

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

In the Matter of)	
)	
Q L)	OAH No. 17-0357-MDS
_____)	Division No.

DECISION

I. Introduction

Q L applied for Medicaid Home and Community-Based Waiver program (“Waiver”) services. The Division of Senior and Disabilities Services (Division) denied her application.¹ Ms. L requested a hearing.²

Ms. L’s hearing was held on June 7, 2017. Ms. L represented herself with assistance from her Medicaid Care Coordinator B Z and her daughter F B, all of whom testified. Victoria Cobo represented the Division. Samantha Fili, the Division’s assessor, testified on its behalf.

Ms. L has significant health issues and is subject to frequent falls. She requires extensive assistance with transfers and toileting. However, she is capable of ambulating, using a walker, without requiring hands-on physical assistance. As a result, Ms. L does not qualify for Waiver services, and the Division’s decision denying her application is AFFIRMED.

II. Background Facts

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

Ms. L is 76 years old. Per her doctor’s letter of April 3, 2017:

Her current diagnoses include: type 2 diabetes with retinopathy, diabetic foot ulcer, left great toe amputation, coronary artery disease with 4 stents, diastolic congestive heart failure, hypertension, hyperlipidemia, GERD, pacemaker placement, restless leg syndrome, obstructive and central sleep apneas without CPAP, Parkinson’s Disease, depression, urinary incontinence, chronic kidney disease stage 3, and osteoarthritis.³

Her doctor also wrote that “[s]he also has difficulties with transitioning and needs assistance from others. Ms. L has neuropathy and diabetic foot ulcer and needs assistance with foot care as she has recently had a toe amputation due to uncontrolled diabetes.”⁴ Ms. L’s podiatrist, on March 28, 2017, specifically noted her poor eyesight, poor balance, peripheral neuropathy,

¹ Division Ex. D.
² Division Ex. C.
³ Ex. 5, p. 1.
⁴ Ex. 5, p. 1.

inability to reach and care for her feet, and her “surgical reconstruction of the right foot and partial left hallux amputation due to prior ulcerations and infections on her toes.”⁵ Ms. L also had spinal surgery (both lumbar and cervical) in 2011.⁶ Ms. L lives by herself in a senior housing complex.⁷

Ms. L was assessed at her home on February 28, 2017, by the Division’s assessor. The assessor determined that Ms. L was capable of moving and repositioning in bed without physical assistance, based upon her observation of Ms. L pulling herself up in bed. However, the assessor also observed Ms. L being short of breath and her hands shaking after that movement.⁸ The assessor observed Ms. L transferring from her bed, from her couch, and from her recliner without assistance. The assessor further observed Ms. L walking in her home, without assistance, by using her walker. She also observed Ms. L transferring from the toilet. The assessor, however, noticed Ms. L taking a long time with transfers from the toilet and struggling with them. The assessor then concluded that Ms. L did not require hands-on physical assistance with transfers, toileting, or locomotion.⁹

The assessment did not show any professional nursing services, therapies, cognitive impairments, and only a very minor behavioral issue.¹⁰ As a result, the assessment, as scored on the Consumer Assessment Tool (CAT), found that Ms. L was not eligible for Waiver services.¹¹ The assessor testified at hearing. Her testimony was consistent with the written assessment. She was a credible witness, who acknowledged some inconsistencies in the written assessment, without being defensive or argumentative.

Ms. L testified about her care needs. She was a credible witness. She stated that she could walk using her walker, without needing hands-on physical assistance, and that she could move and sit up in bed, also without needing help. Her testimony, however, clearly established that while she did not always need help with transfers, both from furniture and the toilet, she needed weight-bearing assistance with transfers and with toileting, more than the minimum of three times per week required to qualify as extensive assistance. Ms. L is also subject to frequent falls, including three in the week immediately preceding the hearing. However, Ms. L’s testimony

⁵ Ex. 5, p. 2.

⁶ See Ex. 1, pp. 2- 3 for a concise summary of Ms. L’s complex medical history.

⁷ Ex. E, p. 3.

⁸ Ex. E, p. 8; Ms. Fili’s testimony.

⁹ Ex. E, pp. 8 – 9, 11; Ms. Fili’s testimony.

¹⁰ Ex. E, pp. 2 – 3, 7, 15 – 17; Ms. Fili’s testimony.

¹¹ Ex. E, p. 31; Ms. Fili’s testimony.

established that she often tries to do more than she should and that increases her fall risk. Ms. L's daughter, Ms. B, and Ms. Z, Ms. L's care coordinator, both credibly testified about Ms. L's frequent falls, her risky cooking behavior, and that she has swallowing issues.

Ms. L has received cardiac therapy in the past, and should probably be receiving physical therapy. However, she was not receiving any therapies at the time of the assessment, nor at the time the Division sent her its letter notifying her that her application was denied, nor at the time of the hearing. Additionally, her podiatrist was changing the dressings from her recent amputation, but that occurred once a week or less, and is not ongoing.¹²

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."¹³ The nursing facility level of care¹⁴ requirement is determined by an assessment which is documented by the CAT.¹⁵ The CAT records an applicant's needs for professional nursing services, therapies, and special treatments,¹⁶ and whether an applicant has impaired cognition or displays problem behaviors.¹⁷ 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 3.¹⁸

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.¹⁹

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

¹² Ms. L's testimony.

¹³ 7 AAC 130.205(d)(4).

¹⁴ See 7 AAC 130.205(d)(4); 7 AAC 130.215.

¹⁵ 7 AAC 130.215(4).

¹⁶ Ex. E, pp. 15 - 17.

¹⁷ Ex. E, pp. 18 - 19.

¹⁸ Ex. E, p. 31.

¹⁹ Ex. E, pp. 20, 31.

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).²⁰

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.²¹

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.²² The relevant date for purposes of assessing the state of the facts is, in general, the date of the agency's decision under review.²³

B. Eligibility

Ms. L is an applicant for Waiver services. Applicants have the burden of proof by a preponderance of the evidence.²⁴ It is undisputed that Ms. L does not have substantially impaired cognition, does not have any behavioral issues, and is not receiving any therapies from a qualified therapist, nor is she receiving any specialized treatments. To qualify for Waiver services, Ms. L would therefore require extensive or complete assistance in at least three of the five scored ADLs. Ms. L maintains that she requires extensive assistance in three of those ADLs: transfers, toileting, and locomotion.²⁵

Both the assessor and Ms. L were credible. However, the assessor had limited access to Ms. L, consisting of the visit to conduct the assessment, and did not have the benefit of observing Ms. L's care needs over an extended period. Because Ms. L was credible, and had medical documentation showing her complicated medical needs, Ms. L's testimony paints a more complete picture of her ongoing care needs. As a result, the evidence shows that Ms. L requires extensive (weight-bearing) assistance at least three times a week for both transfers and for toileting. However, she can walk, using a walker, without requiring hands-on assistance, although she probably should be supervised. She does not require hands-on assistance for eating,

²⁰ Ex. E, p. 31.

²¹ Ex. E, p. 31.

²² Ex. E, p. 31.

²³ 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>).

²⁴ 7 AAC 49.135.

²⁵ The assessor found that Ms. L was independent with both bed mobility and eating. Ex. E, pp. 6, 9. Ms. L does not disagree with those findings and it is therefore not necessary to discuss either of those ADLs.

although she has difficulty swallowing. She can also reposition and sit up in bed without requiring hands-on assistance, although it is difficult for her. Consequently, even though she has debilitating health conditions, she does not meet the requirements for Waiver eligibility.

IV. Conclusion

Ms. L requires extensive assistance with two of the five scored activities of daily living: transfers, and toileting. However, to qualify for Waiver services, she must need extensive assistance with three of the five scored activities of daily living. Consequently, the Division's decision to deny her application for Waiver services is affirmed.

DATED this 30th day of June, 2017.

Signed _____
Lawrence A. Pederson
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 14th day of July, 2017.

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

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