

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

In the Matter of

D. H.

OAH No. 24-0463-MDS

DECISION

I. Introduction

D. H. applied for services under the Alaskans Living Independently and Community First Choice Waiver Programs (collectively, the “Waiver program”). After conducting an assessment, the Division of Senior and Disabilities Services (the “Division”) issued a decision denying Waiver services. Ms. H. appealed the determination. Her case came to hearing on September 19, 2024, with all participants appearing by telephone.

At the hearing, Ms. H. represented herself and offered sworn testimony in support of her application.¹ The Division was represented by Medicaid Program Specialist Terri Gagne. Angel Moody, a Health Program Manager who conducted Ms. H.’s assessment, testified on the Division’s behalf.

As an initial applicant, Ms. H. had the burden to show that she qualified for the Waiver program as of the date her application was denied. While it is undisputed that Ms. H. faces serious health challenges, qualification for the Waiver program requires an applicant to show that she requires the level of care that is normally provided in a skilled or intermediate nursing facility. Since Ms. H. was unable to show that her present conditions require such a high level of care, the Division’s denial of her application is affirmed.

II. Background Facts

Ms. H. is a 53-year-old City A. resident who has been diagnosed with a variety of medical conditions, the most serve of which are multiple sclerosis (with related flaccid hemiplegia), hypothyroidism, and moderate persistent asthma.² These conditions cause her to have problems with mobility, weakness in her hands and arms, shortness of breath, and make her

¹ Ms. H. chose to proceed without the participation of her care coordinator, who was unavailable for the hearing.

² While Ms. H. describes herself as suffering from COPD, there are no medical records showing a clinical diagnosis for this condition. Instead, her primary care provider diagnosed Mr. H. as suffering from asthma. See Exhibit E, p. 4; Exhibit G, p. 15.

prone to falls.³ She is also fully incontinent.⁴ Ms. H. is not cognitively impaired and was working at a FedEx package store until she resigned her position in April 2024 due to concerns about her declining health.⁵ Ms. H. owns a car that she has been using for getting to medical appointments.⁶ She is not presently receiving any ongoing medical therapies, and is not taking any prescriptions that require hands-on assistance from a personal care provider.⁷

Ms. H. applied for benefits through the Waiver program on May 20, 2024.⁸ She was assessed for program eligibility by Ms. Moody on June 24, 2024, by means of a Zoom videoconference. Based on that assessment, the Division issued a letter denying Ms. H.'s application on July 8, 2024.⁹ Ms. H. timely requested a Fair Hearing in response.¹⁰

III. Qualification for Waiver

A. Home and Community-Based Waiver Program

An adult with a physical disability is eligible to receive benefits under the Waiver program if he or she requires the level of care that is normally provided in a skilled or intermediate nursing facility.¹¹ The program pays for services that allow an eligible person to stay in his or her home (which may be an assisted living home) rather than move into a nursing facility. The level of care that is provided in a nursing facility is described by regulation. Skilled nursing facility services are defined in 7 AAC 140.515. Intermediate care facility services are defined in 7 AAC 140.510.

The department determines whether an applicant requires a nursing facility level of care by conducting an assessment using the Consumer Assessment Tool (the "CAT").¹² The CAT functions as both a questionnaire and scoring mechanism. It is utilized to assess an applicant's needs for professional nursing services, therapies, and special treatments,¹³ and the extent to which an applicant has impaired cognition or displays problem behaviors.¹⁴ The CAT

³ Exhibit E, p. 4.

⁴ Ms. H. testimony; Exhibit E, p. 9.

⁵ Ms. H. testimony.

⁶ Exhibit E, p. 8.

⁷ Exhibit E, p. 6.

⁸ Exhibit G, p. 5.

⁹ Exhibit D.

¹⁰ Exhibit C.

¹¹ 7 AAC 130.205(d)(2); 7 AAC 130.215(4).

¹² 7 AAC 130.213.

¹³ Exhibit E, pp. 11-14.

¹⁴ Exhibit E, pp. 15-17.

also records the degree of assistance an applicant requires for Activities of Daily Living (“ADLs”).¹⁵ Because the CAT is adopted by reference in 7 AAC 160.900(d)(6), it is itself a regulation.¹⁶

There are a variety of ways for an applicant to score enough points on the CAT to qualify for the Waiver program. In this decision, however, it will not be necessary to review all the potential paths to eligibility since only one is potentially applicable to Ms. H. This route to qualification requires a demonstrated need for “extensive assistance” with three or more key ADLs. This is the only way Ms. H. could potentially qualify for the Waiver program since her cognition and behaviors are good, and she is not receiving any qualifying services or therapies.

The relevant date for purposes of assessing the state of the facts is, in general, the date of the agency’s decision under review.¹⁷ For this case that date is July 8, 2024, which is when the Division issued the notice informing Ms. H. that her Waiver application was denied.

B. *Extensive Assistance with ADLs*

Even if a person is not receiving any qualifying special therapies, eligibility for the Waiver program can be established via a need for extensive assistance with certain ADLs. For purposes of the CAT, this requires a self-performance score of 3 (extensive assistance) or 4 (dependent) in three of the following five “shaded” ADLs: (1) bed mobility; (2) transfers; (3) toileting; (4) eating; and (5) locomotion within the home.¹⁸ Ms. Moody assigned scores of zero, which means “independent” in this context, for all five of these activities based on her determinations that Ms. H. can perform them without assistance. The scoring for each of these ADLs will be addressed below.

1. *Bed Mobility*

Bed mobility is defined as how a “person moves to and from lying position, turns side to side, and positions body while in bed.”¹⁹ Ms. Moody observed that Ms. H. could lean back, sit

¹⁵ Exhibit E, pp. 18-19.

¹⁶ Adopting January 29, 2009 version of the CAT.

¹⁷ See 7 AAC 49.170; *In re T.C.*, OAH No. 13-0204-MDS (Commissioner of Health & Soc. Serv. 2013) (available at <https://aws.state.ak.us/OAH/Decision/Display?rec=2856>).

¹⁸ Exhibit E, pp. 7, 32. This qualification route is found on page 32 under NF.1(e).

¹⁹ Exhibit E, p. 7.

up, and roll her body in bed during the assessment.²⁰ Ms. H. did not dispute the self-performance score of zero that Ms. Moody assigned to this ADL.

2. *Transfers*

Transfers are defined as how a “person moves between surfaces,” such as from a sitting to a standing position.²¹ During the assessment Ms. H. reported that she can independently get into and out of bed and chairs with the assistance of a two-wheel walker, and was observed performing these activities during the assessment.²² Though Ms. H. testified that she has greater difficulties than Ms. Moody described in the CAT, there is no evidence indicating that Ms. H. is unable to independently perform the activities covered by this ADL. Accordingly, Ms. Moody correctly assigned a self-performance score of zero here.

3. *Toileting*

Toileting is a complex process that combines locomotion, transfers, dressing, and cleansing.²³ During her assessment Ms. H. demonstrated that she can independently walk to the bathroom and get on/off the toilet with the assistance of her walker. While Ms. H. reported that she wears pads and adult diapers due to her incontinence, she can change them without assistance.²⁴ These facts justify the self-performance score of zero that Ms. Moody assigned for this ADL.

4. *Eating*

Eating is defined as “how a person eats and drinks regardless of skill.”²⁵ Notably, it is not the same as meal preparation, which is separately scored and is not relevant to this decision. Ms. H. advised during the assessment that she could feed herself and demonstrated that she can drink from a water bottle without difficulty. Ms. Moody therefore gave a self-performance score of zero that is not disputed by Ms. H. here.²⁶

5. *Locomotion*

Locomotion is defined as how a person “moves between locations in his/her room and other areas on the same floor.”²⁷ If a person uses an assistive device such as a cane, walker or

²⁰ *Id.*

²¹ *Id.*

²² Exhibit E, pp. 7-8.

²³ Exhibit E, p. 9.

²⁴ Exhibit 7, p. 9.

²⁵ Exhibit E, p. 8.

²⁶ Exhibit E, p. 9.

²⁷ Exhibit E, p. 8.

wheelchair, self-sufficiency in using these devices can establish self-performance for this ADL. Ms. H. reported that she utilizes a two-wheel walker and motorized wheelchair to get around in her home. This information was verified by Ms. Moody, who observed Ms. H. independently moving around her home with the assistance of her walker during the assessment.²⁸ Ms. Moody correctly assigned a self-performance score of zero given her personal observations and the information provided by Ms. H.²⁹

6. Overall Eligibility Picture

Given these self-performance scores, Ms. H. cannot qualify for the Waiver program on the basis of ADLs alone. While there may be other kinds of assistance for which she qualifies, it cannot be provided through the Waiver program at issue in this case.

IV. Conclusion

Ms. H. faces a challenging health situation with real physical limitations that impact her day-to-day life. Here, however, she failed to establish that her conditions presently require a level of care that is normally provided in a skilled or intermediate nursing facility. Accordingly, the Division's decision to deny her application for Waiver services is affirmed. Ms. H. may reapply for the program if her conditions worsen in the future.

DATED this 1st day of October 2024.

By: Signed
Signature
Max Garner
Name
Administrative Law Judge
Title

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²⁸ *Id.*

²⁹ Ms. H. also reported that she can get into her car and drive to medical appointments (though she will request a wheelchair and staff assistance to get into the building). *See* Exhibit E, p. 8. Ms. Moody appropriately considered this information in assessing the extent to which Ms. H. can independently move within her home.

Adoption

The undersigned, by delegation from of 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 17 day of October, 2024.

By: Signed
Signature
Max Garner
Name
Administrative Law Judge
Title

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