

A. Background

X.P. is a 69-year-old man who lives alone in single story housing in City A.⁴ He is 6’and his weight fluctuates around 400 lbs.⁵ He was diagnosed with paraplegia in 2012 following back surgery.⁶ He is also diagnosed with morbid obesity, recurrent UTI, edema, arthritis of the spine, peripheral vascular disease, Corpulmonale, intertrigo, obstructive sleep apnea, venous insufficiency, venous hypertension, stasis dermatitis of the legs and Type II diabetes.⁷ He uses a wheelchair.⁸ His legs are swollen and purple below the knees.⁹

X.P. applied for Waiver services and was assessed by C.S. in his home on October 31, 2019.¹⁰ The results of that assessment were recorded on the Consumer Assessment Tool (CAT). He was seated in a recliner upon her arrival. This is where he typically spends his day.¹¹ S.S., PCA, was present.¹²

From the date of the assessment, X.P. had no hospitalizations in the last year and no reported falls in the last 6 months.¹³ He has a bath bench, commode, grab bars, handheld shower, a hospital bed, PERS Life Line, a wheelchair, a recliner that lifts him upright, urinals, trapeze, reacher, and walkers available as assistive devices.¹⁴

X.P. was prescribed physical therapy.¹⁵ He told C.S. he was going “twice a week since May 2018,” however, he has not gone in quite a while.¹⁶

X.P. uses his manual wheelchair to move throughout his residence- he gets from his recliner, to the wheelchair and to toilet, with walkers that are set up by S.S. near his recliner and the toilet.¹⁷ When his walker is out of place, he has S.S. re-position it, or he will call a neighbor for assistance.¹⁸ X.P. obtained a new hospital bed in 2017 but he finds it uncomfortable, so he sleeps in his recliner.¹⁹

⁴ Exhibit E p. 2; Exhibit E p.5.

⁵ Exhibit G p. 4; X.P. testimony.

⁶ Exhibit G p. 13; exhibit E p 5.

⁷ Exhibit G p. 13; exhibit E p 5.

⁸ Exhibit G p. 4.

⁹ Exhibit 1.

¹⁰ Exhibit E.

¹¹ X.P. testimony.

¹² C.S. testimony.

¹³ Exhibit E p. 5.

¹⁴ The relevant time frame is October 31, 2018, when the CAT was done. This appeal relates to whether the assessment was correct at that time. A few days before the hearing, there was a problem with X.P.’s recliner. Exhibit E pp. 5, 30; Exhibit G p. 6; X.P. testimony; C.S. testimony.

¹⁵ Exhibit E p. 7; X.P. testimony

¹⁶ Exhibit E p. 7.

¹⁷ C.S. testimony; X.P. testimony; Ms. Redmon testimony.

¹⁸ X.P. testimony.

¹⁹ X.P. testimony.

When he needs to use the bathroom, he uses a urinal, or, to get to the toilet, he uses a walker that has been set up by his care coordinator to support himself, while he transfers to his wheelchair. He also has a walker in the bathroom to help him transfer between the toilet and his wheelchair.²⁰

X.P. was denied Waiver services on February 14, 2019.²¹ X.P. appealed the denial of Waiver services on March 3, 2019

III. Discussion

When a person disagrees with an administrative agency action that denies, reduces, or terminates Medicaid services, that person is entitled to an administrative hearing. As the person requesting new services, X.P. bears the overall burden, by preponderance of the evidence, to demonstrate eligibility for the services requested.²² In general, the relevant timeframe for assessing the facts is the date of the agency's decision under review²³

During X.P.'s assessment, in addition to observation and a review of medical records, C.S. relied on X.P.'s statements regarding ability to function. While it is not always reasonable to rely on an applicant's recitation of their ability to perform a task, X.P. was clear and responsive. He is a straightforward man who was oriented to the procedures. He was a good historian and able to accurately reflect what transpired during the assessment, as well as in his daily life. Given X.P.'s level of intellectual functioning, it is reasonable for C.S. to rely on his statements of his ability to perform a particular task.

A. Method for Assessing Eligibility

Medicaid provides a variety of in-home support, based on the need of the individual. To qualify for Waiver services, a recipient must require the level of care provided in a nursing facility.²⁴ The level of care requirement is determined by an assessment which is documented by the Consumer Assessment Tool (CAT).²⁵ The CAT evaluates an applicant's needs for professional nursing services, therapies, and

²⁰ X.P. testimony; S.S. testimony.

²¹ Exhibit D.

²² AAC 47.135.

²³ See 7 AAC 49.170; *In re T.C.*, OAH No. 13-0204-MDS (Comm'r of Health & Soc. Serv. 2013), available online at <http://aws.state.ak.us/officeofadminhearings/Documents/MDS/HCW/MDS130204.pdf>; *In re G.J.*, OAH No. 18-0311-MDS(Comm'r of Health & Soc. Serv. 2018) <https://aws.state.ak.us/OAH/Decision/Display?rec=6344>.

²⁴ 7 AAC 130.205(d)(4); *In re T.C.*, OAH No. 13-0204-MDS (Comm'r of Health & Soc. Serv. 2013), available online at <http://aws.state.ak.us/officeofadminhearings/Documents/MDS/HCW/MDS130204.pdf>

²⁵ See 7 AAC 130.205(d)(4); 7 AAC 130.215l.

special treatment.²⁶ Each of the assessed items is coded and contributes to the final numerical score.²⁷ 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 (moving from bed to chair, chair to sofa, etc.), locomotion within the home (walking or moving with an assistive device such as cane, walker, wheelchair, or any combination of such assisted devices), eating, and toilet use, which includes transferring on and off the toilet and personal hygiene care.²⁸

To qualify for Waiver services, a self-performance score of 3 (extensive assistance) or 4 (total dependence), and a support code of 2 or 3, for at least three of the five specified ADLs is required.²⁹

B. Eligibility

X.P. is requesting Waiver services. In order to qualify for Waiver services, X.P. must score an extensive or complete assistance in at least three of the five scored ADL's.³⁰ The assessment scored X.P. as requiring extensive assistance (score of 3/2) for toileting, so to qualify for Waiver services, he needs a score of 3/2 or higher in at least two of the remaining scored ADLs: bed mobility, transfers, locomotion, and eating.³¹ X.P. disagreed with the assessment's finding that he did not require extensive assistance with the activities of bed mobility, transfers, and locomotion.³² Each of these are addressed below.

C. Activities of Daily Living

1. Bed Mobility

The ADL of bed mobility refers to the ability of a person to move to and from a lying position or turn from side to side in bed.³³ The July 2017 revisions to the personal care

²⁶ *In re T. Q.* OAH No. 18-0379-MDS (Comm'r of Health & Soc. Serv. June 2018), available at <https://aws.state.ak.us/OAH/Decision/Display?rec=6346>. It also evaluates an applicant's cognitive issues, but that is not at issue here.

²⁷ Exhibit E; *In re T. Q.* OAH No. 18-0379-MDS (Comm'r of Health & Soc. Serv. June 2018), available at <https://aws.state.ak.us/OAH/Decision/Display?rec=6346>

²⁸ *Id.*

²⁹ *Id.* A person with cognitive or behavioral issues can qualify with a different combination, but that is not at issue here. Further, if a recipient has regularly scheduled specialized nursing services or therapies, including physical therapy, those can potentially, when combined with a need for assistance with the scored ADLs, result in eligibility. Those factors are not present in this case.

³⁰ *In re T. Q.* (OAH No. 18-0379-MDS) (Comm'r Health & Soc. Srvs June 2018) available at <https://aws.state.ak.us/OAH/Decision/Display?rec=6346>

³¹ *Id.*

³² X.P. does not dispute the eating. X.P. disputes the ADLs of bathing, dressing and personal hygiene. But these are not part of eligibility for Waiver services, so they are not addressed here.

³³ 7 AAC 125.030(b)(1).

services program regulations added the phrase “for a recipient who is non-ambulatory” to the description of this ADL, effectively limiting its application to that group of recipients.³⁴

The assessor scored X.P. as independent with bed mobility (score of 0/0). X.P. typically sleeps in his recliner. He was observed operating his lift chair and bringing it to a stand which allowed him to reposition himself.³⁵ He uses the recliner to raise his legs, which provides relief.³⁶

X.P. also has a hospital bed with a grab rail that helps him get in on the left side. However, X.P. does not normally sleep in his bed because he finds it uncomfortable.³⁷ X.P. expressed fear of being stuck in the bed.³⁸ X.P. did not demonstrate getting in and out of the bed because he last slept in it 10 days prior to his CAT assessment and typically sleeps in his recliner.³⁹

There may be some problems with X.P. getting in and out of the bed, however that would fall under the category of transfers, not bed mobility. He and S.S. both described that at his current weight and lack of strength in his upper body, he has difficulty lifting his legs in and out of bed and pulling himself in and out. If he regularly slept in the bed, this could warrant a higher score. However, because he typically sleeps in his recliner and demonstrated an ability to get in and out of it independently, X.P. failed to show he was inaccurately assessed at 0/0 on October 31, 2018.⁴⁰

2. *Transfers*

The program regulations allow assistance with transfers when a person requires physical assistance to move between one surface and another, including to or from a bed or chair, or from sitting to standing.⁴¹ The assessor scored X.P. as requiring supervision or cueing (score of 1/1) for transfers. X.P. believes he should score as requiring extensive assistance (score of 3/2).

³⁴ *Id.*

³⁵ Exhibit E. p. 8; C.S. testimony.

³⁶ X.P.

³⁷ X.P. testimony.

³⁸ *Id.*

³⁹ Exhibit E p. 8; Exhibit G p. 4.

⁴⁰ In the future if X.P. were to use the bed to sleep instead of the recliner, a CAT assessment should evaluate him in the bed rather than the recliner.

⁴¹ Exhibit E p. 8.

X.P. does not walk. However, with the assistance of his lift chair, walker and wheelchair, he is able to move between surfaces.⁴² C.S. observed X.P. bringing his lift recliner to a standing position from which he was able to transfer to his walker.⁴³ From there, he rotated the walker to the wheelchair and transferred to the wheelchair with S.S. standing by.⁴⁴ S.S. did not provide any physical assistance to X.P. other than placing the walker in the position.⁴⁵ Once he was in the wheelchair, he was able to buckle himself in.⁴⁶ X.P. did not dispute this. Both he and C.S. said the critical component is that the walker be positioned correctly, or he gets stuck. His PCA puts his walker in such a place.⁴⁷ Further, X.P. shared that he sometimes gets tired from the efforts to transfer. While it is understandable, it is not a basis for requiring additional help.

X.P. did not show that he needs physical assistance, outside his assistive devices, to move from one surface to another, or to stand up. The Division's score of supervision/cueing (1/1) is affirmed.

3. *Locomotion*

Locomotion is the act of moving between locations in the person's home, or to and from a vehicle used to access routine medical appointments.⁴⁸ The regulation specifically prohibits the division from authorizing personal care services time for a recipient who is "self-sufficient with an assistive device."⁴⁹ Locomotion is defined as how a person "moves between locations in his/her room and other areas on the same floor."⁵⁰ X.P. was assessed as requiring limited assistance (score of 2/2),⁵¹ X.P. objects and asserts he needs extensive assistance (score of 3/2).

X.P. does not walk. However, he moves throughout his single level residence using a manual wheelchair.⁵² C.S. observed him wheel himself from the kitchen to the living

⁴² Exhibit E p. 8; C.S. testimony; X.P. testimony.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Exhibit E p. 8; X.P. testimony; C.S. testimony.

⁴⁷ S.S. testimony. X.P. also stated that he has called neighbors for assistance when the walker has been moved from its place.

⁴⁸ Exhibit E pp.8-9.

⁴⁹ Exhibit E p. 8.

⁵⁰ *Id.*

⁵¹ This assistance includes the guided maneuvering of limbs or other non-weight bearing assistance three or more times per week, or weight-bearing support provided one or two times per week. *See* Exhibit E, p. 8.

⁵² Exhibit E p. 9; C.S. testimony.

room in his wheelchair.⁵³ The longest distance is a hallway to the door, which can require some assistance to propel X.P., which is the basis for the limited assistance score.⁵⁴ X.P. does not dispute he can make it throughout his home in his wheelchair and confirmed there are times when he is experiencing pain, gets tired, or is maneuvering so he requests his PCA to push him.⁵⁵ There are also times when X.P. needs assistance lifting his legs and placing his feet on the foot rest so he can wheel easier.⁵⁶ However, this does not equate with extensive assistance to ambulate within his home.

Locomotion also includes how one moves outside to access medical appointments.⁵⁷ X.P.'s transportation allows him to ride his wheelchair onto the vehicle.⁵⁸ X.P. did not provide evidence that he needed extensive assistance with this. The weight of the evidence supports the assessor's determination that he requires limited assistance with locomotion. The Division's 2/2 was accurately assessed.

IV. Conclusion

For X.P. to qualify for Waiver services, he must require extensive or complete assistance in at least three of the five scored ADL's. While he requires extensive assistance with toileting, he does not require extensive assistance, or more in the other categories, because he utilizes assistive devices. The Division's decision is affirmed.

Dated: July 3, 2019

Signed _____
Hanna Sebold
Administrative Law Judge

⁵³ *Id.*
⁵⁴ *Id.*
⁵⁵ X.P. testimony.
⁵⁶ X.P. testimony.
⁵⁷ Exhibit E p. 9.
⁵⁸ X.P. testimony. He did not provide any testimony about frequency of such transportation.

Adoption

The undersigned, by delegation from of 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 2nd day of August, 2019.

By: Signed
Name: Jillian Gellings
Title: Project Analyst

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