

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

In the Matter of)
)
S J) OAH No. 21-0224-MDS
) Agency No.
_____)

DECISION

I. INTRODUCTION

S J applied for a Medicaid Home and Community-Based Waiver (“Waiver”) benefits. The Division of Senior and Disabilities Services (“Division”) assessed his eligibility by videoconference on February 5, 2021. The Division found that Mr. J has impaired memory and cognition and needs assistance with many daily activities, but ultimately determined that his needs do not rise to the level of a skilled or intermediate-level nursing home and is therefore ineligible for a Waiver.

As an initial applicant, Mr. J has the burden of showing that the Division erred in determining that he did not qualify for a Waiver. This is a heavy burden as Waiver benefits are intended for a particularly high level of care needs. As discussed below, Mr. J has demonstrated a substantial need for assistance, but the evidence falls short of showing a need for this level of care. Accordingly, the application denial is affirmed.

II. BACKGROUND

A. Mr. J’s Condition

Mr. J is a 48-year-old with Susac Syndrome, a rare auto-immune disorder that causes encephalopathy, neuropathy, hearing and vision loss, and impairs balance and cognition.¹ His primary care physician, Dr. E T, testified that Mr. J has vastly decreased vision, hearing loss to the point of needing cochlear implants, drastically reduced cognition, problems with balance, and chronic pain, particularly in his lower extremities. Dr. T also testified that Mr. J has frequent coughing fits, but unlike most people, coughing causes Mr. J to lose consciousness, leading to injuries from falling. These injuries have been significantly enough to require hospitalization and multiple emergency room visits in the past year, including for head lacerations and a broken leg.²

Mr. J lives alone, but requires daily in-person care, largely due to his cognitive difficulties and frequent falls from losing consciousness. Dr. T testified that Mr. J cannot remember to take

¹ Application for ALI/APDD/CCMC/CFC for S J, signed January 8, 2021 (“Application”) at 3; Verification of Diagnosis, December 24, 2020.

² Consumer Assessment Tool for S J, assessment date February 5, 2021 (“CAT”) at 3; Business A Hospital Emergency Department records.

his medication, eat, or maintain personal hygiene. Mr. J's sister, B D, also testified that he will not get out of bed, shower, or eat without assistance and prompting. She testified that Mr. J will go weeks without showering or days without eating. Dr. T reported that Mr. J is incontinent, either daily or at least several time per week. He is physically able to clean up after himself, but either forgets to do so or is unaware of the need until prompted by visiting family members. Ms. D also testified that Mr. J is frequently incontinent and requires prompting to become aware of the issue and to clean himself.

Mr. J's representatives submitted 24-hour "Care Calendars" for several days in February and March 2021 detailing the assistance Mr. J has been requiring from family, primarily his soon-to-be ex-wife and teenage son. These documents detail days filled pain, disorientation, memory lapses, and an inability to complete the simplest of tasks without detailed instructions, prompting, and assistance.³

Mr. J applied for Waiver benefits in January 2021.⁴

B. Medicaid Home and Community-Based Waiver Program

The Alaska Medicaid program provides Waiver services to adults with physical disabilities who require "a level of care provided in a nursing facility."⁵ The purpose of these services is "to offer a choice between home and community-based waiver services and institutional care."⁶

The nursing facility level of care⁷ requirement is determined in part by an evaluation under the Consumer Assessment Tool ("CAT").⁸ The CAT records an applicant's needs for professional nursing services, therapies, and special treatments,⁹ and whether an applicant has impaired cognition or displays problem behaviors.¹⁰ Each of the assessed items is coded and contributes to a final numerical score. The CAT also records the degree of assistance an applicant requires for activities of daily living ("ADL"), which include five specific scored categories: bed mobility (moving within a bed), transfers (*e.g.*, moving from the bed to a chair or a couch), locomotion (walking or movement when using a device such as a cane, walker, or wheelchair)

³ February 17, 2021 Care Calendar; February 28, 2021 Care Calendar; March 7, 2021 Care Calendar; March 17, 2021 Care Calendar; March 19, 2021 Care Calendar.

⁴ Application.

⁵ 7 AAC 130.205(d)(1)(B) and (d)(2).

⁶ 7 AAC 130.200.

⁷ See 7 AAC 130.205(d)(2); 7 AAC 130.230(b)(2)(A).

⁸ 7 AAC 130.215(4).

⁹ CAT at 11-13.

¹⁰ *Id.* at 14-16.

within the home, eating, and toilet use, which includes transferring on and off the toilet and personal hygiene care.¹¹ A variety of score combination in one or more of these categories can qualify a person for Waiver benefits.

C. Division's Consumer Assessment Tool Evaluation of Mr. J

A Division assessor evaluated Mr. J on February 5, 2021.¹² Because of COVID, the evaluation was conducted by videoconference instead of in person.¹³

The assessor noted that Mr. J is not receiving any of the nursing services that alone can qualify a person for the Waiver Program.¹⁴ Nor did the assessor observe significant problem behavior.¹⁵ Mr. J's representatives did not dispute those findings.

The assessment did find Mr. J has issues with cognitive abilities and ADLs, but did not score these needs high enough to qualify for the Waiver Program.¹⁶ In particular, the assessor found that Mr. J had problems with long term memory, memory recall, and cognition, but did not score these or other cognitive problems high enough for Mr. J to qualify for a Waiver.¹⁷ For ADLs, the assessor determined that Mr. J needs limited assistance and one-person physical assistance with transfers between surfaces, locomotion, and toileting, daily cueing for personal hygiene, and supervision and cueing for bathing.¹⁸ The assessor found, however, that Mr. J did not need assistance for bed mobility, dressing, or eating.¹⁹ Mr. J's representatives take issue with many of these findings.

D. Hearing and Documents Submitted After Close of Record.

A telephonic hearing was held on March 31, 2021. Mr. J was represented by his sister and power of attorney, B D, and care coordinator, Y W. His primary care physician, Dr. E T, and Ms. D provided testimony. The Division of Senior and Disabilities Services provided testimony from assessor Katherine Pound. The hearing closed the record on this appeal.

A few weeks later, on April 15, 2021, Ms. W submitted three additional documents. These documents address potential grounds for future Waiver eligibility, not eligibility as of the time the Division evaluated Mr. J. Because these documents are not relevant to whether the

¹¹ *Id.* at 17-18.

¹² *Id.* at 1.

¹³ *Id.* at 3.

¹⁴ *Id.* at 11-13, 31.

¹⁵ *Id.* at 15-16, 31.

¹⁶ *Id.* at 31-32.

¹⁷ *Id.* at 14-15, 31-32.

¹⁸ *Id.* at 6-11.

¹⁹ *Id.*

Division erred in its decision, the record will not be reopened to include them and their contents were not considered for this decision.

III. DISCUSSION

For Mr. J, the two relevant portions of the CAT are cognitive problems and ADLs. Mr. J could qualify for Waiver benefits with either (1) a code of 3 or 4 for self-performance of at least three of the five pertinent ADLs; or (2) a demonstrated need in all areas of cognition plus at least two of the five ADLs with code of 2, 3, or 4 for self-performance and 2 or 3 for support.²⁰

Mr. J has the burden of showing that he should have received these scores on his CAT assessment.²¹

A. Mr. J Did Not Demonstrate Sufficient Cognitive Problems.

To demonstrate cognitive problems that necessitate skilled or intermediate-level nursing home care, Mr. J needs to qualify in four areas: (1) short term memory; (2) memory recall; (3) cognitive skills (Section C3); and (4) cognition (Section C4).²² The Division noted some cognitive difficulties, but ultimately found Mr. J met the threshold for only cognitive skills:²³

NF.3.

a. Is Section C1a (short-term memory), coded with a "1"?	0 - No	1 - Yes	No
b. In section C2 (memory recall) are 1 or 2 boxes checked in C2a-C2d or is C2e. None of the Above checked?	0 - No	1 - Yes	No
c. Is Section C3 coded with a 2 or 3?	0 - No	1 - Yes	Yes
d. [Is Section C4A coded with a 1] OR [in Section E, is at least one shaded ADL coded with a 2, 3, or 4 in self-performance and a 2 or 3 in support AND C4B (from page 3A Supplemental Screening Tool) is 13 or more]?	0 - No	1 - Yes	No
If all the answers to the above questions are "yes," then score this section with a "1".	Score		0

For cognition, the CAT asks for information about the subject’s last seven days.²⁴ The assessor was limited, though, to what she was able to glean from a single videoconference with a subject who she stated “cannot remember a lot about his history.”²⁵ Dr. T noted that it is challenging for an observer to readily appreciate the gravity of Mr. J’s condition and the needs presented by his unique disease. Dr. T and Ms. D both testified that Mr. J’s condition can also vary over time. Thus the evidence Mr. J’s representatives presented on his condition on different days, relatively close in time to the CAT assessment, is informative.²⁶ As discussed below, this evidence demonstrates considerable need. It is not, however, sufficient to meet the high bar set in the CAT.

²⁰ CAT as 31-32.

²¹ 7 AAC 49.135.

²² *Id.*

²³ CAT at 31.

²⁴ CAT at 14-15.

²⁵ CAT at 3.

²⁶ Dr. T and Ms. D both characterized Mr. J’s physical and cognitive condition as being in decline, but over a span of many months. Thus evidence from the weeks after his assessment should be representative of his cognitive problems as of the time of his assessment.

1. Mr. J Demonstrated Short Term Memory Problems.

For short term memory (Section C1a), the assessor marked Mr. J as “Memory OK” for ability to recall after five minutes.²⁷ There is no reason to question that Mr. J demonstrated short term recall during the assessment. But his representatives also provided evidence of Mr. J demonstrating difficulties with short term memory. For example, the application for waiver benefits notes that Mr. J struggles with meal prep, cleaning, and dressing because he has difficulty sequencing steps and will repeat tasks he has already completed.²⁸ Repeating steps in a simple task suggests Mr. J does not recall having completed those steps. The application also stated that Mr. J will start to cook for himself then forget that he has something on the stove, which has led to near-fires.²⁹ Care calendars summarizing Mr. J’s condition on certain days in March also noted numerous incidents of short term memory problems:

- Mr. J had to be reminded to take his medication several times because he was forgetting the prompt in a space of five minutes.³⁰
- During a one-hour period, Mr. J asked several times about the schedule for the day and about whether his bills were being paid because he could not recall the answers to these questions.³¹
- Mr. J repeatedly forgot to transfer clothing from the washer to the dryer, despite multiple reminders.³²
- Mr. J had to be prompted four times to open the door to let his dog outside because after each prompt he would get distracted and forget the task. Mr. J then forgot that the dog was outside.³³
- Mr. J would say that he needed to take his medication, then would immediately forget to take it.
- Mr. J took much more than the prescribed dose of an inhaler in the space of 15 minutes, convinced that he had not used the inhaler more than the allowed dose.³⁴

²⁷ *Id.* at 14.

²⁸ Application at 3.

²⁹ *Id.*

³⁰ March 7, 2021 Care Calendar.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ March 17, 2021 Care Calendar.

Based on this evidence, it is more likely than not that while Mr. J may have demonstrated some short-term recall during the Division’s assessment, he also often experiences difficulties with short term memory. Thus he should be coded 1 for Memory Problems under C1a for short term memory.

2. Mr. J Demonstrated Memory Recall Problems.

For memory recall (Section C2), the assessor marked “no” in response to the question whether 1 or 2 boxes were checked in memory recall section of the CAT.³⁵ In the memory recall section, however, the assessor had in fact marked one of the boxes, for inability to recall the current season:

2. Memory/Recall Ability:

(Check all that person normally able to recall during last 7 days; 24 - 48 hrs, if in hospital)

a. Current Season	0 - No
b. Location of Own Room	1 - Yes
c. Names/Faces	1 - Yes
d. Where He/She Is	1 - Yes
e. None of the Above were Recalled	0 - No

Ms. D also testified that Mr. J is unable to recall the season, leading him to wear insufficient clothing and footwear during winter months. Ms. D further described an incident when Mr. J turned off his heat during subfreezing weather.³⁶ The CAT itself and Ms. D’s testimony both demonstrate that Mr. J satisfies the memory recall category.

3. Mr. J Demonstrated Cognition Problems, But Not Enough to Satisfy the Cognition Category.

For the cognition category (Section C4), Mr. J needs at least 13 points for cognition problems (Section C4B) plus a qualifying ADL.³⁷ There are five components of cognition with a total of 16 possible points: (1) Memory for Events; (2) Memory and Use of Information; (3) Global Confusion; (4) Spatial Orientation; And (5) Verbal Communication.³⁸ The Division gave Mr. J a score of 4. As discussed below, Mr. J presented evidence to support a higher score, but one that falls short of the required 13 points.

For Memory for Events, the Division coded Mr. J as “1 — Cannot recall details or sequences of recent events or remember names of meaningful acquaintances.”³⁹ But the evidence

³⁵ CAT at 31.

³⁶ See also February 17, 2021 Care Calendar.

³⁷ CAT at 31. Mr. J could also qualify by requiring certain professional nursing services for cognition, but there is no evidence regarding such services.

³⁸ Id. at 14-15.

³⁹ Id. at 14.

Mr. J's representatives provided shows he often is unable to recall entire events even when reminded:

- Mr. J often asks “what did we do yesterday?”⁴⁰
- “Some days he is unable to follow verbal instructions.”⁴¹
- Mr. J repeatedly asked about paying his bills. Even after being told they had been paid, he did not recall the task being completed.⁴²
- Mr. J frequently forgets whether he has taken his medication.⁴³
- Mr. J frequently forgets when he has showered.⁴⁴
- Mr. J frequently forgets to eat or whether he has eaten.⁴⁵
- The CAT noted that Mr. J “cannot remember a lot about his history,” and so his medical history needed to be provided by his representatives.⁴⁶

This evidence supports a score of “3 — Cannot recall entire events or name of spouse or other living partner with prompting.”

For Memory and Use of Information, the Division coded Mr. J as “1 — Has minimal difficulty remember[ing] and using information. Requires direction and reminding from others one to three times per day. Can follow simple written instructions.”⁴⁷ Mr. J's representatives provided evidence of Mr. J struggling with memory and information and requiring continual reminders and prompts throughout the course of a day:

- “There are weeks he can read and weeks he is unable to read at all.”⁴⁸
- “Some days he is unable to follow verbal instructions.”⁴⁹
- Mr. J “requires prompts, reminders, and guidance for taking his medication, cooking, cleaning, dressing and bathing.”⁵⁰

⁴⁰ Application at 3; Business B Medical Care, Dr. T records, November 23, 2020.

⁴¹ Application at 3.

⁴² March 7, 2021 Care Calendar.

⁴³ February 28, 2021 Care Calendar; March 17, 2021 Care Calendar; Dr. T testimony.

⁴⁴ B D testimony; February 28, 2021 Care Calendar; March 7, 2021 Care Calendar.

⁴⁵ B D testimony; February 28, 2021 Care Calendar.

⁴⁶ CAT at 3.

⁴⁷ *Id.* at 14.

⁴⁸ *Id.* at 3.

⁴⁹ Application at 3.

⁵⁰ *Id.*

- Mr. J “struggles to sequence the steps within a task correctly. He often messes the order up or backtracks to steps he has already completed. Because of this, meal prep, cleaning and even dressing is a challenge.”⁵¹
- Mr. J is unable to shower without repeated instructions and prompts to remember the steps.⁵²
- Mr. J is unable to wash a plate without instructions and prompts.⁵³
- Mr. J is unable to do laundry without being walked through step-by-step instructions and with multiple reminders.⁵⁴
- Mr. J is unable to feed or let out his dog without step-by-step instructions and prompts.⁵⁵
- Mr. J has been unable to use telehealth during COVID because “he was not able to understand the concept.”⁵⁶
- When attempting to call in a prescription, Mr. J did not understand where to find the phone number on the medication bottle, was unable to dial the number without assistance, and could not understand questions in an automated system.⁵⁷
- Mr. J could not remember where to find his clothing or toiletry supplies.⁵⁸
- Mr. J had to ask where he kept his dog food to feed his dog.⁵⁹

The frequency and severity of these problems with memory and application support a score of “4 — Cannot remember or use information. Requires continual verbal reminding.”

For Global Confusion, the Division coded Mr. J as “0 — Appropriately responsive to environment.”⁶⁰ Mr. J’s representatives provided substantial evidence that Mr. J is often disoriented and confused, more accurately coded with “2 — Periodic confusion during daytime”:

- Mr. J has experienced hallucinations and extreme paranoia from the Susac Syndrome.⁶¹
- Mr. J is often disoriented upon waking.⁶²

⁵¹ *Id.*
⁵² February 28, 2021 Care Calendar; March 7, 2021 Care Calendar; March 19, 2021 Care Calendar.
⁵³ March 7, 2021 Care Calendar.
⁵⁴ *Id.*
⁵⁵ *Id.*
⁵⁶ Application at 5.
⁵⁷ March 7, 2021 Care Calendar.
⁵⁸ March 7, 2021 Care Calendar; March 17, 2021 Care Calendar.
⁵⁹ March 7, 2021 Care Calendar.
⁶⁰ CAT at 15.
⁶¹ Application at 3-4.
⁶² February 17, 2021; February 28, 2021 Care Calendar; March 7, 2021 Care Calendar; March 17, 2021 Care Calendar.

- In February, Mr. J turned off his heat during subfreezing temperatures and was found disoriented, unable to speak, and unaware of the time of day or whether he had been sleeping all day.⁶³
- Mr. J needed assistance to check in for a doctor’s appointment, including an explanation of what was happening and assistance cooperating.⁶⁴
- Mr. J is often incontinent and does not understand or realize he needs to clean himself.⁶⁵ Following one incident, Mr. J attempted to put his soiled socks and shoes on after bathing.⁶⁶
- After having medication placed in his hand, Mr. J was confused where to find water to take the medication.⁶⁷

At the same time, Mr. J displays periods when he is not confused, as shown by the records of his emergency room visits.⁶⁸ On balance, this evidence demonstrates that Mr. J experiences episodes of confusion and disorientation. Thus he should be coded a 2 for Global Confusion.

For Spatial Orientation, the Division coded Mr. J as “1 — Spatial confusion when driving or riding in local community.”⁶⁹ For a higher score, Mr. J would need to have problems with getting lost when walking his neighborhood or getting lost in his own home or present environment.⁷⁰ Mr. J’s evidence does not include examples of these types of problems. Thus he has not demonstrated support for a higher score for Spatial Orientation.

For Verbal Communication, the Division coded Mr. J as “1 — Minor difficulty with speech or word-finding difficulties.”⁷¹ For a higher score, Mr. J would need to demonstrate that he is “[a]ble to carry out only simple conversations” or is “[u]nable to speak coherently or make needs known.”⁷²

The evidence of Mr. J’s ability to communicate varies considerably. During Emergency Room visits, Mr. J often was able to communicate events well.⁷³ Yet during his assessment, Mr. J

⁶³ February 17, 2021 Care Calendar.
⁶⁴ March 19, 2021 Care Calendar.
⁶⁵ Ms. D’s testimony; March 19, 2021 Care Calendar.
⁶⁶ March 19, 2021 Care Calendar.
⁶⁷ March 17, 2021 Care Calendar.
⁶⁸ Business A Hospital Emergency Department records.
⁶⁹ CAT at 15.
⁷⁰ *Id.*
⁷¹ CAT at 15.
⁷² *Id.*
⁷³ Business A Hospital Emergency Department records.

was unable to relay his own medical history.⁷⁴ Dr. T described Mr. J as able to carry on a conversation, but with some difficulty because of his severe hearing loss. Yet the Care Calendars show episodes where Mr. J had some difficulty communicating or articulating his needs.⁷⁵ On balance, the evidence demonstrates Mr. J has some difficulty communicating, but not to the point that he is not incoherent, unable to express his needs, or limited to only simple conversations. Thus Mr. J has not shown he should have received a higher Verbal Communication score.

The Cognition portion of the CAT sets a high bar, requiring 13 out of 16 possible points. Mr. J has demonstrated support for a higher Cognition score, but only that adds up to only 11: 3 for Memory for Events, 4 for Memory and Use of Information, 2 for Global Confusion, 1 for Spatial Orientation, and 1 for Verbal Communication. This score falls short of meeting the requirements for Cognition needs under the CAT.

B. Mr. J's Has Not Demonstrated Sufficient ADL Needs to Qualify for Waiver Benefits.

Without qualifying under Cognition, Mr. J would need to demonstrate a high degree of need for assistance with ADLs to qualify for Waiver benefits.

The CAT records the degree of assistance an applicant requires for ADLs, focusing on five specific categories: bed mobility (moving within a bed), transfers (*e.g.*, moving from the bed to a chair or a couch), locomotion (*e.g.*, walking or movement when using a device such as a cane, walker, or wheelchair), eating, and toilet use (which includes transferring on and off the toilet and personal hygiene care).⁷⁶ To qualify for Waiver benefits based solely on physical assistance needs, Mr. J would need a CAT score of 3 (Extensive Assistance) or 4 (Total Dependence) on at least three of these five ADLs.⁷⁷ “Extensive Assistance” means that a person required weight-bearing support or full staff/caregiver performance three or more times in the seven days preceding the evaluation.⁷⁸ “Total Dependence” means the person required full staff/caregiver performance for the ADL during the entire seven days preceding the evaluation.⁷⁹

The Division found Mr. J needed Limited Assistance to self-perform transfers, locomotion, and toilet use and did not need assistance with bed mobility or eating.⁸⁰ “Limited Assistance” means the applicant is highly involved in the activity, but receives either (1) physical

⁷⁴ CAT at 3.

⁷⁵ February 17, 2021 Care Calendar; March 19, 2021 Care Calendar.

⁷⁶ *Id.* at 17-18.

⁷⁷ *Id.* at 31.

⁷⁸ *Id.* at 17.

⁷⁹ *Id.*

⁸⁰ *Id.*

help in guided maneuvering of limbs or other non-weight bearing assistance three or more times in the seven days preceding the evaluation; or (2) weight-bearing assistance one or two times in the seven days preceding the evaluation.⁸¹

Mr. J's evidence does not contradict the Division's findings. Dr. T and Ms. D expressed great concern about the risks from Mr. J losing consciousness and falling. These falls have taken him to the emergency room multiple times in recent months, including with head lacerations and a broken leg.⁸² But the Division took this risk into account when scoring Mr. J as needing Limited Assistance with locomotion and transfers.⁸³ There is insufficient evidence to demonstrate that these falls create a need for the degree of support required for Extensive Assistance or Total Dependence for locomotion or transfer.

The Care Calendars detail Mr. J needing assistance with moving between surfaces and walking, but not weight-bearing support or full caregiver performance seven times a week, which would be needed to code a 3 or 4 for these ADLs. For example, the February 28, 2021 Care Calendar describes Mr. J's wife assisting Mr. J with standing, walking, and removing his clothes to shower because he experienced pain and was having difficulty maintaining balance.⁸⁴ Similarly, the March 17, 2021 Care Calendar describes Mr. J's son helping him to sit up in bed and holding his hand to stand and walk.⁸⁵ Mr. J participated in these activities and did not require the weight-bearing or full or partial performance by a caregiver that would fall under Extensive Experience or Total Dependence, as described above.

Mr. J's representatives demonstrated that he struggles with periodic incontinence.⁸⁶ The toileting ADL looks at the physical ability to use a toilet, though, not incontinence. The Division nonetheless took incontinence into account in coding Mr. J as needing limited assistance with toileting.⁸⁷ As far as use of the toilet and personal hygiene, the Care Calendars detail Mr. J participating in these activities while requiring some assistance to maintain his balance and avoid slipping or falling.⁸⁸ For a higher code, Mr. J would need to require weight-bearing support or

⁸¹ *Id.*

⁸² Consumer Assessment Tool for S J, assessment date February 5, 2021 ("CAT") at 3; Business A Hospital Emergency Department records.

⁸³ *Id.*

⁸⁴ February 28, 2021 Care Calendar.

⁸⁵ March 17, 2021 Care Calendar.

⁸⁶ Ms. D's testimony; March 17, 2021 Care Calendar; March 19, 2021 Care Calendar.

⁸⁷ CAT at 8.

⁸⁸ *See, e.g.*, February 28, 2021 Care Calendar; March 19, 2021 Care Calendar.

full caregiver performance several time a week for using the bathroom and maintaining personal hygiene.⁸⁹ Mr. J did not provide evidence of that level and frequency of need.

Dr. T and Ms. D raised concerns about Mr. J's habit of forgetting to eat for long periods of time. The Care Calendars also detailed episodes of Mr. J forgetting or being disinterested in eating.⁹⁰ This is more an issue of memory and cognition. The ADL looks at Mr. J's physical ability to eat. While the Care Calendars noted that Mr. J required physical assistance to eat following the incident when he turned off his heat during subfreezing temperatures, that may have been the result of disorientation and cold exposure.⁹¹ In general, the evidence supports the Division's finding that Mr. J is able to physically feed himself.

There can be little doubt that Mr. J's propensity to lose consciousness and difficulties with memory and cognition make it incredibly challenging for him to conduct his daily life without assistance. But the evidence his representatives provided simply does not demonstrate that he is either dependent or requires extensive assistance with three of the five pertinent ADLs. Without qualifying for those scores, Mr. J does not qualify as needing skilled or intermediate-level nursing home care.

IV. CONCLUSION

Mr. J has substantial need for assistance due to his physical and cognitive difficulties. That need, however, does not quite rise to the level of skilled or intermediate-level nursing home care. Thus he does not qualify for Waiver benefits as of the time of the evaluation. The Division's denial is affirmed.

DATED: April 26, 2021.

By: Signed
Rebecca Kruse
Administrative Law Judge

⁸⁹ *Id.* at 6, 8.

⁹⁰ February 17, 2021 Care Calendar; February 28, 2021 Care Calendar; March 17, 2021 Care Calendar.

⁹¹ February 17, 2021 Care Calendar.

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 11th day of May, 2021.

By: *Signed* _____
Name: Cheryl Mandala
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.]