W O is 79 years old. Her primary language is Russian. She lives with her daughter and son-in-law. She receives Medicaid services through both the personal care services (PCS) and home and community based waiver (waiver) programs.<sup>1</sup>

For the waiver program, the division determines what level of care a person requires using the consumer assessment tool (CAT).<sup>2</sup> The CAT is an evaluation tool created by the Department of Health and Social Services.<sup>3</sup> The CAT assesses an applicant's needs for professional nursing services, therapies, and special treatments, and whether an applicant has impaired cognition or displays problem behaviors. The CAT also records the degree of assistance an applicant requires for various physical activities of daily living (ADLs).<sup>4</sup>

Ms. O qualified for waiver services based on an evaluation conducted in December 2013. In November 2013, Ms. O had bypass surgery, and suffered a stroke while she was hospitalized.<sup>5</sup> In

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<sup>1</sup> Exhibit H at 1, 159.

<sup>2</sup> 7 AAC 130.215(4). The CAT is also used to determine the need for personal care services, but personal care services were not the subject of this appeal.

<sup>3</sup> The CAT has been adopted by reference into the administrative code at 7 AAC 160.900(d)(6) and therefore is itself a regulation.

<sup>4</sup> Division Exhibit E.

<sup>5</sup> Exhibit F at 3.

December 2013, she was undergoing physical therapy three days a week as part of a cardiac rehabilitation program.<sup>6</sup> An assessment conducted by the division in December 2013 found that Ms. O needed limited assistance with bed mobility, transfers, and toileting.<sup>7</sup> The day of the 2013 assessment, Ms. O was able to draw a clock, but could not remember three items in five minutes. She reported feeling confused at times since her stroke, and was unable to recall the date and month, but knew it was “the snow season.”<sup>8</sup> In 2013, the assessor apparently did not complete a supplemental screening tool for cognition.<sup>9</sup>

In October 2016, Registered Nurse Julie White reevaluated Ms. O. The 2016 CAT found that Ms. O was no longer receiving cardiac rehabilitation therapy three days a week. It also concluded that Ms. O was independent in bed mobility and needed only setup help with transfers, although she now needed extensive assistance with toileting.<sup>10</sup> Regarding cognition, the 2016 CAT found that Ms. O could draw a clock, but could not recall three items in five minutes. The assessor noted that Ms. O “appeared to use expressive & receptive language & appeared to be oriented to person, place & time,” and noted Ms. O’s daughter’s concern about her mother’s decreased memory, increased confusion, and need for more reminders and cues.<sup>11</sup> The assessor found that Ms. O could recall details and sequences of recent experiences and remember names of meaningful acquaintances. She found that Ms. O had minimal difficulty with remembering and using information, requiring direction and reminding from others one to three times a day. She found that Ms. O experiences periodic confusion during the daytime. Finally, she found that Ms. O was spatially oriented and able to find and keep her bearings, and that she spoke normally.<sup>12</sup> Based on this, the assessor found that Ms. O was not medically eligible for the nursing facility level of care.<sup>13</sup>

In March 2017, the division had Registered Nurse Marianne Sullivan review Ms. White’s conclusions about Ms. O’s need for care. Ms. Sullivan reviewed Ms. O’s history in the waiver program, the 2013 and 2016 CATs, and additional documentation from Ms. O’s primary care physician from November and December 2016. Ms. Sullivan concluded that Ms. O did not have functional limitations

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<sup>6</sup> Exhibit F at 14; Testimony of White.

<sup>7</sup> Exhibit F at 18.

<sup>8</sup> Exhibit F at 4.

<sup>9</sup> Exhibit F.

<sup>10</sup> Exhibit E at 8, 11.

<sup>11</sup> Exhibit E at 6.

<sup>12</sup> Exhibit E at 1.

<sup>13</sup> Exhibit E at 31.

or cognitive impairment that required nursing home placement, and that Ms. O could function in a home setting with family support without a need for waiver services.<sup>14</sup>

On March 20, 2017, division contractor Qualis Health conducted a third-party review of Ms. O's assessment and concurred with the division's conclusion that Ms. O no longer met the level of care requirement for the waiver program, and could function in a home setting without waiver services.<sup>15</sup>

Based on the 2016 CAT, and Ms. Sullivan and Qualis's reviews, on March 23, 2017, the division terminated Ms. O's participation in the waiver program.<sup>16</sup> On April 17, 2017, Ms. O's daughter and son-in-law requested a fair hearing.<sup>17</sup>

Ms. O's daughter had expressed concern to Ms. O's physician Dr. E C as early as November 2, 2015, that Ms. O "was experiencing slowly progressive memory problems."<sup>18</sup> On July 21, 2017, Dr. C conducted a mini-mental status examination (MMSE) of Ms. O and gave her a score of 21/30.<sup>19</sup> This corresponds to a mild degree of cognitive impairment.<sup>20</sup> Ms. O's physical function was evaluated at Excel Physical Therapy on August 1, 2017.<sup>21</sup> The division reviewed this information, but did not change its position on the waiver termination.<sup>22</sup>

A hearing in this matter was held on August 28, 2017. S N, Ms. O's son-in-law and holder of her power of attorney, represented Ms. O. Ms. O's daughter M N also participated. Ms. O did not participate. Fair Hearing Representative Terri Gagne represented the division. Nurse Assessor Julie White testified for the division. D E and O U of No Name Care, Ms. O's personal care agency, and Care Coordinator T L of No Name Care testified for Ms. O.

At the hearing, Ms. O's daughter testified to her mother's increasing difficulties with memory and cognition. Ms. O is forgetful. She has trouble remembering names. Ms. N explained that there have been several occasions where her mother forgot to turn off a faucet, resulting in water overflowing in the kitchen, bathroom, and garage. At least twice, Ms. O has used the stove and forgotten to turn the burner completely off, causing gas to leak

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<sup>14</sup> Exhibit H at 169 - 171.

<sup>15</sup> Exhibit G.

<sup>16</sup> Exhibit D.

<sup>17</sup> Exhibit C.

<sup>18</sup> Exhibit H at 90.

<sup>19</sup> Exhibit I at 1 - 7.

<sup>20</sup> Exhibit K at 2; Exhibit L at 1 - 2.

<sup>21</sup> Exhibit I at 9 - 11.

<sup>22</sup> Exhibit K, L.

into the house. Because of instances like these, her family no longer leaves Ms. O alone because they feel that it is not safe to do so.

Ms. O's daughter also testified that her mother was increasingly confused about time, thinking that it is morning when it is in fact evening, and dressing up for church in the middle of the week. She may expect something to happen – a visit to the doctor or from a grandchild – that had already taken place the previous day. Ms. U, who is acquainted with Ms. O both socially through church and as an employee of No Name Care, confirmed that Ms. O's memory is deteriorating, as did Mr. N. Ms. U testified that Ms. O has trouble recalling people's names, and has mixed up the names of two of her daughters.

### **III. Discussion**

A person age 65 or older may be eligible to receive benefits under the waiver program if the person requires the level of care that is normally provided in a nursing facility.<sup>23</sup> The program pays for services that allow the person to stay in the person's home rather than move into a nursing facility. Regulations define the level of care that is normally provided in a nursing facility.<sup>24</sup>

Once an individual has qualified to participate in the waiver program, before the division may terminate waiver services, the division must assess the individual. The assessment must be reviewed by an independent qualified health professional. The assessment must find that the individual has materially improved to the point where the individual "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."<sup>25</sup>

A person can qualify for waiver services in several different ways. A person may qualify based solely on the need for nursing services or solely on the need for extensive assistance with physical functioning and activities of daily living. Alternatively, a person may qualify through a combination of needing at least limited assistance with activities of daily living and having cognitive or behavioral issues or other nursing service needs.

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<sup>23</sup> 7 AAC 130.205(d)(4).

<sup>24</sup> Skilled nursing facility services are defined in 7 AAC 140.515. Intermediate care facility services are defined in 7 AAC 140.510.

<sup>25</sup> AS 47.07.045(b)(1) – (3).

To qualify for waiver services based only on ADLs, an applicant must need extensive assistance with at least three of the following ADLs: bed mobility, transfers, locomotion, eating, and toilet use. To qualify based on a combination of ADLs and cognitive, behavioral, or other needs, an applicant must need at least limited assistance with one or more ADLs, and must receive at least one point on the CAT's nursing and ADL needs scoresheet for other nursing services, cognitive, or behavioral needs.<sup>26</sup>

Ms. O qualified to participate in the waiver program in 2013 based on her need for cardiac rehabilitation therapy three days a week combined with her need for limited assistance in the areas of bed mobility, transfers, and toileting.<sup>27</sup> In the 2016 assessment, the division found that Ms. O was no longer receiving cardiac rehabilitation therapy, and that she was no longer medically eligible for a nursing facility level of care.<sup>28</sup>

Because the division seeks to terminate Ms. O's waiver benefits, the division has the burden of proof in this case.<sup>29</sup> O's family did not dispute that Ms. O no longer receives cardiac rehabilitation therapy. They argued that Ms. O should continue to receive waiver services based on her deteriorating memory and physical condition. However, a preponderance of the evidence supports the division's conclusion that Ms. O does not meet the nursing home level of care requirement for the program.

#### ***A. Cognition***

The CAT sets a very high scoring threshold to obtain waiver services based on memory and cognitive difficulties. A person must display short-term memory problems, have trouble with recall ability, and be moderately or severely impaired in the person's ability to make decisions regarding tasks of daily life. In addition, the person must 1) need professional nursing assessment, observation, and management at least three days a week to manage cognitive patterns, or 2) need limited assistance with at least one ADL and score 13 or more on the supplemental screening tool for cognition.<sup>30</sup>

##### **1. Short-term memory, memory recall, and cognitive skills for daily decision-making**

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<sup>26</sup> Exhibit E at 31.

<sup>27</sup> Exhibit F at 6, 9, 29; Testimony of Gagne.

<sup>28</sup> Exhibit E at 31.

<sup>29</sup> 7 AAC 49.135.

<sup>30</sup> Exhibit E at 18, 31.

The 2013 CAT found that Ms. O had trouble with her short-term memory, but the 2016 CAT did not. Short-term memory refers to a person's ability to recall after five minutes. At the 2016 assessment, Ms. O recalled three items in five minutes for the assessor, something she had not been able to do unassisted during the 2013 assessment.<sup>31</sup> In 2013 she recalled one item, and all three with prompting.<sup>32</sup> Although Ms. O was able to recall three items in five minutes for the assessor in 2016, the testimony at the hearing indicated that she still has short-term memory problems. Specifically, Ms. N's testimony that Ms. O would do the dishes but forget to turn the water off suggests that short-term memory problems remain.

For memory and recall ability, the CAT evaluates whether a person can recall the current season, the location of the person's own room, names and faces, and where the person is. If a person can only recall two of the four elements, they meet the memory and recall ability element of the test.

In 2013, Ms. O could recall all four elements of the memory and recall ability test. However, in 2016, the assessor did not check the box to indicate that Ms. O could remember names and faces. Ms. O's ability to remember names and faces is discussed further in the section on the supplemental screening tool, below. It is more likely than not that Ms. O is having trouble remembering names.

In 2013, the assessor established that Ms. O knew the season -- it was the snow season.<sup>33</sup> In 2016, the assessor checked the box indicating that Ms. O knew the season, but she did not indicate on the CAT or in her testimony at the hearing how she ascertained that Ms. O still knew the season. The CAT itself does not indicate how the assessor determined that Ms. O knew what season it was during the 2016 assessment, and the assessor did not address this in her testimony at the hearing. However, testimony from Ms. O's daughter at the hearing suggested that Ms. O was not able to keep track of the day of what day of the week it was, thinking that it was Sunday midweek. Also, she reported to Dr. C in July 2017 that Ms. O did not know the season.<sup>34</sup> Based on her daughter's reports, it is more likely than not that Ms. O does not remember the season.

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<sup>31</sup> Exhibit E at 6.

<sup>32</sup> Exhibit F at 4.

<sup>33</sup> Exhibit F at 4.

<sup>34</sup> Exhibit I at 1.

Both the 2013 and 2016 CATs found Ms. O moderately impaired in her ability to make decisions regarding tasks of daily life.<sup>35</sup>

Because Ms. O has difficulties with short-term memory, memory recall, and cognitive skills for daily decision-making, Ms. O meets the first three elements for establishing cognitive issues sufficient to qualify for waiver services based on a combination of ADLs and cognitive issues.<sup>36</sup> However, even though Ms. O meets these criteria, she does not meet the fourth requirement for demonstrating a need for nursing facility level of care based on cognition.

Both the 2013 and 2016 CATs found that Ms. O did not require professional nursing assessment, observation, and management at least three days a week to manage her cognitive patterns.<sup>37</sup> Ms. O's family did not contest this. If a person's cognitive patterns do not require professional nursing assessment, observation, and management at least three days a week, then the person's eligibility for waiver services would have to be based on a combination of ADLs and the person's score on the supplemental screening tool for cognition.<sup>38</sup>

## 2. Supplemental screening tool for cognition

The supplemental screening tool assesses five areas: memory for events, memory and use of information, global confusion, spatial orientation, and verbal communication.<sup>39</sup> The 2013 CAT did not include a supplemental screening tool for cognition.<sup>40</sup> On the 2016 CAT, Ms. O scored a 3 on the supplemental screening tool for cognition.<sup>41</sup>

To qualify for waiver services based on a combination of ADLs and the person's score on the supplemental screening tool for cognition, the person must score at least 2/2 on one ADL, and receive a total score on the supplemental screening tool for cognition of at least 13. Ms. O meets the ADL requirement to qualify on a combination of ADLs and cognition based on her 3/2 score for toileting. However, her total score of 3 on the supplemental screening tool for cognition was not high enough to qualify for waiver services. The evidence indicates that Ms. O should receive a higher score on the

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<sup>35</sup> Exhibit E at 18.

<sup>36</sup> Exhibit E at 18, 31.

<sup>37</sup> Exhibit E at 18, Exhibit F at 16.

<sup>38</sup> Exhibit E at 31.

<sup>39</sup> Exhibit E at 1.

<sup>40</sup> Exhibit F.

<sup>41</sup> Exhibit E at 1.

supplemental screening tool. However, her cognitive issues are still not severe enough to qualify for waiver services based on a combination of ADLs and cognition.

In the first section on the supplemental screening tool for cognition, Ms. O was scored at 0 in memory for events, meaning she “[c]an recall details and sequences of recent experiences and remember names of meaningful acquaintances.”<sup>42</sup> A score of 1 would indicate that the person cannot recall details or sequences of recent events or remember names of meaningful acquaintances. A score of 2 would correspond to a person who cannot recall entire events (such as recent outings, visits of relatives or friends) or names of close friends or relatives without prompting. A score of 3 indicates an inability to recall entire events or the name of one’s spouse or other living partner even with prompting.

Ms. O has trouble remembering recent events and names of family members. In the main cognition section of the 2016 CAT, the assessor did not check the box that would indicate that Ms. O was normally able to recall names and faces during the last seven days, a change from the 2013 CAT.<sup>43</sup> Ms. U testified credibly that Ms. O is having trouble with memory, and has mixed up the names of two of her daughters. According to her daughter, Ms. O has difficulty recalling events that had already taken place, for example a visit to the doctor or a visit from a grandchild.

Based on the testimony at the hearing, it is more likely than not that Ms. O is experiencing deficits in her memory for events. At times she has trouble recalling entire events or the names of close relatives without prompting. Ms. O should be scored at 2 for memory for events on the supplemental screening tool for cognition.

On the 2016 CAT, Ms. O was scored at 1 for memory and use of information, meaning she has minimal difficulty remembering and using information, and that she requires direction and reminding from others one to three times a day. The testimony of her family members at the hearing, however, indicates that greater difficulty remembering and using information. Ms. N stated that her mother could no longer safely be left alone at home; she needs someone with her to prevent things like leaving the water running or failing to turn the gas on the stove all the way off. Mr. N testified that Ms. O forgets what she eats, can’t find where things are in the house, and forgets to put on her coat before she

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<sup>42</sup> Exhibit E at 1.

<sup>43</sup> Exhibit E at 18.



goes outside. In his view, she can no longer attend to these details of life on her own due to her memory issues. Ms. U also testified to Ms. O's declining memory. Based on all of this, it is more likely than not that Ms. O has difficulty remembering and using information and requires direction and reminding from others four or more times a day. She should therefore receive a 3 for memory and use of information on the supplemental screening tool for cognition.

Ms. O scored a 2 for global confusion, corresponding to periodic confusion during the daytime. A person who is "nearly always confused" would score higher. However, the testimony did not indicate that Ms. O is "nearly always confused." Ms. O was correctly scored for global confusion on the 2016 CAT.

There was very little testimony at the hearing relating to spatial orientation. The assessor found that Ms. O was oriented and able to find her bearings and keep her bearings, but at the hearing she did not explain how she came to this conclusion. The Ns testified that Ms. O was wandering in their home, but it was not entirely clear what was meant by wandering, and whether it related to spatial orientation issues or other issues. Ms. N reported to Dr. C in July 2017 that Ms. O "commonly got lost in her own house and did not know where she was."<sup>44</sup> If Ms. O is getting lost in her own home, that would correspond to a spatial orientation score of 3.

The testimony at the hearing did not directly address Ms. O's verbal communication abilities, the last element evaluated on the cognition scoresheet. The fact that Ms. O speaks primarily Russian may make her verbal communication abilities more difficult to assess. Based on the testimony, it is possible that she has minor difficulty with speech or word-finding difficulties, but there was no indication that her abilities are limited to simple conversations. Indeed, the testimony indicated that Ms. O is able to converse with Ms. N and Ms. U about her health, and is able to tell stories repeatedly (having forgotten she had already told them to the listener). The assessor observed that Ms. O "appeared to use expressive & receptive language."<sup>45</sup> The concerns expressed at the hearing centered on memory and confusion, not verbal communication ability.

In summary, Ms. O should have received a score of 2 in memory for events, and a score of 3 for memory and use of information. She was correctly scored at 2 for global

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<sup>44</sup> Exhibit I at 1.

<sup>45</sup> Exhibit E at 6.

confusion. She was scored at 0 for spatial orientation, however, the most generous interpretation of her daughter and son-in-law's testimony might merit a 3. Ms. O may be having minor difficulty with speech or word-finding difficulties, but this is not clear -- at most she would score at 1 for verbal communication. The record does not show that it is more likely than not that more generous scores for spatial orientation and verbal communication are warranted, but even taking the highest plausible scores into consideration, Ms. O would still only score a total of 11 on the supplemental screening tool for cognition, less than the requisite 13.<sup>46</sup>

### 3. Cognition overall

Based on the CAT, it is more likely than not that Ms. O is experiencing some memory and cognitive issues. These may be somewhat greater than reflected on the 2016 CAT, however, they are not severe enough to warrant a total score on the supplemental screening tool of 13 or more. Therefore, Ms. O's cognition issues are not severe enough to meet the CAT's very high threshold for obtaining waiver services based on cognition combined with physical functioning.

This conclusion is supported by the medical records presented. The MMSE conducted by Dr. C indicates that Ms. O is experiencing some memory and cognition issues, but that these are mild rather than severe.

#### ***B. Activities of Daily Living***

To qualify for waiver services based only on physical functioning, an applicant must need extensive assistance (corresponding to a self-performance score of 3) with at least three of the following five activities of daily living (ADLs): bed mobility, transfers, locomotion, eating, and toilet use.<sup>47</sup> To qualify based on a combination of ADLs and cognitive, behavioral, or other needs, an applicant must need only limited assistance (corresponding to self-performance score of 2) with one or more ADLs.<sup>48</sup> However, as discussed above, Ms. O did not score high enough on the supplemental screening tool for cognition to qualify for waiver based on a combination of ADLs and cognition, so the remaining issue is whether she requires extensive assistance with three or more ADLs.

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<sup>46</sup> See Exhibit E at 1, 31.

<sup>47</sup> The CAT evaluates a person's need for assistance with seven ADLs, however, only the four shown as shaded on Exhibit E at 18 are considered in determining eligibility for waiver services.

<sup>48</sup> Exhibit E at 29.

The 2016 CAT found that Ms. O needs extensive assistance with toileting. However, it did not find that she needs extensive assistance or limited assistance with the other four ADLs considered in determining waiver eligibility. The 2016 CAT scored Ms. O at 0/1 for bed mobility and locomotion, 1/1 for transfer, 0/5 for eating, and 3/2 for toileting. Because witnesses for Ms. O testified that she was having difficulty with ADLs, this decision must examine whether Ms. O requires extensive assistance with any of the other four ADLs.

Ms. O's family argued that Ms. O has good days and bad days, and that the 2016 assessment was done on a good day. Ms. N acknowledged that her mother can get up from the sofa or out of bed independently on a good day. However, she reported that when her mother is having a bad day or is very tired, she needs help with these activities. She described assisting her mother with transfers by grabbing her by both upper arms and helping her up, and she estimated that she needed to help her mother with transfers approximately 70% of the time. Ms. U also testified that Ms. O told her at the time of the 2016 assessment (at which Ms. U was present) that she was dizzy and needed help getting up. Ms. U said Ms. O was less active and less fit generally than she was when she met her in 2011. She also said Ms. O usually needs help sitting down and getting up at church, and that if her daughter and son-in-law are not there, other church members help. This is consistent with Ms. O's report to the assessor that on some days she can pull herself up to stand using her walker, but at other times she needs to be pulled up to stand.<sup>49</sup>

The CAT scored Ms. O at 1/1 for transfers, a score corresponding to oversight, encouragement, or cueing with set-up help. However, based on the testimony of Ms. N and Ms. U, Ms. O requires physical assistance with transfers. In 2013, Ms. O was scored at 2/2 for transfers, corresponding to limited assistance where the person is highly involved in the activity. To score a 3/2 for transfers, a person must be able to perform part of the activity themselves, but need weight bearing support with the activity or full caregiver performance of the activity three or more times over the course of a week. Based on the testimony at the hearing, it is more likely than not that Ms. O still requires limited assistance with transfers, but not extensive assistance.

Ms. N also contested Ms. O's 2016 CAT score for bed mobility. The activity of bed mobility is described on the CAT as how the person "moves to and from lying position, turns side to side, and positions body while in bed."<sup>50</sup> Because Ms. O could ambulate with a walker, the assessor scored her at

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<sup>49</sup> Exhibit E at 8.

<sup>50</sup> Exhibit E at 8.

0/1 for bed mobility, or independent with set-up help.<sup>51</sup> The assessor noted Ms. O's report that she can turn and sit up in bed, but "some days she needs to be pulled to a sitting position." The assessor testified that according to her training, if a person could walk, they could also turn themselves over in bed. The physical therapist who evaluated Ms. O in August 2017 found that Ms. O was independent though slow in rolling. Ms. N testified that her mother frequently experienced leg cramps, and that when she experienced a leg cramp at night, she was unable to turn herself over and needed Ms. N to help her calm down, to massage her leg, and to assist her in turning over. She also testified that her mother has a bell to ring at night when she needs help. She specifically cited her mother's need for help at night with toileting, however, the ADL of toileting is scored separately and Ms. O's toileting score was not disputed. The preponderance of the evidence does not support a finding that Ms. O requires extensive assistance with bed mobility.

Ms. O has only one ADL requiring extensive assistance. To qualify for waiver services based on ADLs alone, she would have to require extensive assistance with three or more ADLs. The evidence does not support a conclusion that she requires this level of care.

### ***C. Ability to function in home***

Ms. O lives with her daughter and son-in-law and their children. She also receives 24.75 hours a week of services through the PCS program. So, Ms. O has support systems in place to help her manage in a home setting. After the 2016 assessment, but before the notice of termination was issued, Ms. O traveled to Russia with her personal care assistant and another family member. Her daughter explained that Ms. O had a great deal of support going back and forth on this trip, and used a wheelchair in the airports. She did not dispute that her mother was able to make the trip without waiver services.<sup>52</sup> In December 2016, Dr. C, Ms. O's physician, completed a level of care verification request for at the request of the decision. The form asked whether he would admit Ms. O to a skilled nursing facility, and he answered "no." The form also asked whether Ms. O had intermediate nursing needs. Dr. C answered "no."<sup>53</sup>

All of this supports the division's conclusion that Ms. O will be able to function in a home setting if waiver services are terminated.<sup>54</sup>

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<sup>51</sup> Testimony of White.

<sup>52</sup> Testimony of L. N, Testimony of White.

<sup>53</sup> Exhibit H at 162.

<sup>54</sup> Exhibit H at 169.

#### IV. Conclusion

Although having three ADLs scored at 2/2 together with the cardiac rehabilitation therapy three times a week enabled Ms. O to qualify for waiver services in 2013, she is no longer receiving the cardiac rehabilitation therapy. Ms. O is now experiencing memory loss and confusion, but her cognitive and memory deficits are not severe enough to make Ms. O eligible for waiver services based on a combination of cognition issues and ADLs. Ms. O's physical functioning does not qualify her for waiver services based on ADLs alone. Therefore, the division correctly concluded that Ms. O's condition no longer meets the level of care requirement for the waiver program. The decision to terminate Ms. O's waiver services is affirmed.

If Ms. O's condition has changed since the date of the adverse action letter, or changes in the future, she may reapply for the program.

Dated: September 21, 2017.

*Signed*

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Kathryn L. Kurtz

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 9th day of October, 2017.

By: *Signed*

\_\_\_\_\_  
Name: Kathryn L. Kurtz

\_\_\_\_\_  
Title: Administrative Law Judge

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