

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

In the Matter of)	
)	
T Q)	OAH No. 18-0379-MDS
_____)	Agency No.

DECISION

I. Introduction

T Q applied for Medicaid Home and Community-Based Waiver program (“Waiver”) services. The Division of Senior and Disabilities Services (Division) assessed her for eligibility on February 2, 2018. The Division subsequently notified Ms. Q that her application was denied.¹ Ms. Q requested a hearing.²

The evidence presented at hearing demonstrates that it is more likely true than not true that Ms. Q requires extensive assistance with all five of the scored activities of daily living: bed mobility, transfers, locomotion, eating, and toileting. As a result, Ms. Q qualifies for Waiver services, and the Division’s denial of her application is reversed.

II. Facts and Procedural History

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

Ms. Q is currently 87 years old. She lives by herself in an apartment. She is quite frail and thin. Both of her hands are severely contracted, and she is missing three fingers on her right hand.³ In addition to the joint contracture, her medical conditions include a chronic ulcer on her left foot, chronic pain syndrome, difficulty walking, hypertension, heart failure, hypothyroidism, rheumatoid arthritis, osteoarthritis, lumbar disc disease with myelopathy, and joint pain.⁴

Ms. Q was assessed at her home on February 2, 2018 to determine if she was eligible for Waiver services.⁵ In addition to Ms. Q, Ms. L, her Medicaid Care Coordinator, and Ms. D, her PCA, were present at the assessment.

¹ Ex. D.

² Ex. C.

³ Ex. E, pp. 2, 6

⁴ Ex. E, pp. 3 - 4.

⁵ The written assessment (Ex. E) shows Scott Chow as the assessor. However, Ms. Rodes testified that was an error and that she was the assessor.

Ms. Q was lying flat on a mat on the floor at the beginning of the assessment process. The assessment provided that the assessor saw her move around and sit up on the mat, get up from the mat without assistance, walk to the bathroom using a walker but no other assistance, and sit down and get up from the toilet, again without assistance. The assessment further stated that the assessor saw Ms. Q, later during the assessment process, being “pulled . . . to standing from mat on living room floor.” The assessor testified that she thought this second demonstration was unusual and unnecessary.⁶ The assessor also saw that Ms. Q’s hands were contracted, shaky, and missing three fingers on the right hand. She saw Ms. Q hold a cup up to her mouth with both hands and stated that Ms. Q told her that she could eat bread. The PCA told the assessor that Ms. Q had to be spoon fed and required pureed food because she only had two teeth.

Based upon her observations and discussions with Ms. Q, the assessor concluded that Ms. Q was independent with bed mobility, that she required some supervision (self-performance code of 1) with locomotion, transfers, and eating, and she required extensive assistance (self-performance code of 3) with toileting. The assessment, as scored by the assessor, found that Ms. Q was not eligible for Waiver services.⁷

Ms. Q disagreed with the Division’s determination that she did not qualify for Waiver services and requested a hearing to challenge its determination. That hearing was held on three separate dates: May 18, June 1, and June 6, 2018. Ms. Q and her power-of-attorney B K were physically present for the May 18 and June 1 portions of the hearing. Ms. L, and Ms. D were physically present on all three occasions. The Division was represented by Victoria Cobo, a Health Program Manager on all three occasions. Barbara Rodes, the Division’s assessor, attended in-person on May 18 and June 1, 2018.

Ms. D has taken care of Ms. Q for approximately 11 years. She sees Ms. Q almost every day. She testified that Ms. Q can move from side to side in bed but is unable to sit up without being lifted. She says that Ms. Q is only approved for PCA services for 2.5 hours per day, but that she spends 4 to 5 hours per day with her. When asked what Ms. Q does for toileting needs when left alone, Ms. D stated that Ms. Q lies on absorbent pads on her mat, and if she needs to urinate and doesn’t have help available, then she uses the pads on her mat. She further stated

⁶ Ex. E, pp. 6 – 8.

⁷ Ex. E, pp. 7 – 9, 31 – 32.

that Ms. Q has to be hand fed and cannot eat by herself; she needs to have her hands steadied when she tries to hold a cup to drink from.⁸ Ms. D said that Ms. Q has to be lifted to a sitting from a lying position. Ms. D described the process as one where Ms. D's arms go under Ms. Q's armpits and she is physically lifted. She described a similar process for moving Ms. Q from a sitting to a standing position. She also provides supportive-weight-bearing assistance for walking. Ms. D said that Ms. Q has not been able to use a walker for about a year.⁹

Mr. K has known Ms. Q for about three years. Although he does not see her every day, he does see her occasionally. He testified that she was unable to move or reposition herself and was not capable of self-care.¹⁰

Ms. L first met Ms. Q about one month before the February assessment. She arrived late for the assessment. When she came into the apartment, there was a strong odor of urine. She did not see Ms. Q move from the mat without assistance, as described by the assessor. She did see Ms. Q being lifted up while transferred and physically supported while walking.¹¹

There is a clear discrepancy between the assessor's observations, as recounted in the written assessment and her testimony, and the testimony of Ms. D, Mr. K, and Ms. L. Because all the witnesses were present in the hearing room, it was possible to watch them while they testified and while they listened to each other's testimony.

Ms. D is the person most familiar with Ms. Q's condition and her care needs. There was nothing in her demeanor or her answers to suggest that she was less than credible. In addition, she visibly reacted to the assessor's testimony on several occasions. Most notably, when the assessor testified that Ms. Q was able to get up from the mat independently and used the walker independently, Ms. D did not react audibly, she smiled and shook her head in clear disagreement. In addition, Ms. D's testimony was corroborated by Mr. K, and Ms. L. Ms. L's statement that the apartment smelt strongly of urine was consistent with Ms. D's testimony that if she isn't there to assist Ms. Q with going to the bathroom, that Ms. Q simply urinates on the absorbent pads on top of her mat.

Ms. Q was also present in the hearing room on May 18 and June 1, 2018. She attempted to stand from her chair at one point and was clearly unable to stand up on her own. Both hands

⁸ Ms. D
⁹ Ms. D's testimony.
¹⁰ Mr. K's testimony.
¹¹ Ms. L's testimony.

were severely contracted. Between the contracture and her missing fingers, it is difficult to visualize her being able to properly hold onto a walker, or for her to eat independently, or to hold a cup or food to her mouth without assistance. She was observed being pushed while seated on her walker.¹² In addition, it was apparent that she was missing almost all her teeth. Given the consistency of their testimony coupled with the physical observation of Ms. Q, Ms. D, Mr. K, and Ms. L are considered more credible than the assessor.

It is therefore more likely true than not true that Ms. Q has to be physically lifted from a lying position to a sitting position when on her mat, that she has to be physically lifted on transfers, that she has to be physically supported and held up when walking or that she has to be pushed while seated on her walker, and that she has to be fed.

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

¹² Ms. Q’s walker is one that has a seat on it, so that a person can use it either as a walker or a seat.

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. 12 - 14.

¹⁷ Ex. E, pp. 15 - 18.

¹⁸ Ex. E, pp. 31 - 32.

¹⁹ Ex. E, pp. 18 - 19, 31 - 32.

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 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

B. Eligibility

Ms. Q applied for Waiver services. As an applicant, she has the burden of proof.²³ Ms. Q was not receiving any specialized treatments or therapies. While she was receiving frequent dressing changes for foot ulcerations, she was receiving them at home and not from a medical professional, except for occasional podiatrist visits.²⁴ Ms. Q's cognitive abilities are impaired. Based upon observation of her during the hearing, she was aware that she was in a hearing and knew the people who accompanied her to the hearing. She has self-care issues, as evidenced by her refusals to seek medical treatment. However, neither her cognitive impairment nor her self-care issues are severe enough to assist her in qualifying for Waiver services.²⁵

In order to qualify for Waiver services, Ms. Q would therefore require extensive or complete assistance in at least three of the five scored ADLs. "Extensive assistance," as defined in the CAT, requires that a person receive weight bearing support three or more times per week in a specified ADL.²⁶ In a 2013 decision, the Commissioner reviewed the term "weight bearing" as it is used in the CAT, and held that that:

²⁰ Ex. E, p. 31.

²¹ Ex. E, p. 31 - 32.

²² Ex. E, p. 32.

²³ 7 AAC 49.135.

²⁴ Ms. D's testimony.

²⁵ To achieve a point towards eligibility based on cognition, Ms. Q would need to be severely cognitively impaired. *See* Ex. E, pp. 15 – 16, 31 – 32. To achieve a point toward eligibility based on behavioral issues, she would similarly have to exhibit severe behavior issues. *See* Ex. E, pp. 17 - 18, 31 – 32. While the evidence shows that she has some cognitive impairment and some behavioral issues, neither of them are near the high threshold required for eligibility scoring.

²⁶ Ex. E, p. 7.

Weight bearing assistance should be interpreted as supporting more than a minimal amount of weight. It does not require that the assistant bear most of the recipient's weight, but instead that the recipient could not perform the task without the weight bearing assistance.²⁷

The assessment found that Ms. Q required extensive assistance with toileting. In order to qualify for Waiver services, she would need extensive assistance with at least two of the remaining scored ADLs: bed mobility, transfers, locomotion, and eating. Ms. Q maintains that she requires extensive assistance with all four.

1. Bed Mobility

Bed mobility is defined as how a "person moves to and from lying position, turns side to side, and positions body while in bed."²⁸ As found above, Ms. Q has to be physically lifted to move from a lying to a sitting position. This is extensive assistance.

2. Transfers

Transfers are defined as how a "person moves between surfaces," such as from a sitting to a standing position.²⁹ As found above, Ms. Q has to be physically lifted for transfers. This is extensive assistance.

3. Locomotion

Locomotion is the act of moving about in the home. It may involve the use of an assistive device such as a cane, walker, or a wheelchair.³⁰ As found above, Ms. Q has to be physically supported and held up when walking, or she has to be pushed while seated. This is extensive assistance.

4. Eating

Eating is "how [a] person eats and drinks regardless of skill."³¹ As found above, Ms. Q has to be fed. This is extensive assistance.

²⁷ See *In re K T-Q*, OAH Case No. 13-0271-MDS, p. 4 (Commissioner DHSS June 21, 2013). This decision is available at the OAH website: <http://aws.state.ak.us/officeofadminhearings/Documents/MDS/HCW/MDS130271.pdf>

²⁸ Ex. E, p. 7.

²⁹ Ex. E, p. 7.

³⁰ Ex. E, p. 7.

³¹ Ex. E, p. 9.

IV. Conclusion

Ms. Q requires extensive assistance with all five of the scored activities of daily living: toileting. As a result, she qualifies for Waiver services. Consequently, the Division's denial of her application is reversed.

DATED this 29th day of June, 2018.

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 13th day of July, 2018.

By: *Signed*

Name: Christopher Kennedy
Title: Administrative Law Judge

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