

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

In the Matter of)
)
B L) OAH No. 17-0571-MDS
) Agency No.
_____)

DECISION

I. Introduction

B L is a disabled adult who receives Medicaid Home and Community-based Waiver (Waiver) services. Her 2016 – 2017 Plan of Care (POC) provided her with 3 hours per day of day habilitation services (4,368 15-minute units per year) and 13 hours per day of supported living services (18,928 15-minute units per year). Her 2017 - 2018 Plan of Care (POC) included a request that she receive the same level of day habilitation and supported living services. The Division approved her POC but reduced the supported living services to 12 hours per day. Her day habilitation services were not reduced. N L, who is B’s mother and legal guardian, requested a hearing to challenge the reduction in B’s benefits.

B’s hearing was held on July 21, 2017. N L represented B and testified on her behalf. J T, B’s Medicaid Care Coordinator, also testified on her behalf. Victoria Cobo represented the Division. Heather Chord testified for the Division.

The evidence does not show that B has had any increase in her functional skills. Nor does it show that she does not need the full amount of services which she is provided. Because the Division has the burden of proof and did not meet it, the Division’s reduction in services is REVERSED.

II. Facts

B is a severely intellectually disabled 41-year-old adult who is also blind. She has the adaptive behavior capacity of a two-year-old.¹ She has osteoporosis in addition to other medical conditions. She lives in her own apartment, where she has staff 24 hours per day. Dr. U, who has been B’s physician since October 2008, recently stated:

The greatest risk to this patient remains falling leading to unhealable fractures and more intense care.

* * *

She is fragile to be sure. Her continued safety requires 24/7 care. Less than that places this patient at significant falling and fracture risk. Just as we would not

¹ See December 5, 2016 *Inventory for Client and Agency Planning*.

consider leaving a 2 year old alone, we must continue to provide the level of care for this patient that will allow for her continued safety.

* * *

We simply cannot expect this patient to ever be able to care for herself or be left alone. Skill building, lifeskills, and prevention of injury is as continuous as that of a toddler, 16 hour per day requiring continuous attention.²

Ms. L, B's mother, sees her daughter for a brief visit weekly. She credibly testified that B experiences intermittent incontinence, and that she requires continuous attention and monitoring. B speaks constantly, unless she is asleep, likes being read to by staff, and does not like listening to audio books because she requires ongoing continual interaction. B normally goes to bed about 10:30 p.m., and rises between 6:30 and 7:30 a.m., with one bathroom visit during the night. She has to be monitored for cleaning and washing her hands, and can do some minor kitchen chores.³

Ms. T has been B's Medicaid care coordinator from approximately 2 and one-half years, and previously worked with B when Ms. T was working for No Name Resources. Overall, she has known B for about 10 years, is aware of her care needs, and interacts with her almost weekly. She credibly testified that B bites her lips and her fingernails, engages in negative self-talk, and requires some sort of engagement with staff every three to five minutes.⁴

B's approved POC for her plan year that spanned 2016 to 2017 provided her with 3 hours per day of day habilitation services (4,368 15-minute units per year) and 13 hours per day of supported living services (18,928 15-minute units per year), for a total of 16 hours per day in these combined services.⁵

B submitted a proposed POC for the period running from March 22, 2017 through March 21, 2018. That plan of care contained the same 3 hours per day of day habilitation services and 13 hours per day of supported living services.⁶ The goals and objectives for day habilitation services and supported living services for the 2017 – 2018 POC are very similar to those contained in the 2016 – 2017 POC. These include items such as not interrupting people, helping with kitchen and home chores, and self-care issues.⁷

² Undated letter from S U, M.D.

³ Ms. L's testimony.

⁴ Ms. T's testimony.

⁵ Ex. F, pp. 1, 16, 26.

⁶ Ex. E, pp. 20, 26.

⁷ Ex. E, pp. 20 – 29; Ex. F, pp. 18 – 28.

The Division approved the day habilitation services without any reduction. However, it reduced the supported living services to 12 hours per day.⁸ Its rationale was that the information provided “does not clearly show how [B] engaged in active habilitative activity during each 15-minute unit of the 13 hours of Supported Living services she received. . . .”⁹ The Division’s reduction notice further stated that the approved level of service (3 hours per day in day habilitation and 12 hours per day in supported living services) “when combined with other natural and community supports appears to be of sufficient amount, duration and scope to accomplish the intent of the POC. Therefore, seven hours per week of Supported Living are denied for lack of sufficient documentation and justification.”¹⁰

III. Discussion

The Medicaid program has a number of coverage categories. One of those coverage categories is the Waiver program.¹¹ 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.”¹² The Division must approve each specific service as part of the Waiver recipient’s POC.¹³

The type of waiver services at issue here, supported living services, are provided in the recipient’s private residence.¹⁴ The general standards for residential habilitation services, which include supported living services, are:

The activities provided as residential habilitation services must be planned with the objective of maintaining or improving the recipient’s physical, mental, and social abilities rather than rehabilitating or restoring such abilities. These services must be individually tailored, and may include personal care and protective oversight and supervision, in addition to skills development.¹⁵

The testimony provided by Ms. L and Ms. T, coupled with Dr. U’s letter, show that B requires ongoing continuous attention. She is a two-year old in a 41-year old body. She is blind, has osteoporosis, and is at risk for falls. Her care needs fit well within the standards enunciated for supported living services: services aimed at maintaining or improving her physical, mental,

⁸ Ex. D.

⁹ Ex. D, p. 2.

¹⁰ Ex. D, pp. 2 – 3.

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

¹² 7 AAC 130.217(b)(1).

¹³ 7 AAC 130.217(b).

¹⁴ 7 AAC 130.265(d).

¹⁵ See Residential Habilitation Services Conditions of Participation (available online at <http://dhss.alaska.gov/gcdse/documents/publiccomment/reshabilitation.pdf>). This document is adopted into regulation by 7 AAC 160.900(a)(45).

and social activities, which include personal care, protective oversight, and supervision. Her mental and physical condition support a need for continuous care during the waking hours, 16 hours per day. This is met by the 13 hours per day of supported living services and the 3 hours per day of day habilitation services.

The Division had the burden of proof in this case. It did not show that B's care needs had decreased since the 2016-2017 plan year. Nor did it show that B's previous level of services was unnecessary. Accordingly, the weight of the evidence demonstrates that B's requested 13 hours per day of supported living services should be approved, without reduction.

IV. Conclusion

The Division's reduction of B's supported living services from 13 hours per day (18,928 15-minute units per year) to 12 hours per day is reversed.

DATED this 23rd day of August 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 5th day of September, 2017.

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

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