

BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of)	
)	OAH No. 16-0024-PER
M. K T)	Agency No. 2015-1221
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DECISION

I. Introduction

M. K T is a retiree with the Alaska Teachers’ Retirement System (TRS). She selected long term care (LTC) insurance as part of her retirement package. On March 7, 2013, she cancelled the LTC insurance. Subsequently, Ms. T’s son, who holds her power of attorney, requested that the LTC insurance be reinstated, arguing that his mother was not competent when she made the decision to cancel that insurance.

The TRS administrator denied the request to reinstate the LTC insurance. Ms. T appealed. The evidentiary hearing was held on March 29, 2016. Dr. S T, Ms. T’s son and designed power-of-attorney, represented Ms. T. Assistant Attorney General Kevin Dilg represented the TRS administrator.

In order to prevail in this case, Ms. T had to demonstrate, by a preponderance of the evidence, that she was not competent when she cancelled her LTC insurance in March 2013. However, she failed to meet her burden of proof. Accordingly, the TRS administrator’s determination that her LTC insurance should not be reinstated is **AFFIRMED**.

II. Facts

Ms. T retired in 2002. She selected long term care (LTC) insurance as part of her retirement package. The premium for that insurance was deducted from her retirement payment.¹ Mr. T, Ms. T’s husband, is also a State of Alaska retiree who elected LTC coverage as part of his retirement package. On March 7, 2013, Ms. T, along with her husband, went in person to the Retirement and Benefits office in Anchorage where they each presented a signed typed request to cancel their LTC insurance. She and her husband met with a Retirement and Benefits counselor. The counselor would have written a note in the Ts’ records if she had noticed any signs of confusion, disorientation, abnormal, unusual, or bizarre behavior on their part. There are no such notes in either of their member files. The counselor would have advised Ms. T, as part of her normal practice, that once cancelled, the LTC insurance could not be

¹ K. T Record, p. 60.

reinstated.² The cancellation resulted in an increase in Ms. T's monthly retirement benefit payment.³

Ms. T had a neuropsychological evaluation performed on October 24, 2014. Ms. T's patient history questionnaire showed problems with cognitive deficits and adaptive functioning, including some current money management issues. The neuropsychological testing resulted in findings that Ms. T's then current intellectual functioning fell in the average range, and that her then current judgment and reasoning skills fell in the low average range, while her attention and concentration skills fell in the impaired range.⁴ The only medical evidence in the record regarding Ms. T's pre-October 2014 cognitive status is also contained in the neuropsychological report, which provides that Ms. T had a mini-mental status exam in late August 2014, where "her results fell within normal limits (26/30). She was considered oriented to time, place, and person, and her judgment was intact."⁵

H U is a registered nurse who was the medical case manager for Ms. T at No Name.⁶ She testified that Ms. T was having some issues at home in August 2014, where she was not compliant with her medications, not eating, and falling asleep while Ding meals. She was surprised, however, by the results on Ms. T's neuropsychological evaluation, and believed that Ms. T was doing better cognitively than determined by that evaluation. Ms. T did have her driver's license taken away in January 2015, but was able to obtain it back that same month after having some testing done through Providence Hospital.⁷

Several relatives of Ms. T testified regarding her cognitive capacity. R N is Ms. T's sister-in-law. During a summer visit with Mr. and Ms. T in Alaska in the summer of 2013, she noticed that Ms. T was slowing down physically, but did not notice any signs of mental impairment.⁸ C D, Ms. T's sister, was also present during that visit. She also did not notice Ms. T showing signs of mental impairment.⁹ D R is Ms. T's niece. Her aunt and uncle visited her in 2012, 2013, and 2014. She is a pharmacist. She went through their medications in 2012 and found out they were taking each other's medications. She thought both Mr. and Ms. T were

² Jennifer Dalton's testimony; Debbie Bialka-Benedict's testimony.

³ Jennifer Dalton's testimony.

⁴ K. T Record, pp. 13 – 22.

⁵ K. T Record, p. 16.

⁶ Mr. T is retired military.

⁷ Ms. U's testimony.

⁸ Ms. N's testimony.

⁹ Ms. D's testimony.

rational in 2012, but did not think that they should be traveling alone. She thought there was some decline for both Mr. and Ms. T in 2012 and 2013, with Mr. T having the stronger mental decline, with Ms. T experiencing a stronger physical decline and being in denial about their mutual decline.¹⁰ Dr. T, Ms. T's son, related one specific example which predated March of 2013. He and a cousin were visiting his parents for Thanksgiving, which he believes was in 2012, and his mother forgot to get the turkey for the Thanksgiving meal. He was in contact with his parents in March of 2013. He was not then concerned about their mental condition, but was concerned because they were not handling their affairs correctly.¹¹

X E is a certified financial planner. Mr. and Ms. T were his clients starting in 2005. He met annually with them. He had a face-to-face meeting with them on March 15, 2013. He recalled that both of them were engaged and he did not see anything that would have caused him to be concerned about either's mental capacity. He would have asked them not to cancel their LTC insurance if he had known about their plans to cancel it; he had previously told them that he thought it was a wise choice to carry it; and their financial situation was such that they did not need the extra income they received by cancelling it.¹²

III. Discussion

The issue is whether Ms. T's cancellation of her LTC insurance should be rescinded. This issue is resolved by answering the question of whether Ms. T was mentally competent when she cancelled the insurance. In a contractual formation case, the Alaska Supreme Court upheld the trial court's rescission of the contract due to the incompetency of a party because he "was unable to understand the nature and consequences of the [underlying] transaction" when he entered into it.¹³ Applying that same principle, in order to prevail, Ms. T must demonstrate, by a preponderance of the evidence, that she was unable to understand the nature and consequences of cancelling her LTC insurance.

Ms. T did not testify. Her direct recollection of her reasoning and understanding of the LTC insurance cancellation is not available. The limited medical evidence shows that her mental functioning was within normal limits when undergoing a mini-mental status exam in August of 2014, which was approximately 17 months after the LTC insurance cancellation, and that her

¹⁰ Ms. R's testimony.

¹¹ Dr. T's testimony.

¹² Mr. E's testimony; K. T Record, p. 12.

¹³ *Pappert v. Sargent*, 847 P.2d 66, 68 (Alaska 1993).

judgment and reasoning skills fell in the low average range, while her attention and concentration skills fell in the impaired range, when undergoing a full neuropsychological evaluation in late October 2014. There is no medical evidence regarding her mental status as of March 2013, when she cancelled the LTC insurance. Ms. T's sister and sister-in-law testified that although she was physically declining, her mental faculties appeared intact in the summer of 2013. Her financial planner saw no evidence of mental decline in March 2013. Further, the Retirement and Benefits counselor would have explained, as part of her standard practice, that LTC insurance, once cancelled, could not have been reinstated, and did not note that there was anything unusual about the Ts.

Dr. T, and Ms. T's niece, D R, both had some concerns about Ms. T's mental capacity. However, this was not enough to outweigh the medical evidence which showed normal functioning in August of 2014 and low average functioning in judgment and reasoning skills in October 2014. When the combined observations of Ms. T's sister, sister-in-law, financial planner, and the Retirement and Benefits counselor are taken into account, Ms. T has not met her burden of proof. She has failed to demonstrate that in March 2013, she was unable to understand the nature and consequences of cancelling her LTC insurance.

IV. Conclusion

The TRS administrator's decision to not reinstate Ms. T's LTC insurance is affirmed.

Dated this 28th day of April, 2016.

By: Signed
Lawrence A. Pederson
Administrative Law Judge

Adoption

This Decision is issued under the authority of AS 14.25.006. The undersigned, in accordance with AS 44.64.060, adopts this Decision 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 Rule of Appellate Procedure 602(a)(2) within 30 days of the date of this decision.

DATED this 26th day of May, 2016.

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

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