

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

In the Matter of	)	
	)	
H. T.	)	OAH No. 24-0562-MDS
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**DECISION**

**I. INTRODUCTION**

H. T. applied for a Medicaid Home and Community-Based Waiver (“Waiver”) benefits. The Division of Senior and Disabilities Services (“Division”) assessed his eligibility and determined that while he struggles with several medical conditions, his needs do not rise to the level of a skilled or intermediate-level nursing home and he is therefore ineligible for a Waiver.

As an initial applicant, Mr. T. 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. The evidence Mr. T. provided falls short of the showing needed for a Waiver-level of care. Accordingly, the application denial is affirmed.

**II. BACKGROUND**

H. T. is a 70-year-old man diagnosed with cluster B personality disorder, common iliac aneurysm, gait instability, aortitis, and adjustment disorder with anxiety.<sup>1</sup> Medical records reviewed by the Division also state that Mr. T. has numerous conditions, including hypertension, hypoalbuminemia, chronic kidney disease, low kidney function, and peripheral polyneuropathy.<sup>2</sup> He receives in-home care three times a week for wounds on his legs.<sup>3</sup>

Mr. T. applied for Waiver benefits and was assessed by the Division on July 23, 2024.<sup>4</sup> Based on that assessment, the Division denied his application.<sup>5</sup>

Mr. T. appealed. A hearing was held October 21, 2024. Mr. T. testified and presented testimony from two care coordinators and a home health care provider. The agency presented testimony from the assessor who conducted Mr. T.’s July 2024 assessment.

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<sup>1</sup> Ex. E at 4.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Ex. E.

<sup>5</sup> Ex. D.

### III. DISCUSSION

The Alaska Medicaid program provides Waiver services to adults with physical disabilities who require “a level of care provided in a nursing facility.”<sup>6</sup> The purpose of these services is to provide an “opportunity to choose to receive home and community-based waiver services as an alternative to institutional care.”<sup>7</sup>

The nursing facility level of care requirement is determined in part by an evaluation under the Consumer Assessment Tool (“CAT”).<sup>8</sup> The CAT records an applicant’s needs for professional nursing services, therapies, and special treatments, whether an applicant has impaired cognition, and the degree of assistance an applicant requires for five particular activities of daily living (“ADL”): 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) within the home, eating, and toilet use, which includes transferring on and off the toilet and personal hygiene care.<sup>9</sup>

As the applicant, Mr. T. has the burden of showing, by a preponderance of the evidence, that he qualified for Waiver benefits as of the July 23, 2024 assessment.<sup>10</sup>

To qualify, Mr. T. would need at least three points on the CAT. As of the time of the assessment, Mr. T. was not receiving any nursing services considered for purposes of the CAT, so he would need points based on based on cognitive and behavioral issues and the need for assistance with ADLs. Points are awarded: (1) one point if three or more of the five ADLs score a 3 or 4 for self-performance (2) one point for each ADL for which a person scores both a 2, 3, or 4 for self-performance and a 2 or 3 for support; (3) one point if a person scores a 2 or 3 for problematic behaviors, scores a 14 for cognition-related behaviors, and for at least one ADL scores both a 2, 3, or 4 for self-performance and a 2 or 3 for support; and (4) one point for demonstrated need in all areas of cognition (short-term memory, memory recall, cognitive skills, and cognition).<sup>11</sup>

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<sup>6</sup> 7 AAC 130.205(d)(4).

<sup>7</sup> 7 AAC 130.200.

<sup>8</sup> 7 AAC 130.215(4).

<sup>9</sup> Ex. E.

<sup>10</sup> 7 AAC 49.135. At the late October hearing, Mr. T.’s witnesses testified that he has declined in the last few months and spoke to his use of a wheelchair that he acquired in late August. These developments occurred well after the July assessment and thus are not considered for determining Mr. T.’s eligibility at the time of the assessment.

<sup>11</sup> Ex. E at 31-32. There are additional ways to earn points if a person is receiving nursing services.

The CAT scores the ADLs for self-performance and support using the following scale for self-performance:

0. INDEPENDENT - No help or oversight - or - Help/oversight provided only 1-2 times during last 7 days.
1. SUPERVISION - Oversight, encouragement or cueing provided 3+ times during last 7 days - or - Supervision plus nonweight-bearing physical assistance provided only 1 or 2 times during last 7 days.
2. LIMITED ASSISTANCE - Person highly involved in activity; received physical help in guided maneuvering of limbs, or other nonweight-bearing assistance 3+ times - or - Limited assistance (as just described) plus weight-bearing 1 or 2 times during last 7 days.
3. EXTENSIVE ASSISTANCE - While person performed part of activity, over last 7-day period, help of following type(s) provided 3 or more times: Weight-bearing support and/or Full staff/caregiver performance during part (but not all) of last 7 days.
4. TOTAL DEPENDENCE - Full staff/caregiver performance of activity during ENTIRE 7 days.<sup>12</sup>

The CAT scores support as follows:

0. No setup or physical help from staff
1. Setup help only
2. One-person physical assist
3. Two+ persons physical assist<sup>13</sup>

During the assessment and at the hearing, Mr. T. stated that he needs assistance with cooking, cleaning, bathing, and dressing.<sup>14</sup> There are public benefits that address those needs, but the Waiver program focus on the ADLs of bed mobility, transfers, locomotion, eating, and toileting. To receive a point in any of the first three point categories listed above, Mr. T. must require a certain level of assistance with one or more of these five key ADLs.

For bed mobility, the CAT assessor observed Mr. T. lay down, rotate himself, and sit up in bed independently.<sup>15</sup> He told the assessor that he sometimes sleeps in his recliner to elevate

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<sup>12</sup> Ex. E at 7.

<sup>13</sup> *Id.* The CAT also scores for cuing, but only support scores of 2 or 3 are relevant to the point categories noted above.

<sup>14</sup> Ex. E at 4; T. testimony.

<sup>15</sup> Ex. E at 7; Earhart testimony.

his legs, but that he never needs assistance to lay down or sit up.<sup>16</sup> At the hearing, Mr. T. testified that he regularly chooses to sleep in his recliner instead of his bed and that getting in and out of bed or the chair and changing positions requires effort, but that he nonetheless does so independently.<sup>17</sup> The assessor scored Mr. T. with a zero for both the self-performance and support categories.<sup>18</sup> The evidence does not support a higher CAT score for bed mobility.

For transfers, the CAT assessor observed Mr. T. stand up and use a walker to transfer between surfaces independently.<sup>19</sup> Mr. T. told the assessor that he uses a walker, cane, or furniture to stand up and that he does so without assistance.<sup>20</sup> The assessor scored Mr. T. with a zero for both self-performance and support.<sup>21</sup> At the hearing, Mr. T. testified that getting up from his recliner requires great effort, but that he does so on his own.<sup>22</sup> As the scoring system described above shows the CAT does not score for effort required to perform an ADL or whether a person experiences pain, but whether a person is able to perform the ADL without assistance from a third person. Mr. T. argued he would use assistance if it was available and that he performs ADLs like transfers independently because he has no other option.<sup>23</sup> It is understandable that Mr. T. would prefer assistance, but Waiver eligibility looks at whether an applicant can physically perform tasks. Mr. T. demonstrated during his assessment that he can transfer independently with the assistance of a cane or walker. The evidence does not support a higher CAT score for transfers.

For locomotion, the assessor observed Mr. T. walk around a room using his walker.<sup>24</sup> Mr. T. took a break because he started feeling dizzy, but did not require assistance.<sup>25</sup> He told the assessor that he is able to walk around his home using a cane or walker.<sup>26</sup> The assessor scored Mr. T. with a zero for both self-performance and support.<sup>27</sup> At the hearing, Mr. T. testified that he cannot walk very far without help, but also stated that he does not use assistance with

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<sup>16</sup> *Id.*  
<sup>17</sup> T. testimony.  
<sup>18</sup> Ex. E at 7.  
<sup>19</sup> *Id.*  
<sup>20</sup> *Id.*  
<sup>21</sup> *Id.*  
<sup>22</sup> T. testimony.  
<sup>23</sup> *Id.*  
<sup>24</sup> Ex. E at 8; Earhart testimony.  
<sup>25</sup> *Id.*  
<sup>26</sup> *Id.*  
<sup>27</sup> Ex. E at 8.

locomotion other than his cane and walker.<sup>28</sup> Again, the CAT scores an applicant's ability to perform ADLs independently, not whether doing so is easy or pain free. The evidence shows Mr. T. walks independently and therefore does not support a higher CAT score for locomotion.

For eating, the assessor observed Mr. T. drink from a cup, demonstrating his ability to feed himself.<sup>29</sup> He told the assessor he feeds himself and has no issues with eating or swallowing.<sup>30</sup> Mr. T. similarly testified that he eats independently.<sup>31</sup> The assessor scored Mr. T. with a zero for both self-performance and support.<sup>32</sup> The evidence does not support a higher CAT score for eating.

For toileting, the assessor observed Mr. T. locomote and transfer independently, demonstrating the ability to get to the bathroom and on and off the toilet.<sup>33</sup> The assessor also observed Mr. T. demonstrate strong grip strength and raising his arms over his head and behind his back, demonstrating the ability to pull pants up and down and clean himself for toileting.<sup>34</sup> Mr. T. told the assessor that he uses his walker to get to the bathroom and uses the toilet, including pulling his pants up and down and cleaning himself, independently.<sup>35</sup> The assessor thus scored Mr. T. with a zero for both self-performance and support.<sup>36</sup> Mr. T. testified at the hearing that he does, indeed, get to and use the toilet independently.<sup>37</sup> The evidence does not support a higher CAT score for toileting.

With zero scores for all of the five key ADLs, Mr. T. does not qualify for a point in the first three of the four point categories listed above. The fourth category (cognition) is worth only one point, and he needs three points to qualify for Waiver benefits. Mr. T.'s scores for cognitive and behavioral issues need not be addressed because without nursing services or ADL scores above zero, Mr. T. does not qualify for Waiver benefits.

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<sup>28</sup> T. testimony. Mr. T. also testified about his use of a wheelchair in the home, but he did not acquire this wheelchair until late August, so it is outside the time period at issue for considering his eligibility as of the July assessment.

<sup>29</sup> Ex. E at 8; Earhart testimony.

<sup>30</sup> Ex. E at 8.

<sup>31</sup> T. testimony.

<sup>32</sup> Ex. E at 8.

<sup>33</sup> Ex. E at 9.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> T. testimony.

There is no question Mr. T. faces many challenges. But Waiver benefits are reserved for a very high level of need. Mr. T. has not met his burden to show that he met that threshold as of the July 23, 2024 assessment.

#### **IV. CONCLUSION**

Mr. T.'s needs do not rise to the level of skilled or intermediate-level nursing home care. Accordingly, as of the time of his assessment, Mr. T. does not qualify for Waiver benefits. The Division's denial is affirmed.

Dated: October 29, 2024

By: Signed  
Signature  
Rebecca Kruse  
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.]

### **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 15th day of November, 2024.

By: Signed  
Signature  
Rebecca Kruse  
Name  
Administrative Law Judge  
Title