

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

In the Matter of:)	
)	
L.Q.)	OAH No. 22-0712-MDS
_____)	Agency No. 22-SDS-0152

DECISION

I. Introduction

L.Q. is a minor who was receiving Medicaid Home and Community Based Waiver (Waiver) benefits in the Intellectual and Development Disability (IDD) Waiver category. On August 8, 2022, the Division of Senior and Disabilities Services (Division) notified L.Q. that his IDD Waiver benefits would be terminated.

K.Q., L.Q.'s mother and legal guardian, requested a hearing on his behalf. That hearing was held on October 12, 2022. K.Q. represented L.Q.'s interests and testified on his behalf. Victoria Cobo-George, a Division Fair Hearing Representative, represented the Division. Maria Del Rosario, a Health Program Manager II, testified for the Division. The record was held open after the hearing to allow K.Q. to submit additional documentation and for the Division to respond, in writing, to the documentation.

The evidence shows that L.Q. continues to experience cognitive and behavioral issues. However, he no longer has a psychiatric or medical diagnosis that qualifies him for IDD Waiver benefits. Consequently, the termination of his IDD Waiver benefits is **AFFIRMED**.

II. Facts

L.Q. is currently 14 years old. In 2012, Psychologist L.G., Ph.D. performed a neuropsychological evaluation of him, where he was diagnosed with Autism and had a full-scale IQ Composite Score of 93.¹ L.Q., who was on the IDD Waiver waitlist, was subsequently approved for IDD Waiver benefits. L.G. performed two subsequent neuropsychological evaluations of L.Q., in 2016 and 2020. Neither of these evaluations contain an Autism diagnosis.² The 2020 evaluation concludes that L.Q. has the following diagnoses: Attention-deficit/hyperactivity disorder (ADHD), predominantly inattentive type, Phonological Disorder, Specific development disorder of motor function with dysgraphia, social/pragmatic

¹ L.G.'s 2012 Neuropsychological Evaluation, pp. 5, 8.

² See Ex. D, p. 2. The 2016 evaluation is not contained in the record. However, Ms. Del Rosario credibly testified that it did not contain an Autism diagnosis. That testimony was not rebutted by K.Q.

communication disorder, and unspecified depressive disorder.³ The 2020 evaluation did not contain a full-scale IQ. Instead, it has a “General Ability Index” of 86, which places him at the 18th percentile.⁴ That evaluation concluded that “L.Q. certainly has the intellectual abilities to complete high school with appropriate accommodations in place.”⁵

L.Q.’s Medicaid Care Coordinator applied to renew his IDD Waiver benefits in March of 2022. The Division reviewed his recent neuropsychological evaluations during the renewal process. The Division’s review, which was itself reviewed and concurred with by an independent third-party, concluded that because L.Q. no longer had an Autism diagnosis, and a General Ability Index of 86, that he no longer qualified for IDD Waiver benefits.⁶

After hearing K.Q. provided a copy of a “Comprehensive Speech/Language and Literacy Re-Evaluation” conducted by Clinic A on August 24, 2022. That evaluation showed that L.Q. was originally evaluated at Clinic A in September 2018, received treatment at Clinic A between January 17, 2019 through May 2, 2019, and that while his spelling score had remained stagnant since he was evaluated in 2018, that his word recognition score and other indicia of literacy such as paragraph level decoding, and comprehension and writing were generally poor or below average. His nonverbal intelligence was average.⁷

K.Q. testified that her son had behavioral issues and that he could not read.

III. Discussion

The IDD Waiver program permits families with children who meet certain disability eligibility requirements to qualify for Medicaid even if they are otherwise over the normal income limit for participation in Medicaid. Qualifying children are those who receive at-home medical care similar to that provided at a medical institution.⁸ Thus, the question presented is whether L.Q. needs what is referred to as an institutional “level of care” equal to that of an intermediate care facility for individuals with intellectual disabilities.⁹

³ L.G.’s 2020 Neuropsychological Evaluation, p. 13.

⁴ L.G.’s 2020 Neuropsychological Evaluation, p. 5.

⁵ L.G.’s 2020 Neuropsychological Evaluation, p. 13.

⁶ Ex. D, pp. 4 – 5; Ms. Rosario’s testimony.

⁷ Clinic A “Comprehensive Speech/Language and Literacy Re-Evaluation” dated August 30, 2022.

⁸ 42 C.F.R. § 435.225.

⁹ 7 AAC 140.600.

The Department has adopted a regulation to define the institutional level of care (*i.e.*, condition) necessary to qualify for the IDD Waiver program.¹⁰ The regulation describes five possible qualifying conditions; an applicant must have at least one of the five conditions to qualify for the program.¹¹ Four of these require a diagnosis of (i) an intellectual or developmental disability that meets the diagnostic criteria for codes 317, 318.0, 318.1 or 318.2 of the *Diagnostic and Statistical Manual of Mental Disorders (DSMD)*, (ii) cerebral palsy, (iii) seizure disorder or (iv) autism (*DSMD* code 299.00).¹² Of those four categories, L.Q. has only been diagnosed with one of those conditions – Autism. However, that diagnosis was made when he was quite young in 2012, and he no longer has an Autism diagnosis as of 2016. This means that L.Q.’s continued eligibility is dependent on whether he satisfies the requirements for the remaining category, which the Division entitles “Other Intellectual Disability Related Condition.”

The “Other Intellectual Disability Related Condition” – is more generic than the other four. To qualify under this condition, a child must have a condition that:

- is “one other than mental illness, psychiatric impairment, or a serious emotional or behavioral disturbance”;
- is “found to be *closely related to* intellectual or developmental disability because that condition results in impairment of general intellectual functioning and adaptive behavior *similar to* that of individuals with intellectual or developmental disabilities”;
- “require[s] treatment or services *similar to* those required for individuals with intellectual or developmental disabilities”; and
- is “diagnosed by a licensed physician.”¹³

In short, the fifth qualifying condition is for children who have significant functional limitations. They are not so severely disabled that they qualify for a diagnosis that would put them in the category of severe intellectual or developmental disability, but their functioning is at a similarly low level.

The determination of whether L.Q. has a condition “closely related to” an intellectual or developmental disability with impairments “similar to” that of a child with an intellectual or

¹⁰ 7 AAC 140.600.

¹¹ 7 AAC 140.600(c)(1)-(5).

¹² 7 AAC 140.600(c)(1), (3)-(5).

¹³ 7 AAC 140.600(c)(2) (emphasis added).

developmental disability will be based on all the evidence in this record. To find that L.Q. meets this level of disability requires a finding that his disability and level of care are “closely related to” the level of disability, and “similar to” the treatment, experienced by a child who has an IQ of 75 points (70 plus 5 points plus or minus) - the qualifying measure for those children for whom deficits must be similar.¹⁴

Considering all the evidence in the record, L.Q. does not have a condition sufficiently related to intellectual or developmental disability and that his condition results in impairments similar to those experienced by a child with intellectual or developmental disabilities. His only full-scale IQ in the record, although dated, is 93. His 2020 evaluation shows a General Ability Index of 86, which places him at the 18th percentile. While that is certainly on the lower end of the scale, that score when reviewed in light of the 2020 evaluation’s conclusion that “L.Q. certainly has the intellectual abilities to complete high school with appropriate accommodations in place,”¹⁵ demonstrates that L.Q.’s impairments are not similar to those experienced by a child with intellectual or developmental disabilities. His current diagnoses of ADHD, dyslexia, dysgraphia, social/pragmatic communication disorder, and depression support that finding, as does the August 2022 at Clinic A report that showed that while his literacy levels were poor or below average, his nonverbal intelligence was average.

The evidence therefore shows that the Division has established by a preponderance of the evidence that L.Q. no longer has a qualifying diagnosis of autism, and that he does not fall within the other possibly qualifying category of the IDD Waiver program, being the “Other Intellectual Disability Related Condition” described in 7 AAC 140.600(c)(2). Consequently, he no longer eligible for IDD Waiver coverage.

IV. Conclusion

The Division’s termination of L.Q.’s IDD Waiver benefits is **AFFIRMED**.

Dated: October 25, 2022

Signed

Lawrence A. Pederson
Administrative Law Judge

¹⁴ 7 AAC 140.600(c)(1).

¹⁵ L.G.’s 2020 Neuropsychological Evaluation, p. 13.

Adoption

The undersigned, by delegation from the Commissioner of Health, 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 8th day of November, 2022.

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

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