

specified individual services to Waiver recipients.³ The Division must approve each individual service as part of the Waiver recipient's Plan of Care.⁴

Particularly high-needs waiver recipients receiving group home habilitation services may also qualify to receive Acuity services.⁵ Acuity services are provided to a recipient receiving group home habilitation services who must, "because of the recipient's physical condition or behavior," need "direct one-to-one support from direct care workers whose time is dedicated solely to providing [those] services ... to that one recipient 24 hours per day, seven days per week."⁶ The request for Acuity services must be supported by documentation establishing the need for this extra level of support.⁷

III. Facts

A. C. is a young adult (currently 19 years old). He is physically capable but is intellectually impaired. His clinical diagnoses include intellectually disability, major depressive disorder, disruptive mood dysregulation disorder, and several learning disorders.⁸ He has a history of both suicidal ideation and suicide attempts.⁹ In addition to his intellectual disability and mental health issues, he also has Phenylketonuria (PKU), which requires that he follow a very restrictive diet.¹⁰

A. C. is physically and verbally aggressive to women and to men who are smaller in build than himself. He currently resides in a group home, where he has been living since September 2021. Immediately prior to his move into the group home, he was hospitalized for 10 days due to mental health issues.¹¹

A. C. attends public school in Anchorage. He has been suspended from school four times for assaultive and aggressive behaviors since February of 2022 (February 3, 2022, February 25, 2022, November 1, 2022, and January 12, 2023).¹² The women at his school are afraid of him, and the school system wants to transition him out of school. In addition, because of his

³ 7 AAC 130.205(a).

⁴ 7 AAC 130.217.

⁵ 7 AAC 130.267(a). Acuity services are also available for recipients who receive residential supportive living services under 7 AAC 130.255; for simplicity in light of A. C.'s particular situation, this summary is limited to recipients of group-home habilitation services under 7 AAC 130.265(f).

⁶ 7 AAC 130.267(b)(2).

⁷ 7 AAC 130.267.

⁸ See Health Center A March 14, 2019 Neuropsychological assessment, p. 6.

⁹ See Health Center A March 14, 2019 Neuropsychological assessment, p. 1.

¹⁰ E. K.'s testimony.

¹¹ E. K.'s testimony.

¹² See Suspension Notifications submitted on February 1, 2023.

behavioral issues around women, it is difficult to find staffing for him, including at his scheduled appointments at Health Center B.¹³

Since A. C. moved into the group home in September of 2021, there have been multiple critical incidents:

- On November 25, 2021, he was hospitalized due to appendix inflammation.
- On December 9, 2021, he was admitted to the hospital due to suicidal ideation.
- On March 1, 2022, he was verbally abusive to staff and residents, and attempted to instigate a fight with another resident.
- On June 11, 2022, he left the group home on his bicycle and did not return.
- On July 17, 2022, he became verbally abusive and aggressive and threatened to fight.
- On November 12, 2022, he had a “breakdown” and set fire to his bed and trashcan in his room. He stated he wanted to kill himself and was subsequently admitted to the Hospital for psychological evaluation.¹⁴

In order to keep A. C.’s behavior under control, he requires oversight from a male who is physically larger than him. He does behave himself when E. K. is around. However, E. K. cannot be around him 24 hours a day. He is checked on at night, approximately every 30 minutes, because he will occasionally defecate in his bed. While the group home keeps daily notes regarding A. C., it does not keep a 24-hour care log.¹⁵

A. C.’s guardian applied for Acuity services. The application did not include a 24-hour care log, or service notes. It did not include a list of attempted interventions and the result. It did not discuss how the Acuity services would be used. The Division did receive the critical incident reports and school suspension information. However, most of that information was not supplied until after the application was denied.¹⁶

The Division denied A. C.’s request for Acuity services for two separate reasons: the information provided did not demonstrate a need for Acuity service due to “lack of justification and supporting documentation.”¹⁷

IV. Discussion

¹³ Ms. Williams’ testimony.

¹⁴ See Adult Protective Services Intake Reports filed on February 1, 2023.

¹⁵ E. K.’s testimony.

¹⁶ Ms. Mattingly’s testimony.

¹⁷ Ex. D, p. 2.

The critical issue here is whether A. C. satisfies the strict requirements of the Acuity services regulation. Does he “because of [his] physical condition or behavior,” need “direct one-to-one support from direct care workers whose time is dedicated solely to providing [those] services ... to that one recipient 24 hours per day, seven days per week”?¹⁸ In addition, did A. C.’s request include the information required by regulation? Because A. C. is requesting that he receive an additional Waiver service, Acuity services, he has the burden of proof.¹⁹

A. Dedicated 24-Hour Care

The evidence in this case demonstrates that A. C. is a danger to himself and others. This conclusion is reached by reviewing his history of assaultive and aggressive behaviors both at his school and at the group home. In addition to the school suspension reports and the critical incident reports, Ms. Williams and E. K. presented credible evidence regarding his aggressive behaviors. His setting fire in his room in November 2022 as part of a suicide attempt is particularly disturbing in that it presented a very real danger, not only to himself, but also to the other residents and the staff.

The evidence does not show that A. C. requires someone with him, and only with him, 24 hours per day, 7 days per week. That is a prerequisite for eligibility for Acuity services: he must “need[] direct one-to-one support from direct care workers whose time is dedicated solely to providing services. . . to [him] 24 hours per day, seven days per week, in all environments in which [he] functions.”²⁰ Instead, the evidence shows that A. C. requires careful supervision and monitoring, primarily during waking hours. At night, A. C. is only checked upon every 30 minutes, not continually. And the reason he is checked on is due to nighttime incontinence. Consequently, the evidence does not show, by a preponderance of the evidence, that A. C. requires the 24 hour one-on-one dedicated care necessary to qualify for Acuity services.

B. Required Documentation

The regulation that authorizes the payment for Acuity services has very specific requirements for an applicant for Acuity services. If an applicant requires dedicated one-on-one services due to either their physical condition or behavior, they must provide, as part of their request, 24-hour care logs “for each of the 30 days immediately preceding the date of the

¹⁸ 7 AAC 130.267(b)(2).

¹⁹ 7 AAC 49.135.

²⁰ 7 AAC 130.267(b)(2).

request.”²¹ It is undisputed that no such care logs were provided. Per E. K.’s testimony, the group home does not maintain a 24-hour care log for A. C.

The request for Acuity services must also include documentation that includes a list of interventions utilized to control problem behaviors and whether successful or not, medical and psychological evaluations, and how the requested Acuity services would be utilized.²² These were not provided. Indeed, the neuropsychological evaluation now in the record was not supplied until the end of the evidentiary hearing.

The preponderance of the evidence therefore shows that the request for services was defective on its face for failing to satisfy the regulatory requirements.

V. Conclusion

A. C. requested that he receive Acuity services as a part of his Medicaid Home and Community-based plan of care. He has the burden of proof. He did not meet his burden. The evidence shows that he does not meet the exceedingly high care requirements that would qualify him for Acuity services. In addition, his request was defective in that it did not provide the documentation required by the Acuity services regulations. Accordingly, for these two independent reasons, the Division’s denial of his request is affirmed.

DATED: March 20, 2023.

Signed

Lawrence A. Pederson
Administrative Law Judge

²¹ 7 AAC 130.267(d)(3) and (e)(2).

²² 7 AAC 130.6267(d) and (e).

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 4th day of April, 2023.

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

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