

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

In the Matter of)
)
M C) OAH No. 17-1246-MDS
) Agency No.
_____)

NOTICE TRANSMITTING FINAL DECISION

Attached is the administrative law judge's decision in this matter, which became the final agency decision on April 23, 2018 by operation of AS 44.64.060(f).

Judicial review of the decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the decision is mailed or otherwise distributed.

DATED April 24, 2018

By: Signed

Law Office Assistant
Office of Administrative Hearings

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DECISION

I. Introduction

M C receives Medicaid Home and Community-Based Waiver (Waiver) benefits. He requested that the Medicaid program pay for a stairlift for his home. The Division of Senior and Disabilities Services (Division) denied his request. Mr. C requested a hearing to challenge that denial.

Mr. C’s hearing was held on February 7, 2018. E D, who is Mr. C’s daughter and guardian, represented him and testified on his behalf. Jane Doe, Mr. C’s Medicaid Care Coordinator, testified on his behalf. Victoria Cobo represented the Division. Denise Busby, a Health Program Manager employed by the Division, testified on its behalf.

The evidence in this case demonstrates that Mr. C is a fall risk, who does not always wait for assistance when transiting his stairs, that he does not always have someone at home who can assist him with transiting the stairs, and that he has almost fallen down the stairs on numerous occasions even when assisted. As a result, it is more likely true than not true that he meets the regulatory requirements for Medicaid to pay for the stairlift. Accordingly, the denial of his request for a stairlift for his home is REVERSED.

II. Facts

M C is 86 years old. He lives with his daughter E D in her home. Ms. D is his court-appointed guardian and his personal care attendant (PCA). Ms. D has a two-story home. Mr. C’s bedroom is on the second floor. In order to move between floors, it is necessary to traverse two sets of stairs. There is a short flight of stairs (three steps) to a landing, from which the main set of stairs goes up to the second floor. The stairs are narrow and wooden.¹

Mr. C receives 20.5 hours per week of PCA services. The Division’s June 2017 assessment of his needs provides that he should receive limited (non-weight bearing hands-on

¹ Ms. D’s testimony. See Ex. E, pp. 15 -16 for photographs of the stairs.

physical assistance) PCA services to move between the floors in his home twice daily.² Ms. D credibly testified that Mr. C has diabetes, swollen feet, and low blood pressure; that he is dizzy and unsteady and that when he leans upon her to go down the stairs, he occasionally stumbles which causes both of them to almost fall. She estimated that this happens at least once every two weeks, sometimes more. She also credibly testified that Mr. C, who has dementia, will transit the steps on his own without waiting for assistance or asking for assistance. She will sometimes look up from what she is doing and find that he has managed to get down the stairs without her knowing. He is a fall risk and has fallen while walking and while transiting the stairs. Fortunately, none of those falls have injured him and he has not needed medical attention, so no critical incident reports have been filed with the Division.³ According to the Division's *Consumer Assessment Tool*, dated June 16, 2017, Ms. D reported falls occurring on April 6, May 1, and May 20, 2017.⁴

Ms. D is at home for the most part and there are respite services to provide care for her father. However, there are times when she is not in the home and when respite is not available to supervise him. She babysits in the home, so she is not always able to keep an eye on her father. In addition, she is concerned because she has pets in the home that might contribute to her father being a fall risk on the stairs.⁵

Ms. D requested that the Division pay for two separate environmental modifications to her home. The first was for modifications to make the bathroom more accessible for her father, which primarily consisted of a walk-in/roll-in shower with a seat, grab bars and a handheld shower, an ADA sink and countertop, and toilet grab bars. The second was for stairlifts for both the lower (three steps) and upper portions of the stairs.⁶ The Division granted the request for the bathroom modification. It denied the request for the stairlifts.⁷ The rationale provided in the denial letter was:

According to the 06/16/2017 assessment the guardian reports falls occurred approximately on 04/06/2017, 05/01/201[sic] and 05/20/2017 EMS was not called nor were there any Critical Incidents Reports made. The assessment further states with locomotion assistance the client was able to ambulate without assistive

² *Consumer Assessment Tool*, p. 7.

³ Ms. D's testimony.

⁴ *Consumer Assessment Tool*, p. 3.

⁵ Ms. D's testimony.

⁶ Ex. E, pp. 2, 5 – 16.

⁷ Ex. D.

devices. The client was approved for locomotion assistance based on current needs. The Clients current Locomotion single level and locomotion multi-level accessibility needs are being provided for by the Personal Care Assistance and the unpaid caregiver. Therefore, the stair-lift is denied.⁸

III. Discussion

Ms. D was a credible witness. Her testimony established that when Mr. C transits the stairs with assistance, it is risky for both him and his caregiver. His history of falls shows that transiting the stairs by himself is also risky.

The Division did not meaningfully controvert these facts. Instead, it argued that Mr. C should obtain a more physically capable caregiver. However, this does not allay the situation of Mr. C trying to ascend or descend the stairs without assistance. In addition, regardless of a caregiver’s physical condition, it is still possible that Mr. C could stumble on the stairs, as he has, per Ms. D’s testimony, causing a fall to both Mr. C and the caregiver. The Division also appeared to dispute whether Mr. C was at risk for falls, because no Critical Incident Reports had been filed. However, as the Division’s witness stated, Critical Incident Reports do not need to be filed if no injury or medical intervention results from the fall.⁹

The applicable regulation authorizes the Medicaid program to pay for environmental modifications to a recipient’s residence, if the modification is “necessary” to “meet the recipient’s needs for accessibility,” to “protect the health, safe, and welfare of the recipient,” and “further the independence of the recipient in the recipient’s residence.”¹⁰

A review of the facts in this case show that Mr. C’s request for a stairlift falls squarely within the regulation’s requirements. The stairlift will help assure his safety, i.e. protect him from falls, while meeting his need to access both floors of the home, and further his independence within his home. As a result, Mr. C has met his burden of proof by a preponderance of the evidence, and the Division’s denial of his request for the stairlift environmental modification is reversed.

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⁸ Ex. D, p. 2.
⁹ Ms. Busby’s testimony.
¹⁰ 7 AAC 130.300(b)(2)

IV. Conclusion

Mr. C has demonstrated that a stairlift in the home is necessary to ensure his safety and his independence and access within the home. As a result, denial of the request is reversed.

Dated: March 9, 2018

Signed _____
Lawrence A. Pederson
Administrative Law Judge

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]