



In January 2019, B.'s Medicaid Waiver services changed. Instead of family habilitation services, she began receiving in-home support habilitation services and respite services.<sup>4</sup> In her PCSP plan year that began January 13, 2024 and ended January 12, 2025, she was approved to receive 4080 units of in-home support habilitation services, 2080 units of hourly respite services, 14 days of daily respite services, in addition to day habilitation services and care coordination services.<sup>5</sup> These are the same services that she has been receiving for several years.<sup>6</sup>

B. applied to renew her Medicaid Waiver services at the exact same level for her PCSP year that started on January 13, 2025.<sup>7</sup> The Division initially approved the renewal with no changes.<sup>8</sup> The Division, after the initial approval, found out that B. was living in a licensed home. B.'s prior PCSP did not mention that fact.<sup>9</sup> The Division then notified B.'s parents on January 31, 2025, that B. was not eligible for either in-home support habilitation services or respite services, either hourly or daily, and that those services would be terminated effective February 14, 2025. Her day habilitation and care coordination services were not affected.<sup>10</sup>

Neither Ms. T. nor Mr. K. are paid to care for B.<sup>11</sup>

#### *B. The Hearing*

B.'s parents requested a hearing to challenge the termination of her in-home support habilitation services and respite services. A telephonic hearing was held on April 10, 2025. T. T., B.'s mother, represented B.'s interests. Ms. T. testified, as did B. J. and F. C., both of whom are employed with All Ways Caring, which provides Medicaid Waiver services for B. Victoria Cobo-George, a Fair Hearing Representative with the Division, represented the Division. Heather Chord, the manager for the Division's Intellectual and Developmental Disability unit, testified.

The record was held open after the hearing for the Division to supply additional background material discussed during the hearing, and for B.'s response. The Division did not supply any additional material, and consequently there was no need for B. to respond.

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<sup>4</sup> Ms. T.'s testimony.

<sup>5</sup> Ex. F.

<sup>6</sup> Ms. Chord's testimony.

<sup>7</sup> Ex. G, pp. 1 – 6.

<sup>8</sup> Ms. Chord's testimony.

<sup>9</sup> Ms. Chord's testimony; Ex. F.

<sup>10</sup> Ms. Chord's testimony; Exs. D and E.

<sup>11</sup> Ms. T.'s testimony.

### III. Discussion

The core facts for this case are simple. B. is Mr. K. and Ms. T.'s daughter. She is disabled and a Medicaid Waiver recipient. Mr. K. and Ms. T. are the owners of a licensed foster home where they provide care for children placed with them by OCS. Those children, similar to B. prior to her adoption by Mr. K. and Ms. T., receive paid family habilitation services through the Medicaid Waiver program.

The specific type of Medicaid Waiver services at issue are residential in-home supports and respite, both hourly and daily. Residential habilitation services are

provided to assist recipients to acquire, retain, and improve the self-help, socialization, and adaptive skills necessary to maximize independence and to live in the most integrated setting appropriate to the recipient's wishes and needs.<sup>12</sup>

When those services are provided in a recipient's private home, they are referred to as "in-home support habilitation services."<sup>13</sup> In order to receive those services, the recipient must be younger than 18, and live full-time in their own private residence where an unpaid primary caregiver also lives.<sup>14</sup>

Respite services can be provided in both hourly and daily increments. They are only provided to primary unpaid caregivers and family home habilitation service providers who need relief or are temporarily unable to care for the recipient.<sup>15</sup>

The Medicaid regulations defines a "primary unpaid caregiver" as an individual who either lives with a recipient "in the same unlicensed residence" or who lives separately from the recipient and assists that recipient in the "recipient's unlicensed residence" and who does not receive payment for providing services to the recipient.<sup>16</sup> The term "private residence" is regulatorily defined as "a home that a recipient owns or rents, or a home where the recipient resides with other family members or friends."<sup>17</sup>

It is undisputed that neither Ms. T. nor Mr. K. are paid for B.'s care. It is also undisputed that they have a licensed foster home<sup>18</sup> where they, B., and minor children for whom they

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<sup>12</sup> **Residential Habilitation Services Conditions of Participation** (Ex. B, p. 33).

<sup>13</sup> **Residential Habilitation Services Conditions of Participation** (Ex. B, p. 33); 7 AAC 130.265(h).

<sup>14</sup> **Residential Habilitation Services Conditions of Participation** (Ex. B, p. 36). 7 AAC 130.265(h).

<sup>15</sup> **Respite Care Services Conditions of Participation** (Ex. B, 30); 7 AAC 130.280(b)(3).

<sup>16</sup> 7 AAC 130.319(14).

<sup>17</sup> 7 AAC 130.319(15).

<sup>18</sup> Foster homes are homes where an "adult head of household provides 24-hour care on a continuing basis to one or more children who are apart from their parents." AS 47.32.900(5). Foster homes are required to be licensed. AS 47.32.010(c)(2) and AS 47.32.020(a).

provide care, all reside. i.e., they and B. do not reside in a private residence. Instead, they all reside in a licensed residence, which means that they are, despite not being paid for B.'s care, unpaid primary caregivers as defined by the applicable regulations. Consequently, because in-home support habilitation services can only be provided in private residences which contain both a recipient and an unpaid primary caregiver, B. is not eligible for in-home support habilitation services. And because respite services are only available for unpaid primary caregivers,<sup>19</sup> B. is also not eligible for respite services.

The Division, despite B. not being eligible for in-home support habilitation services or respite service, has approved her receiving those services for years. The question then arises as to whether it is required to continue to approve those services. However, the Division is not required to perpetuate its earlier error.<sup>20</sup> As a result, the Division's termination of B.'s in-home support habilitation services and respite services is upheld.

#### **IV. Conclusion**

Because B. resides with her parents in a licensed home, she is not eligible for either Medicaid in-home support habilitation services or respite services. The termination of those services is upheld.

Dated: April 25, 2025

By: Signed  
Signature  
Lawrence A. Pederson  
Name  
Administrative Law Judge  
Title

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<sup>19</sup> While Ms. T. and Mr. K. provider family habilitation services to other children who reside in their home, they are not family habilitation providers for B., who as their child is not eligible to receive those from her parents. See 7 AAC 130.265(b)(2)(B).

<sup>20</sup> *May v. Alaska Commercial Fisheries Entry Comm'n*, 168 P.3d 873, 882-885 (Alaska 2007) (concluding that the commission was not required to perpetuate an error by awarding fishery participation points in the instant case simply because it had done so in an earlier—wrongly decided—permit adjudication).

## 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 28<sup>th</sup> day of May, 2025.

*Signed* \_\_\_\_\_  
Daniel R. Phelps II  
Process Improvement Manager  
Office of the Commissioner  
Alaska Department of Health

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