

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

In the Matter of:)	
)	OAH No. 16-1082-MDS
L S)	Agency No.
_____)	

DECISION

I. Introduction

L S receives Medicaid Home and Community-Based Waiver (Waiver) services. He is autistic with behavioral issues. As part of his Waiver services, he has been receiving Intensive Active Treatment (IAT) services since 2009. Mr. S applied to renew his Waiver plan of care for the plan year from August 16, 2016 through August 15, 2017. As part of that plan of care, he asked to continue his IAT services through the entire plan year. The Division of Senior and Disabilities Services (Division) notified him that it was approving his IAT services for only the first 26 weeks of his plan year.

Mr. S has been receiving IAT services since 2009. Although these services have been highly beneficial to him, it appears that he will need them for the indefinite future to address his ongoing behavioral issues. By regulation, IAT services are time-limited. As a result, the Division's reduction in Mr. S's IAT services, by limiting them to 26 weeks and terminating them thereafter, is AFFIRMED.

II. Facts

Mr. S is autistic. He is 26 years old and lives with his parents. He is a strong man, who is 6'3" tall and weighs between 200 and 230 lbs.¹ He began receiving IAT services in 2009, which was one hour per week with a psychiatrist. He began displaying aggressive and destructive behaviors in 2010. In June 2011, his IAT services changed when he began receiving Applied Behavior Analysis (ABA) treatment three times per week from No Name Services. He continues to receive that treatment three times weekly.² His aggressive and destructive behaviors have decreased, but still occur. For instance, in September of 2016, he threw things at his mother and then destroyed a brand new TV. He has also kicked doors and struck his parents.³

¹ Mr. S's testimony; Ex. E, p. 9.

² Mr. S's testimony; Ex. E, p. 9.

³ Mr. S's testimony.

M Q is the co-owner of No Name Services. She has known Mr. S for approximately 18 years. She has been treating him with ABA therapy since 2011. Her professional credentials include a master's degree in special education and she is board certified in ABA. She stated that Mr. S has improved to some degree, but that some of his behavior is still unacceptable, and that he continues to need ABA services. She was unable to provide a timeline on how long he would continue to require ABA services. Her professional opinion was that he would require institutionalization without the ABA services.⁴

Mr. S's Medicaid Waiver plan of care for August 16, 2016 through August 15, 2017 requested that he continue to receive ABA therapy, under the category of IAT services, for the next year.⁵ The Division reviewed that plan of care and authorized him for IAT services for 26 weeks, rather than the full year requested. The Division's reason was that his behavior issues were ongoing and that he should not receive IAT services for them. However, it partially approved his request to allow him transition time.⁶

III. Discussion

The Medicaid program has a number of coverage categories. One of those coverage categories is the Waiver program.⁷ The Waiver program pays for specified individual services to Waiver recipients, if each of those services is "sufficient to prevent institutionalization and to maintain the recipient in the community."⁸ The Division must approve each specific service as part of the Waiver recipient's plan of care.⁹

The Alaska Medicaid regulations provide for the waiver service at issue here, IAT service. The Medicaid regulations define an IAT service as a specific treatment or therapy that "is in the form of time-limited interventions that address . . . the recipient's personal, social, behavioral, or mental problem . . ."¹⁰ The same regulation states that the Medicaid program will not pay for IAT services that "are intended as therapy or treatment for problems or disorders . . . that are ongoing rather than time-limited problems or disorders or that do not place the recipient at risk of institutionalization."¹¹

⁴ Ms. Q's testimony.

⁵ Ex. E, pp. 18 - 9.

⁶ Ex. D, pp. 2 - 3.

⁷ 7 AAC 100.002(d)(8); 7 AAC 100.502(d).

⁸ 7 AAC 130.217(b)(1).

⁹ 7 AAC 130.217(b).

¹⁰ 7 AAC 130.270(b).

¹¹ 7 AAC 130.270(c).

Mr. S pointed to the portion of the regulation that says that the Medicaid program will not pay for IAT services for problems or disorders “that are ongoing rather than time-limited problems or disorders or *that do not place the recipient at risk of institutionalization.*”¹² Mr. S then argued that the wording of the regulation meant that his risk of institutionalization, as testified to by Ms. Q, required his continuing receipt of his IAT service, the ABA treatment. Mr. S’s argument is plausible, however, it ignores the regulation as a whole. The regulation defines an IAT service as a “time-limited intervention.”¹³ Because Mr. S has been receiving IAT services since 2009, and has been receiving this particular form of IAT services, ABA treatment, since 2011, his continued IAT treatment does not meet the requirement of it being a “time-limited intervention.” As a result, the Division has met its factual burden of proof, by a preponderance of the evidence, and demonstrated that Mr. S’s ongoing receipt of IAT services does not satisfy the regulatory definition of IAT services as being “time-limited.” The Division’s denial of the request for a full year of services and allowing those services for a limited time, is consistent with the regulatory definition of IAT services.

IV. Conclusion

The Division’s denial of Mr. S’s request for a full year of IAT services, and its reduction of those services to the first 26 weeks of Mr. S’s Medicaid plan of Care year, is upheld.

DATED this 9th day of November, 2016.

Signed

Lawrence A. Pederson

Administrative Law Judge

¹² 7 AAC 130.270(c) (emphasis supplied).

¹³ 7 AAC 130.270(b)(2).

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 23rd day of November, 2016.

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.]