



Ms. T had a total right shoulder replacement in November 2015. She was transferred to a transitional care center post-surgery, and released to her home on January 20, 2016.<sup>5</sup> She was subsequently assessed for and found eligible for Waiver services, based upon a February 1, 2016 assessment that found she was receiving therapy five days per week: physical therapy three days and occupational therapy two days.<sup>6</sup> Ms. T continued to receive outpatient therapy until mid-September 2016.<sup>7</sup>

T was assessed at her home on January 11, 2017, to determine her continuing eligibility for Waiver services. During that assessment, the Division's assessor determined that Ms. T was independent with regard to bed mobility, transfers, locomotion, eating, and toileting, although the Ms. T told the assessor that she sometimes needed help with transfers, and the assessor noticed that transfers were a bit on the unsteady side. Ms. T uses either forearm crutches or a power scooter to move in her apartment.<sup>8</sup>

The assessment did not show any professional nursing services, therapies, cognitive impairments, but did show a very minor behavioral problem – being restless sleep.<sup>9</sup> As a result, the assessment, as scored on the Consumer Assessment Tool (CAT), found that Ms. T was not eligible for Waiver services.<sup>10</sup>

The Division sent Ms. T notice on January 23, 2017 that its preliminary finding was that she was no longer eligible for Waiver services. After that letter was sent, Ms. T was hospitalized in June 2017 due to possible pneumonia.<sup>11</sup> She began physical therapy in June, which consisted of two therapy visits per week for a four-week period.<sup>12</sup>

On July 10, 2017, the Division's medical reviewer took a second look at whether Ms. T was eligible for Waiver services. The reviewer concluded that because Ms. T was no longer receiving physical or other therapy five or more days a week, was able to ambulate independently, and did not have nursing needs, she no longer qualified for Waiver services.<sup>13</sup> The Division's medical reviewer's non-eligibility determination was reviewed by Qualis Health,

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<sup>5</sup> Ex. G, p. 1.

<sup>6</sup> Ex. F, pp.14, 29.

<sup>7</sup> Ex. G, p. 1; also *see* physical therapy and occupational therapy records located at Ex. H, pp. 42 – 254.

<sup>8</sup> Ex. E, pp. 8 – 9, 11; Ms. White's testimony.

<sup>9</sup> Ex. E, pp. 1 -2, 7, 15 – 17; Ms. White's testimony.

<sup>10</sup> Ex. E, p. 31; Ms. G's testimony.

<sup>11</sup> Ex. H, pp. 289 – 359.

<sup>12</sup> Ex. H, p. 369.

<sup>13</sup> Ex. H, pp. 637 – 644.

a third-party medical reviewer, on July 14, 2017. Qualis Health agreed with the Division’s medical reviewer that Ms. T no longer qualified for Waiver services.<sup>14</sup> The Division then notified Ms. T on July 18, 2017 that her Waiver services were terminated.<sup>15</sup>

Ms. T disagreed with the Division’s decision to terminate her Waiver services. She requested a hearing, which was held on November 30, 2017. The assessor testified at hearing. Her testimony was consistent with the written assessment. She was a credible witness. Ms. T, who testified at hearing, was also a credible witness.

Ms. T did not disagree with the Division’s findings that she was not receiving any nursing care. She did not disagree with the Division’s findings that she was able to perform her ADLs of bed mobility, locomotion, toileting, and eating without assistance. She, however, testified that she needs assistance with transfers, approximately five times per week. She did not explain what type of help she needed, stating that, even though she needed help with transfers, she managed to do the transfers herself. She also pointed out that she began physical therapy in October. She initially had physical therapy three times per week, which decreased to twice weekly beginning in November.<sup>16</sup> She was hospitalized in November 2017 for a week due to pneumonia.<sup>17</sup>

### **III. Discussion**

#### ***A. Method for Assessing Eligibility***

The Alaska Medicaid program provides Waiver services to adults with physical disabilities who require “a level of care provided in a nursing facility.”<sup>18</sup> The nursing facility level of care<sup>19</sup> requirement is determined by an assessment which is documented by the CAT.<sup>20</sup> The CAT records an applicant’s needs for professional nursing services, therapies, and special treatments,<sup>21</sup> and whether an applicant has impaired cognition or displays problem behaviors.<sup>22</sup> Each of the assessed items is coded and 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>23</sup>

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<sup>14</sup> Ex. G.

<sup>15</sup> Ex. D.

<sup>16</sup> Ms. T’s testimony.

<sup>17</sup> See Providence Medical Records from November 2 – 9, 2017.

<sup>18</sup> 7 AAC 130.205(d)(4).

<sup>19</sup> See 7 AAC 130.205(d)(4); 7 AAC 130.215.

<sup>20</sup> 7 AAC 130.215(4).

<sup>21</sup> Ex. E, pp. 15 - 17.

<sup>22</sup> Ex. E, pp. 18 - 19.

<sup>23</sup> Ex. E, p. 31.

The CAT also records the degree of assistance an applicant requires for activities of daily living (ADL), which include five specific categories: bed mobility (moving within a bed), transfers (i.e., moving from the bed to a chair or a couch, etc.), locomotion (walking or movement when using a device such as a cane, walker, or wheelchair) within the home, eating, and toilet use, which includes transferring on and off the toilet and personal hygiene care.<sup>24</sup>

For a person who only has physical assistance needs to score as eligible for Waiver services on the CAT, he or she would need a self-performance code of 3 (extensive assistance) or 4 (total dependence) and a support code of 2 or 3 for three or more of the five specified activities of daily living (bed mobility, transfers, locomotion within the home, eating, and toileting).<sup>25</sup>

A person can also receive points for combinations of required professional nursing services, therapies, 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>26</sup>

The results of the assessment portion of the CAT are then scored. If an applicant's score is a 3 or higher, the applicant is medically eligible for Waiver services.<sup>27</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>28</sup>

### ***B. Eligibility***

Ms. T receives Waiver services. The Division has the burden of proof by a preponderance of the evidence when it seeks to terminate services.<sup>29</sup> Ms. T did not dispute that, at the time of the Division's termination decision, she did not have substantially impaired cognition, any behavioral issues, and did not require assistance with bed mobility, locomotion, toileting, and eating. She testified that she needed transfer assistance five times weekly. Her testimony, however, established that she was able to transfer by herself, *i.e.*, she was independent with transfers, although given her complicated medical history, some transfer assistance would undoubtedly be useful. She, however, was receiving physical therapy twice weekly starting in June. Twice a week of physical therapy is not sufficient to qualify for Waiver services. To

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<sup>24</sup> Ex. E, pp. 20, 31.

<sup>25</sup> Ex. E, p. 31.

<sup>26</sup> Ex. E, p. 31.

<sup>27</sup> Ex. E, p. 31.

<sup>28</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>29</sup> 7 AAC 49.135.

qualify for Waiver services based upon therapy alone requires that a recipient have five or more days of therapy a week.<sup>30</sup>

A recipient could otherwise qualify if he or she had three days of therapy plus limited or extensive assistance in two of the scored ADLs (bed mobility, transfers, locomotion, toileting, and eating).<sup>31</sup> Because Ms. T only had two days of therapy, even if transfers were assessed at limited or extensive assistance, she still would not qualify. This is because she would need a scoring of limited or extensive assistance in both transfers and another of the score ADLs plus therapies three or more times per week. Consequently, the Division has met its burden and established that Ms. T was no longer eligible for Waiver services at the time of its July 18, 2017 termination decision.

The fact that Ms. T was subsequently hospitalized in November 2017 and began therapy again in October 2017 does not change this decision. Eligibility is based on a recipient's condition at the date of the Division's decision, which was back in July.<sup>32</sup> Because Ms. T's condition had materially improved, due to the fact she was no longer receiving therapy five times per week on July 18, 2017, the date of the Division's decision, she no longer qualified for Waiver services.

#### **IV. Conclusion**

Ms. T has a complicated medical history. However, the facts of this case show that her condition has materially improved since the last time she was found eligible for Waiver services: she no longer has therapies five times a week, and she does not satisfy the other requirements for Waiver service eligibility. Consequently, the Division's decision to terminate her Waiver services is affirmed.

DATED this 15<sup>th</sup> day of December, 2017.

*Signed*

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Lawrence A. Pederson  
Administrative Law Judge

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<sup>30</sup> Ex. E, Sec. NF. 1(d), p. 31.

<sup>31</sup> Ex. E, Secs. NF. 2(b), NF. 6, p. 31.

<sup>32</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>).

## 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 29<sup>th</sup> day of December, 2017.

By: Signed  
Signature  
Lawrence A. Pederson  
Name  
Administrative Law Judge  
Title

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