

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

In the Matter of)
)
Z-K B) OAH No. 20-0840-MDS
) Agency No. [REDACTED]

DECISION

I. Introduction

Z-K B applied for Medicaid Home and Community-Based Waiver (Waiver) services. The Division of Senior and Disabilities Services (Division) initially assessed Ms. B for program eligibility on September 8, 2020.¹ It denied her application on September 17, 2020.² Through her care coordinator, C E, Ms. B requested a hearing.³

Ms. B experiences a number of physical impairments and some cognitive deficits. She experiences pain and resides in an assisted living home, where staff support her in many tasks. However, her health care needs do not require the nursing facility level of care that is necessary to qualify for Waiver services. As a result, the denial of her application for Waiver services is affirmed.

II. Procedural History

A hearing on Ms. B’s eligibility for Waiver services was held on November 13, 2020. Ms. B appeared telephonically, along with Y Z, her Assisted Living Home (ALH) administrator, and her care coordinator, C E. Ms. B, Ms. Z, and Ms. E testified. The Division was represented by Victoria Cobo-George. Ernest Shipman, who conducted the assessment of Ms. B, testified on the Division’s behalf. Ms. B’s assessment for waiver eligibility was conducted via Zoom video conference due to the Coronavirus pandemic.⁴

III. Background Facts

Ms. B is 70 years old and lives in an assisted living home.⁵ She is diagnosed with dementia, diabetes, depression, hypothyroidism, and incontinence.⁶ While she has been

¹ Exhibit D, Page 1.
² Exhibit D, Page 1.
³ Exhibit C.
⁴ Exhibit E, page 3.
⁵ Exhibit E, page 2.
⁶ Exhibit E, page 3.

diagnosed with dementia, she manages her own finances and she participated appropriately in the hearing.⁷ She has lived in an assisted living home with Ms. Z since February 2020.⁸

During the virtual assessment, Mr. Shipman observed Ms. B turn in bed, stand from the bed with a walker, and walk with her walker and a caregiver behind her holding her shirt with one hand.⁹ Mr. Shipman reports that he was told Ms. B is able to cleanse herself for toileting, and he testified that medical documentation did not support her need for assistance.¹⁰ He concluded that she was independent with bed mobility, transfers, locomotion, eating, and toileting and did not qualify for Waiver services.

Initially, it did not appear that Ms. B knew why there was a hearing, nor did she want to participate. However, she was able to orient herself and testified first. She answered questions about her ability in ways that sounded reasonable, and were consistent with Ms. Z and Mr. Shipman’s testimony. Throughout the hearing, it was difficult to discern what Ms. B can do for herself, and when others help because it is more convenient. She testified that she is able to roll over in bed, and in the middle of the night she can get up, with the assistance of her walker, to use the commode by her bed.¹¹ However, during the day, when people are around, staff usually help her stand up.¹² She testified that she needs help cleaning herself after a bowel movement because she cannot reach behind her.¹³ She is able to eat independently.¹⁴ When walking, and when someone is available, someone will walk with her, placing a hand on her back or shoulders to make sure she doesn’t fall.¹⁵

IV. 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.”¹⁶ The nursing facility level of care¹⁷ requirement is determined by an assessment which is documented by the

⁷ Exhibit E, page 4.
⁸ Testimony of Y Z.
⁹ Testimony of Ernest Shipman.
¹⁰ Testimony of Ernest Shipman.
¹¹ Testimony of Z-K B.
¹² Testimony of Z-K B; Testimony of Y Z.
¹³ Testimony of Z-K B.
¹⁴ Testimony of Z-K B; Testimony of Y Z.
¹⁵ Testimony of Z-K B; Testimony of Y Z.
¹⁶ 7 AAC 130.205(d)(4).
¹⁷ See 7 AAC 130.205(d)(4); 7 AAC 130.215.

Consumer Assessment Tool (CAT).¹⁸ The CAT records an applicant's needs for professional nursing services, therapies, and special treatments,¹⁹ and whether an applicant has impaired cognition or displays problem behaviors.²⁰ Each of the assessed items are coded and contribute 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 3.²¹

The CAT also records the degree of assistance an applicant requires for activities of daily living (ADLs), which include the following: 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 as related to toileting.²² ADL's are scored based on the level of assistance an individual requires. To be eligible for Waiver services based entirely on physical assistance needs with ADL's, an individual would need a self-performance code of 3 (extensive assistance) or 4 (total dependence) for three or more of the five ADL's highlighted above (bed mobility, transfers, locomotion within the home, eating, and toileting).²³ Extensive assistance is defined as being able to perform part of the activity, but only with "[w]eight-bearing support and/or [f]ull staff/caregiver performance" at least three times in the seven day period leading up to the assessment.²⁴ Total dependence means the individual required that a caregiver perform the activity for them entirely in the seven day period leading up to the assessment.²⁵

A person can also be eligible for Waiver services if they require certain combinations of required professional nursing services, therapies, assistance with ADL's, and/or if they have impaired cognition (memory/reasoning difficulties), or difficult behaviors (wandering, abusive behaviors, etc.).²⁶

¹⁸ 7 AAC 130.215(4).

¹⁹ Exhibit E, pages 5, 11-13.

²⁰ Exhibit E, pages 14-17.

²¹ Exhibit E, page 30-31.

²² Exhibit E, pages 6-11.

²³ Exhibit E, page 30-31.

²⁴ Exhibit E, page 6.

²⁵ Exhibit E, page 6.

²⁶ Exhibit E, pages 31-32.

B. Burden of Proof

In this case, Ms. B seeks Waiver eligibility and bears the burden to prove by a preponderance of the evidence that she satisfies eligibility requirements.²⁷ She can meet this burden using any evidence on which reasonable people might rely in the conduct of serious affairs.²⁸

C. Eligibility

It is undisputed that Ms. B is not receiving any therapies or specialized nursing services. Ms. B, however, does have dementia, which affects both her cognition and her behavior. She also has some impaired physical functionality. It is therefore necessary to examine these to determine if they provide a pathway toward her eligibility for Waiver services.

On the CAT, Ms. B scored a 2 for cognition out of a possible 16.²⁹ This is the compilation of scores in five different areas relating to one's memory and interaction with the environment around them. One must receive a score of 13 for this score to become a factor in Waiver eligibility.³⁰ While Ms. B does have dementia, there was nothing in the questioning or responses from Ms. B that would provide evidence for a score different than she received in her assessment.

On the CAT, Ms. B scored a 1 for behavior. This does not rise to the level required to make this a potential factor for Waiver eligibility and there is no evidence to suggest this score is inaccurate.

Because Ms. B's cognitive and behavior difficulties are minimal, the only way she would qualify for Waiver services would be if she requires extensive or a higher level of assistance with three or more of the five scored ADLs: bed mobility, transfers, locomotion, toileting, and eating.

Bed mobility is how a person moves to and from a lying position, how they can turn from side to side and how they can change position when lying in bed.³¹ The assessment scored Ms. B as independent with bed mobility. This is supported by the testimony. While Ms. B sometimes receives assistance in bed, it is most likely true that this is for convenience. Therefore, the Division's assessment that Ms. B is independent with bed mobility is affirmed.

²⁷ 7 AAC 49.135.

²⁸ 2 AAC 64.290(a)(1).

²⁹ Exhibit E, pages 14-15.

³⁰ Exhibit E, pages 31-32.

³¹ Exhibit E, page 6.

Transfers include how a person moves between surfaces, including standing to sitting and sitting to standing.³² Ms. B was scored as independent with transfers, and she was observed standing, slowly but independently from her bed during the assessment.³³ This is also consistent with Ms. B's testimony. Ms. Z testified that Ms. B receives assistance to stand through staff pulling her up.³⁴ However, the allegation that Ms. B *needs* help with transfers is not supported by the totality of the evidence. Therefore, the Division's assessment that Ms. B is independent with transfers is affirmed.

Locomotion for purposes of Waiver eligibility is defined in relation to the physical assistance one needs to move around within their home on the same floor.³⁵ The use of assistive devices are not considered physical assistance. Ms. B was assessed as requiring supervision and set-up help with locomotion.³⁶ Mr. Shipman observed Ms. B walk with her walker, with someone behind her with one hand holding onto her shirt. This is consistent with the testimony of Ms. B and Ms. Z. When going short distances (such as the commode during the middle of the night), it is clear that she sometimes moves independently, but when going longer distance, she has met her burden to show that she receives assistance in the form of a hand on her back or holding onto a shirt. This level of assistance was scored as supervision, however, she is actually receiving hands-on physical assistance. Therefore, the appropriate scoring should be limited assistance, or 2/2 for the activity of locomotion.

Eating is how someone eats or drinks.³⁷ Ms. B was assessed as being independent in her ability to feed herself and cut up her food.³⁸ This is consistent with the testimony of Ms. B and Ms. Z. The evidence therefore shows that Ms. B is independent with eating.

The ADL of toileting is how a person uses the type of toilet (or urinal etc) present in their home, how they transfer onto and off of the toilet, cleanse themselves after toileting, and adjust their clothing before and after toileting.³⁹ Ms. B was scored independent with toileting based on her statement during the assessment that she can cleanse herself.⁴⁰ At hearing, Ms. B testified that she receives assistance cleaning herself after a bowel movement, and this was supported by

³² Exhibit E, page 6.

³³ Testimony of Ernest Shipman; Testimony of Y Z.

³⁴ Testimony of Y Z.

³⁵ Exhibit E, page 6.

³⁶ Exhibit E, pages 6-7.

³⁷ Exhibit E, page 8.

³⁸ Exhibit E, page 8.

³⁹ Exhibit E, page 8.

⁴⁰ Exhibit E, page 8.

Ms. Z's testimony. This testimony is credible, and the evidence shows Ms. B requires limited assistance, or a score of 2/2 for the activity of toileting.

As discussed immediately above, Ms. B does not require extensive or a higher degree of assistance with the five scored ADLs. She only requires limited assistance with two of the five scored ADLs – locomotion and toileting.

V. Conclusion

Ms. B requires only limited assistance with locomotion and toileting, whereas in order to qualify for Waiver services, she would need to require extensive or a higher level of assistance with three of the five scored ADLs. Consequently, she does not meet the stringent standards for qualifying for Waiver services and the denial of her application is affirmed.

Dated: December 10, 2020

Signed _____
Elizabeth Smith
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 28th day of December, 2020.

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

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