

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

In the Matter of)	
)	
Z H)	OAH No. 20-0983-MDS
_____)	Agency No.

DECISION

I. Introduction

Z H applied for Medicaid Home and Community-Based Waiver (Waiver) services. The Division of Senior and Disabilities Services (Division) initially assessed Ms. H for program eligibility on October 28, 2020.¹ It denied her application on December 3, 2020.² Ms. H requested a hearing to contest the Division’s denial.³

Ms. H has a variety of medical conditions that require her to need some assistance to complete her Activities of Daily Living. This decision finds that Ms. H requires more assistance with bed mobility than determined by the Division. However, even with this change she does not require the level of assistance that would be required in a nursing facility as determined through the assessment process used by the Division. Therefore, the Division’s denial of Waiver services is upheld.

II. Facts

A. The Hearing

A hearing on Ms. H’s eligibility for Waiver services was held on February 25, 2021. Ms. H participated and testified on her own behalf. Her daughter, E T was also present at her hearing and testified, along with Personal Care Agency representative R E and care coordinator L D. Ms. E and Ms. D both assisted Ms. H in asking questions of the Division’s witness. Victoria Cobo-George represented the Division, and Julie White who conducted the assessment testified on the Division’s behalf.

B. Finding of Facts

Ms. H is a 73 year old female who lives in her own home.⁴ She has been diagnosed with congestive heart failure, hypertension, and chronic obstructive pulmonary disease.⁵ She uses

¹ Exhibit E.
² Exhibit D.
³ Exhibit C, page 2.
⁴ Exhibit E, page 4; Testimony of Ms. H.
⁵ Exhibit E, page 5.

oxygen on a regular basis.⁶ A few weeks prior to her assessment, Ms. H was receiving home health visits twice weekly to monitor blood pressure.⁷ She also participated in physical therapy and occupational therapy one day per week up to a few weeks before her assessment.⁸ One of her main impediments is obtaining enough oxygen. She does use oxygen and gets out of breath easily when moving. However, doctors and therapists encourage her to exercise to maintain and improve her movement abilities.⁹

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.”¹⁰ The nursing facility level of care¹¹ requirement is determined by an assessment which is documented by the Consumer Assessment Tool (CAT).¹² The CAT records an applicant’s needs for professional nursing services, therapies, and special treatments,¹³ and whether an applicant has impaired cognition or displays problem behaviors.¹⁴ 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 3.¹⁵

The CAT also records the degree of assistance an applicant requires for activities of daily living (ADL), 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.¹⁶ 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

⁶ Testimony of Ms. H.

⁷ Exhibit E, page 5.

⁸ Exhibit E, page 5.

⁹ Testimony of Ms. H.

¹⁰ 7 AAC 130.205(d)(4).

¹¹ See 7 AAC 130.205(d)(4); 7 AAC 130.215.

¹² 7 AAC 130.215(4).

¹³ Exhibit E, pages 7, 13-15.

¹⁴ Exhibit E, pages 16-17.

¹⁵ Exhibit E, page 33.

¹⁶ Exhibit E, pages 8-13.

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).¹⁷ 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.¹⁸ 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.¹⁹

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.).²⁰

B. Burden of Proof

In this case, Ms. H seeks Waiver eligibility and bears the burden to prove by a preponderance of the evidence that she satisfies eligibility requirements.²¹ She can meet this burden using any evidence on which reasonable people might rely in the conduct of serious affairs.²²

1. Bed Mobility

There are multiple ways for an individual to qualify for Waiver benefits, however, Ms. H argued that she qualifies based on scoring for activities of daily living. Therefore, this path is all that needs to be discussed in this decision. Evidence in the record does not support another path to eligibility.

Bed mobility is how a person moves within their bed.²³ The Division scored Ms. H as independent with bed mobility.²⁴ Ms. H has a hospital bed in her home.²⁵ She struggles to turn within her bed independently.²⁶ She is able to use a trapeze to pull herself to sitting, but testified

¹⁷ Exhibit E, page 33.

¹⁸ Exhibit E, page 8.

¹⁹ Exhibit E, page 8.

²⁰ Exhibit E, pages 33-34.

²¹ 7 AAC 49.135.

²² 2 AAC 64.290(a)(1).

²³ Exhibit E, page 8 ("How person moves to and from lying position, turns side to side, and positions body while in bed.").

²⁴ Exhibit E, page 8.

²⁵ Exhibit E, page 8; Testimony of Ms. H.

²⁶ Exhibit E, page 8.

that approximately 4-5 times per week she is unable to pull herself up to a sitting position.²⁷ On those days that she cannot get up, she waits until someone comes to help get her out of bed.²⁸ When her caregiver is there, Ms. H places one hand on her trapeze bar, and her caregiver grabs the other arm and helps to pull her to a sitting position.²⁹ Then her caregiver moves her legs off to the side of the bed for her, and places her walker so that Ms. H can stand using her walker to get up.³⁰

Ms. H's testimony was credible. She stated throughout her hearing that she has good days and bad days. A caregiver need only to bear some weight to be considered weight-bearing assistance, and this must be required only three times per week to be considered extensive assistance.³¹ Ms. H testified that she needs her caregiver to pull her up to sitting approximately 4-5 times per week. The 'pulling' motion described involves bearing some of her weight, as does the physical movement of her legs over the side of the bed. This decision finds that Ms. H has met her burden to show that she requires extensive assistance in the area of bed mobility, or a self-performance score of 3.

2. *Transfers*

Transfers determine the assistance an individual requires to move from seated to standing and vice-versa between the different surfaces in their home. During the assessment, Ms. H was able to stand from her four wheeled walker, though she reported that her PCA helps her to stand when she is present.³² When discussing assistance needed, Ms. H testified that she is able to stand from her bed and the toilet with the help of her walker.³³ It is more likely true than not that Ms. H can move to a standing or sitting position without physical hands on assistance. This is consistent with a score of supervision and setup help, as scored by the Division, and its decision is upheld.

3. *Locomotion*

Locomotion for purposes of Waiver eligibility is defined in relation to the physical

²⁷ Exhibit E, page 8; Testimony of Ms. H.

²⁸ Testimony of Ms. H.

²⁹ Testimony of Ms. H.

³⁰ Testimony of Ms. H.

³¹ Exhibit E, page 8.

³² Exhibit E, page 8.

³³ Testimony of Ms. H.

assistance one needs to move around within their home on the same floor. The use of assistive devices is not considered physical assistance. The Division scored Ms. H as requiring supervision and setup help with locomotion.³⁴ Ms. H was able to walk a short distance using her walker during the assessment, though she reported and testified that usually she sits on her walker and propels herself through her home using her legs.³⁵ Even though she is sitting, this means that she is able to move independently. Additionally, Ms. H testified that her therapist asked her to walk from one side of the room to the other regularly, and to walk outside daily.³⁶ She said she got out of breath and wasn't moving consistently, however, the fact that a professional therapist encouraged this movement demonstrates her independence with locomotion.³⁷ Therefore, the Division's decision as to locomotion is affirmed.

4. *Eating*

Eating is how someone eats or drinks. The Division scored Ms. H as independent with eating.³⁸ She was only observed to drink water, however she reported that she eats on her own, and this was confirmed during the hearing.³⁹ Therefore, the Division's decision that Ms. H is independent with eating is affirmed.

5. *Toileting*

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, and their ability to clean themselves and perform other personal hygiene tasks associated with toileting. Ms. H wears briefs and receives assistance to change and cleanse from her personal care assistant.⁴⁰ The Division scored Ms. H as requiring limited assistance with toileting to allow for help changing briefs and cleansing as well as for occasional assistance to stand from the toilet.⁴¹ Ms. H testified that she only uses the toilet when her caregiver is there to assist. She is able to sit by herself, but needs help holding the walker to stand because the bathroom floor is tile and she needs someone for her to steady

³⁴ Exhibit E, page 9.

³⁵ Exhibit E, page 8; Testimony of Ms. H.

³⁶ Testimony of Ms. H.

³⁷ There is evidence in the record of numerous falls that Ms. H had while ambulating alone in her home. While everyone should feel safe moving in their home, at most this would suggest that she should have someone on standby for balance. It does not rise to the level of physical assistance needed per the Division's standards.

³⁸ Exhibit E, page 10.

³⁹ Exhibit E, page 10; Testimony of Ms. H.

⁴⁰ Exhibit E, page 10; Testimony of Ms. H.

⁴¹ Exhibit E, page 10; Testimony of Julie White.

her walker in order for her to use it securely to stand up.⁴² What Ms. H described is consistent with limited assistance, and the Division's scoring as to toileting is upheld.

IV. Conclusion

Based on the evidence presented, Ms. H has met her burden to show she requires more assistance than scored by the Division as to bed mobility. A score of extensive assistance for bed mobility, but only limited for toileting and independent or supervision help for the other three relevant Activities of Daily Living, does not make Ms. H eligible for waiver eligibility. Therefore, the Division's denial is upheld.

Dated: April 5, 2021

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 20th day of April, 2021.

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

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

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⁴² Testimony of Ms. H.