

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

In the Matter of	)	
	)	
K. S.-E.	)	OAH No. 24-0603-MDS
_____	)	

**DECISION**

**I. Introduction**

K. S.-E. applied for Medicaid Home and Community-Based Waiver (Medicaid Waiver) benefits. Following an assessment that was conducted on August 13, 2024, the Division of Senior and Disabilities Services (Division) denied his application on September 10, 2024

Mr. S.-E. requested a hearing to challenge the denial of his application. His hearing was held on October 29, 2024. Mr. S.-E. attended, but did not otherwise participate. He was represented by N. H.-J., who holds his power of attorney. She testified on his behalf as did P. L., his Medicaid Care Coordinator. The Division was represented by its Fair Hearing Representative Victoria Cobo-George. The Division's assessor in this case, Maria Hughes, testified for the Division, as did Q. S., R.N., who is with the Division's nursing unit.

The evidence in this case shows that Mr. S.-E. has cognitive impairments which affect his ability to care for himself, including his medical care and medication management. However, he can perform four of the five scored activities of daily living (bed mobility, transfers, locomotion, eating) independently without any assistance. Regarding the scored activity of daily living of toileting, he requires supervision and/or cueing with cleansing, but not hands-on physical assistance, post-toileting. Because he does not require hands-on physical assistance with any of the five scored activities of daily living, his cognitive impairment notwithstanding, his care needs do not meet the very high threshold required to qualify for Waiver benefits. Consequently, the Division's denial of his application is AFFIRMED.

**II. Preliminary Facts**

Mr. S.-E. is 71 years old. He lives in an assisted living facility, where he has been residing since July 30, 2024.<sup>1</sup> Mr. S.-E. experiences several health conditions: chronic

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<sup>1</sup> Ex. E, pp. 2, 4.

obstructive pulmonary disease, type 2 diabetes, hypertension, cirrhosis of the liver, prostate cancer, depression, and cognitive impairment.<sup>2</sup>

Mr. S.-E. applied for Medicaid Waiver benefits. The Division assessed Mr. S.-E. by video on August 13, 2024 to determine whether he met the requirements to qualify for Medicaid Waiver benefits. Mr. S.-E. was present for the assessment as were Ms. H.-J. and Mr. L.<sup>3</sup>

The Division's assessment showed that Mr. S.-E. is physically capable of performing the five activities of daily living of bed mobility, transfers, locomotion on a single level, eating, and toileting without requiring any hands-on physical assistance.<sup>4</sup> The assessment also showed that Mr. S.-E. experiences a very minor degree of cognitive impairment, and no behavioral issues.<sup>5</sup>

The final scoring on Mr. S.-E.'s assessment found that he was not eligible for Waiver benefits.<sup>6</sup> The Division notified Mr. S.-E. on September 10, 2024 that he was not eligible for Waiver benefits and that his application was denied.<sup>7</sup>

Ms. H.-J. is Mr. S.-E.'s friend and holds his power of attorney. She was a credible witness who testified about his day-to-day functioning. Her testimony did not dispute that Mr. S.-E. was physically capable of performing his ADLs of bed mobility, transfers, locomotion, and eating without requiring any hands-on physical assistance. For instance, she testified that he can walk within his residential environment without help, although he will lean on furniture and walls for support. He can also take the bus by himself, but he needs some help planning the trip. However, she credibly testified that Mr. S.-E. is not capable of thoroughly cleansing himself following a bowel movement – his resultant body odor is such that she will tell him that he needs to shower.<sup>8</sup> Mr. S.-E. does not use incontinence supplies.<sup>9</sup> She further testified that Mr. S.-E. does not understand his medication and other medical needs, and that he will experience heightened care/behavioral needs when he does not take his medications properly, but that he will follow directions.<sup>10</sup>

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<sup>2</sup> Ex. E, p. 4.

<sup>3</sup> Ex. E, p. 2.

<sup>4</sup> Ex. E, pp. 9 - 10; Ms. Hughes' testimony.

<sup>5</sup> Ex. E, pp. 16 - 19; Ms. Hughes' testimony.

<sup>6</sup> Ex. E, pp. 33 - 34.

<sup>7</sup> Ex. D.

<sup>8</sup> Ms. H.-J.'s testimony.

<sup>9</sup> Ex. E, p. 10.

<sup>10</sup> Ms. H.-J.'s testimony.

Neither the care notes from the assisted living facility where Mr. S.-E. lives nor his medical records demonstrate that Mr. S.-E. requires hands on physical assistance with the five scored ADLs. Instead, they reflect that he is independently ambulatory and will leave the assisted living facility to go into the community. The assisted living facility notes do show that he is provided physical assistance with showering.<sup>11</sup>

E. J., R.N., is the Care Management Supervisor at the Medical Center. On October 14, 2024, she wrote that Mr. S.-E. was significantly cognitively impaired, not able to care for himself medically, requires daily medication management, and will not take medications on his own.<sup>12</sup>

D. N., M.D., is Mr. S.-E.'s treating physician. On September 23, 2024, he wrote that, among other diagnoses, that Mr. S.-E. experienced "moderate cognitive impairment," and that his most recent hospitalization (July 8 – 30, 2024) was likely due to "medication non-compliance."<sup>13</sup>

### **III. Discussion**

#### *A. Burden of Proof*

Mr. S.-E. is an applicant for Waiver benefits. He therefore has the burden of proving by a preponderance of the evidence that he is eligible for Waiver benefits.<sup>14</sup> The parties can meet their burden of proof using any evidence on which reasonable people might rely in the conduct of serious affairs,<sup>15</sup> including such sources as written reports of firsthand evaluations of the patient. The relevant date for purposes of assessing the state of the facts is, in general, the date of the agency's decision under review.<sup>16</sup> For this case, that date is September 10, 2024, the date of the notice informing Mr. S.-E. that his Waiver application was denied.

#### *B. The Consumer Assessment Tool Scoring*

The Alaska Medicaid program provides Waiver benefits to adults with physical disabilities who require "a level of care provided in a nursing facility."<sup>17</sup> The nursing facility

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<sup>11</sup> See the assisted living care notes filed on October 22, 2024 and October 25, 2024 and the medical records filed on October 23, 2024.

<sup>12</sup> See October 14, 2024 letter filed on October 22, 2024.

<sup>13</sup> See September 23, 2024 letter filed on October 22, 2024.

<sup>14</sup> 7 AAC 49.135.

<sup>15</sup> 2 AAC 64.290(a)(1).

<sup>16</sup> See 7 AAC 49.170; *In re T.C.*, OAH No. 13-0204-MDS (Commissioner of Health & Soc. Serv. 2013) (<http://aws.state.ak.us/officeofadminhearings/Documents/MDS/HCW/MDS130204.pdf>).

<sup>17</sup> 7 AAC 130.205(d)(4).

level of care<sup>18</sup> requirement is determined by an assessment which is documented by the Consumer Assessment Tool (CAT).<sup>19</sup>

The CAT records an applicant's needs for professional nursing services, therapies, and special treatments,<sup>20</sup> and whether an applicant has impaired cognition or displays problem behaviors.<sup>21</sup> Each of the assessed items are coded and contribute to a final numerical score. For instance, if an individual required 5 days or more of therapies (physical, speech/language, occupation, or respiratory therapy) per week, he or she would receive a score of 3.<sup>22</sup>

The CAT also records the degree of assistance an applicant requires for Activities of Daily Living (ADLs).<sup>23</sup> The CAT provides applicants with a two-part numerical score to reflect their ability to perform the activity and need for assistance in doing so. The score consists of a self-performance code, which rates a person's ability to perform the activity, followed by a support code, which reflects the degree of assistance required to do so.

The ADLs measured by the CAT are bed mobility, transfers, locomotion, dressing, eating, toilet use, personal hygiene, and bathing.<sup>24</sup> For ADLs, the possible self-performance codes relevant to determining an applicant's level of need are as follows:

**0 – “Independent.”** This code is used if help or oversight was provided no more than twice in the prior seven days.

**1 – “Supervision.”** This code is used if the person requires only “oversight, encouragement, or cueing” while performing the activity.

**2 – “Limited Assistance.”** This Code is used if the person is “highly involved” in the activity” and “received physical help in guided maneuvering of limbs, or other nonweight-bearing assistance” three or more times in the last seven days, or received physical help in guided maneuvering of limbs plus weight bearing assistance no more than twice in the last seven days.

**3 – “Extensive Assistance.”** This code is used where the person performed part of the activity, but over the past seven days received weight-bearing support and/or full caregiver performance of the activity three or more times.

**4 – “Total Dependence.”** This code is used where there has been full staff/care giver performance of the activity during the entire prior seven days.<sup>25</sup>

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<sup>18</sup> See 7 AAC 130.205(d)(4); 7 AAC 130.215.

<sup>19</sup> 7 AAC 130.215(4).

<sup>20</sup> Ex. E, pp. 7, 13 – 15

<sup>21</sup> Ex. E, pp. 16– 19.

<sup>22</sup> Ex. E, p. 33.

<sup>23</sup> Ex. E, pp. 7 - 10.

<sup>24</sup> Ex. E, pp. 7 - 10.

<sup>25</sup> Ex. E, p. 7.

For ADLs, the possible support codes used to determine a service level are as follows, with each option reflecting the “most support provided” over each 24-hour period during the prior seven days.

- 0 – The person required no set up or physical help.
- 1 – The person required only setup help.
- 2 – The person required a one-person physical assist.
- 3 – The person required a physical assist from two- or more people.<sup>26</sup>

*C. Mr. S.-E. 's Waiver Eligibility*

Waiver eligibility requires that an applicant have a total score of three or more on the CAT. That score can be arrived at through several scenarios, all of which are set out in the CAT itself.<sup>27</sup> For instance, if Mr. S.-E. required nursing services seven days per week, or had therapy five or more times per week, or if he required extensive physical assistance with three or more of five specific ADLs (bed mobility, transfers, locomotion, toileting, and eating), he would qualify for Waiver benefits.<sup>28</sup> There is no evidence that he required nursing services seven days per week at the time of the assessment and denial decision. There is no evidence that he receives therapy five or more times per week. The evidence does show that Mr. S.-E. experiences a cognitive impairment which center around some communication difficulties and unawareness of his self-care needs, including the need to take his medications, which is classified as a behavioral impairment.<sup>29</sup> However, the evidence shows that his cognitive and behavioral issues are limited and do not approach the very high level of impairments which would assist him in obtaining Waiver eligibility.<sup>30</sup>

Mr. S.-E.'s only path to Waiver eligibility would therefore require him to need extensive assistance with at least three of the five specified ADLs: bed mobility, transfers, locomotion, toileting, and eating. The assessment finds that Mr. S.-E. is independent with all the five specified ADLs (bed mobility, transfers, locomotion, toileting, and eating).

The other evidence in this case regarding the five specified ADLs is Ms. H.-J.'s credible testimony, the assisted living facility care notes, some very limited medical records, and the

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<sup>26</sup> Ex. E, p. 7.

<sup>27</sup> Ex. E, pp. 33 - 34.

<sup>28</sup> Ex. E, p. 33 question NF 1.

<sup>29</sup> See Ex. E, p. 18, Section D2B(5) “Awareness of Needs/Judgment.”

<sup>30</sup> See Ex. E, pp. 16 - 19 and pp. 33 – 34: question NF 3 (cognitive impairment plus scored ADL), question NF 4 (behavioral impairments), and questions NF 5 - 7.

letters from Mr. S.-E.'s medical care providers. Those are consistent with the assessment, which shows no need for assistance with the ADLs of bed mobility, transfers, locomotion, and eating.

Ms. H.-J.'s testimony, however, disagreed with the assessment regarding the ADL of toileting. Her testimony established that Mr. S.-E. does not or cannot properly cleanse himself after a bowel movement, to such an extent that she has to prompt him to shower due to his body odor. This supports a finding that he requires supervision or cueing assistance for toileting, which is a non-physical assist (coded as 1 / 2 supervision or cueing from one person).<sup>31</sup> The evidence in this case therefore shows that Mr. S.-E. does not require extensive assistance with any of the five scored ADLs.

Mr. S.-E. had the burden of proof in this case to demonstrate that he satisfied the stringent eligibility requirements for Medicaid Waiver benefits as of the relevant date of September 10, 2024. The evidence in this case is that although he is cognitively impaired which affects his ability to care for himself, his medical care needs and physical care needs are not sufficient to qualify him for Waiver benefits.

#### **IV. Conclusion**

The Division's denial of Mr. S.-E.'s application for Medicaid Waiver benefits is **AFFIRMED**.

Dated: November 19, 2024

By: Signed  
Signature  
Larry Pederson  
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.]

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<sup>31</sup> The assessment reflects that the assessor was told that Mr. S.-E. receives some assistance with showering. (Ex. E, p. 11). However, receiving assistance with bathing/showering does not help a person qualify for Waiver benefits. (Ex. E, p. 33, question NF 1(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 December, 2024.

By: Signed  
Signature  
Larry Pederson  
Name  
Administrative Law Judge  
Title