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

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| In the Matter of | ) | |
| | ) | |
| N. L. | ) | OAH No. 26-0170-MDS |
| | ) | |

# DECISION

## I. Introduction

On behalf of their ward, N. L., the Office of Children's Services (OCS) applied for services funded under the Individuals with Intellectual and Developmental Disabilities Medicaid Waiver program ("IDD Waiver"). The Division of Senior and Disabilities Services (SDS) partially denied that application. Although SDS found that Ms. L. qualified for all requested services, it determined that the person centered support plan (PCSP) failed to demonstrate the proposed site of family home habilitation and acuity services was appropriate under 7 AAC 130.265(c)(1). OCS requested a hearing on the denial and asserted that it had satisfied the applicable regulatory requirements and provided all information SDS requested.

Although OCS identified several miscommunications by SDS and certain flaws in the reasoning underlying the denial, it was unable to overcome the most fundamental deficiency barring Ms. L. from receiving services: the failure of her PCSP to address—or even mention—that Ms. L., a child with a history of threatening to kill her foster siblings, had a roommate. SDS can find a home to be a viable service site only if the PCSP examines whether the recipient poses a risk to other residents. The PCSP's complete silence on the existence of a roommate, and its accompanying lack of analysis of whether that individual's safety was threatened by Ms. L.'s presence, is determinative. Accordingly, SDS's partial denial of Ms. L.'s is AFFIRMED.

Even so, SDS conceded that, over the course of this appeal, SDS had received sufficient information to address most of their concerns with Ms. L.'s application, and that the application could be approved with services covered from the date OCS permanently removed Ms. L.'s roommate, which appears to have been January 17, 2026.

## II. Facts

### *A. Factual Background*

N. L. is a thirteen-year-old in OCS foster care. She has been in OCS custody since age six, when OCS assumed custody following substantiated concerns of neglect and domestic violence in the home of her grandmother, with whom she had previously resided. Since entering OCS custody, Ms. L. has moved through multiple placements. Her previous household was significantly overcrowded before she was relocated to Anchorage. Past caregivers have reported difficulty managing her escalating behaviors.[1] Ms. L. currently resides in a family habilitation home operated by All Ways Caring, where her foster mother is C. V. and she receives 1:1 staffing from Agape living.[2] Ms. D., Ms. L.'s guardian with OCS, credibly testified that there are no other placements available that can meet Ms. L.'s current needs.[3]

Ms. L. is suspected of suffering from fetal alcohol spectrum disorder.[4] She has threatened to kill members of her foster family and other children, hidden knives, physically attacked other children, and has been psychiatrically hospitalized multiple times—most recently due to aggression, self-harm, homicidal ideation, and possible psychosis.[5] Ms. L. has a history of elopement and has previously engaged in sexualized solicitations with adult men via social media.[6] According to her care team, "[h]er aggression, self-harming actions, elopement, and homicidal threats pose ongoing safety risks to both herself and others."[7]

On November 2, 2025, OCS submitted an initial PCSP requesting services funded under the IDD Waiver. The PCSP requested respite services, care coordination services, 1:1 staff acuity, and family home habilitation coverage. It highlighted Ms. L.'s aggressive tendencies and noted that her caregivers were required to keep her in sight and earshot 24/7.[8] The PCSP requested that care coordination services and 1:1: staff acuity coverage begin on August 18, 2025, and that respite and family home habilitation services begin on October 1, 2025.[9]

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[1] Ex. F at 16.
[2] *Id.*
[3] M. D. testimony.
[4] Ex. F at 16.
[5] Ex. F at 16, 18
[6] *Id.* at 17, 18.
[7] *Id.* at 18.
[8] *Id.* at 22 – 25.
[9] Ex. D at 1.

Beginning on November 14, 2025, SDS requested additional information from OCS and worked with OCS over the following months to refine the application.

On January 1, 2026, a critical incident occurred between Ms. L. and her roommate.[10] Although the full details of that incident are not in the record, it is significant as reviewing the incident report was the first time SDS learned that Ms. L. had a roommate.[11] SDS then conducted a site visit on January 7, 2026, which confirmed that Ms. L. had a roommate.[12]

The final adjustments to the PCSP were submitted on January 6, 2026, with OCS providing Ms. L.'s treatment plan a few days later.[13] None of these documents disclosed that Ms. L. had a roommate, let alone evaluated the roommate's safety in light of Ms. L.'s documented ongoing behaviors.[14]

*B. Procedural Background*

On January 14, 2026, SDS approved Ms. L.'s application for respite and care coordination services but denied the request for 1:1 staff acuity and family home habilitation. SDS conceded that Ms. L. would otherwise qualify for acuity services; however, acuity is an add-on service that may only be provided to a recipient who is already receiving a qualifying service such as family home habilitation.[15] Because family home habilitation was denied, the acuity request necessarily failed as well.

SDS identified two[16] legal rationales for their denial. First, SDS asserted that the PCSP failed to satisfy the requirement of 7 AAC 130.265(c)(1)(E) to evaluate whether Ms. L. posed a risk to other household members or whether other household members posed a risk to her. Second, and relatedly, although SDS did not cite the provision directly, it appears to have also asserted that the PCSP failed to meet the requirements of 7 AAC 130.265(c)(1)(D) by not demonstrating to SDS's satisfaction that the suitability of the physical site had been evaluated. In

[10] C. Sheagren testimony.
[11] *Id.*
[12] *Id.*
[13] Ex. 5, 6.
[14] Ex. F, Ex. 7.
[15] 7 AAC 130.267 (only authorizing SDS to pay for acuity if recipient is receiving home habilitation or residential supported living services.)
[16] Additionally—though it failed to identify why SDS was attempting to interpret and enforce OCS regulations against OCS—SDS appears to have claimed that denial was appropriate because there were more children in the home than permitted by OCS regulation 7 AAC 67.220(b). However, evidence was provided at hearing that suggested OCS had received a variance for their regulation and SDS witness Ms. Chord testified that SDS would defer to OCS regarding its compliance with its own regulation and variance rules. Accordingly, this decision need not examine the appropriateness of SDS attempting to interpret and apply another division's regulations.

any event, the denial had nothing to do with Ms. L.'s individual qualifications; it was based entirely on the deficiencies in the evaluation of the proposed family home habilitation site.

OCS requested a hearing on the denial. After multiple continuances, the hearing was held over two days during the week of April 27, 2026. M. D. represented OCS and Victoria Cobo-George represented SDS. SDS called three witnesses: Pamela Burton, Chief of the Developmental Health Program; Heather Chord, Health Program Manager III; and Connor Sheagren, Health Program Manager II. OCS called Ms. D. in her capacity as nurse consultant and Ms. L.'s Guardian, as well as Ms. L.'s Care Coordinator, J. P.

At hearing, SDS's representative conceded that, based on information received over the course of the appeal, SDS now believed Ms. L. was eligible for family home habilitation and acuity at her current foster home—but only as of the date she no longer shared a room with a roommate. SDS thus maintains that its initial denial was correct and that Ms. L. did not become eligible for those services until she had her own bedroom,[17] while OCS contends that the original denial was erroneous and that benefits should be awarded beginning October 1, 2025, as requested in the original application.

## III. Discussion

SDS will only pay for family home habilitation services if the recipient's care coordinator demonstrates in the PCSP that specific criteria were evaluated in determining the appropriateness of the proposed family home habilitation site.[18] The relevant criteria underlying the denial here are: whether the physical site is suitable,[19] whether other individuals at the site could pose a risk to Ms. L., and whether Ms. L. could pose a risk to them.[20] Analysis of these criteria can be nuanced, as reasonable parties may disagree about the extent of discussion the PCSP must contain to demonstrate that a given factor was considered. That is not always the case, however, and an obvious failure to evaluate a required factor can unambiguously support denial.

SDS based its denial on the three following issues it found with the PCSP:

First and most significantly, the PCSP failed to disclose that Ms. L. was sharing a room with another child. Given her documented and ongoing homicidal ideation towards foster

[17] SDS's representative identified January 21, 2026, as the date Ms. L. had her own room, but Exhibit 4 shows that the roommate left on January 16, 2026. As SDS's representative was speaking from memory, this decision finds Exhibit 4 more reliable on this point. Accordingly, January 16, 2026, is the last day Ms. L. had a roommate.
[18] 7 AAC 130.265(c)(1).
[19] 7 AAC 130.265(c)(1)(D).
[20] 7 AAC 130.265(c)(1)(E).

siblings and sexualized behaviors, SDS argued this demonstrated a serious failure to consider the risks posed to other household members.

Second, the foster home and acuity staff were not complying with Ms. L.'s PCSP requirements. During a site visit, Ms. L.'s acuity staff were playing a game while she was asleep in another room, and her foster mother was showering—conduct apparently contrary to the PCSP's requirement of constant audiovisual monitoring. SDS contended this was evidence of an inadequate evaluation of the home and demonstrated inadequate supervision and ongoing safety risks.

Third, the PCSP failed to adequately document the home's safety features—such as whether knives were secured or egress alarms were in place—given Ms. L.'s ongoing behaviors. SDS again asserted this was evidence of an inadequate evaluation of the home.

OCS raised several arguments in defense and—without identifying the technical legal argument—asserted that SDS should be estopped from denying Ms. L.'s benefits. OCS made valid points regarding potentially misleading comments by SDS staff, the questionable propriety of SDS attempting to apply OCS regulations, and whether the PCSP must restate information contained in other documents such as the Behavioral Intervention Plan and Treatment Plan. However, these points are not dispositive here. SDS has already conceded Ms. L.'s overall eligibility; the only remaining issue is the effective date of services. OCS was unable to address the core deficiency in Ms. L.'s PCSP—its failure to disclose that she had a roommate and to analyze that roommate's safety. The two remaining grounds identified by SDS—flawed supervision and unsecured knives and egresses—may not independently justify denial, but, as discussed below, they further compound the PCSP's central omission of not evaluating the roommate's safety.

*A. The PCSP's Failure to Disclose and Evaluate the Safety of Ms. L.'s Roommate Justified Denial.*

The PCSP discloses that Ms. L. has threatened to harm members of her foster family, hidden knives, physically attacked other children, threatened to kill other children, and been hospitalized for homicidal ideation, and it characterizes these as ongoing safety risks.[21] To address those risks, the PCSP states that Ms. L. will be kept under 24/7 audio and visual

[21] Ex F at 16, 18.

supervision and that she will not have access to sharp objects.[22] It provides no specifics regarding how Ms. L. is kept away from sharp objects other than round the clock monitoring.

The PCSP also discloses that three other children reside in the home: Z.O.B., a seventeen-year-old girl; K.Q., a twelve-year-old boy; and the foster mother's eleven-year-old son.[23] An exhibit introduced by OCS at hearing demonstrates that a second seventeen-year-old girl, O.C., also resided in the home for various periods in fall 2025.[24] The PCSP does not disclose where the children sleep in the three-bedroom mobile home.[25] Ms. D. testified, however, that both Z.O.B. and O.C. shared Ms. L.'s room for various lengths of time between September 9, 2025, and January 16, 2026.[26]

The PCSP's only discussion of these children is that their age and gender composition has been reviewed and does not present a concern related to Ms. L.'s health, safety or overall well-being.[27] That is an extremely generic statement. While it is not inconceivable that such language could meet the requirements of 7 AAC 130.265(c)(1)(E)(i) in specific circumstances, the PCSP contains no discussion or evaluation whatsoever of whether Ms. L. could pose a risk to those children, as required by 7 AAC 130.265(c)(1)(E)(ii).[28]

The combined effect of these facts is that Ms. L.—described in the PCSP as threatening to kill her foster siblings, expressing homicidal ideation, and engaging in sexualized behaviors[29]—spent significant time sharing a room with another child and the PCSP did not address that situation at all. That omission alone is sufficient to justify denial, as the PCSP failed to meet the requirement of 7 AAC 130.265(c)(1)(E)(ii) to evaluate whether Ms. L. could pose a risk to others in the home. The additional deficiencies identified by SDS, while not necessarily sufficient to justify denial independently, further compound this omission.

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[22] *Id.* at 18, 24.
[23] *See, e.g.,* Ex. F at 25, 34. The support plan inconsistently describes the foster mother's child is biological in some places and adopted in others, *see, e.g.,* Ex. F at 30. Whether the child is biological or adopted is immaterial to this decision, as the only relevant fact is that there is one child and not two. No party suggested the foster mother has two children of her own.
[24] Ex 4.
[25] Ex. C at 5.
[26] M. D. testimony, s*ee also,* Ex. 4 (with roommates listed in red and their time periods in the home).
[27] Ex. F at 25.
[28] At hearing there was some discussion of whether the other residents of the foster home had more complex needs that could pose a risk to Ms. L., based on SDS's belief that those residents were receiving waiver services. There was also a dispute about whether that belief was accurate. Neither question need be resolved here.
[29] *See, e.g.*, Ex. F at 18.

*B. Inadequate Supervision of Ms. L. Compounded the PCSP's Failure to Address the Roommate's Safety.*

Turning to the second flaw of insufficient oversight, the PCSP repeatedly states that staff will keep Ms. L. "within sight and sound at all times . . . 24/7."[30] Yet, during an unannounced site visit, Ms. L. was in her room—supposedly sleeping—without direct supervision.[31] Her foster mother was showering, and her acuity staff were playing a game rather than maintaining the continuous audiovisual monitoring the PCSP requires.[32] The record contains limited detail about this event, but OCS did not dispute that it occurred. OCS argued instead—validly—that acuity services do not always require constant eyes on a client. That may be true as a general matter, but it does not resolve the issue here. The problem is not that acuity recipients universally require constant observation as SDS's denial letter conceded that Ms. L. would qualify for acuity if she had qualified for family home habilitation.[33] The concern is more specific: the PCSP itself stated that Ms. L. absolutely required unbroken sight and sound observation, 24/7, and unbroken monitoring is the primary practical mechanism the PCSP identifies for protecting against her dangerous behaviors.[34] The site visit demonstrated that this monitoring is not actually occurring, which reveals a serious flaw in the PCSP's evaluation of how Ms. L.'s risks would be managed at the home.

This deficiency compounds the omission of Ms. L.'s roommate. If Ms. L. were truly under 24/7 supervision, that could arguably provide some assurance that other children in the home would be protected from harm. But the site visit established that supervision is not continuous—and that gap is particularly problematic given that Ms. L. and her roommate were apparently sleeping in the same room with only intermittent oversight. A situation in which Ms. L. shares a room at night with another child towards whom she has made ongoing homicidal threats, with only intermittent supervision presented precisely the kind of risk that the PCSP was required to address under 7 AAC 130.265(c)(1)(E)(ii).

[30] *See, e.g.,* Ex. F at 23 – 25.
[31] Ex. C at 5.
[32] P. Burton testimony.
[33] Ex. D at 3.
[34] *See, e.g.,* Ex. F at 23 – 25.

*C. The PCSP's Failure to Document Sharp Object and Egress Controls Further Compounded the PCSP's Failure to Address the Roommate's Safety and Ensure 24/7 Monitoring.*

The PCSP's treatment of sharp objects and egress security presents a further compounding deficiency. The PCSP appears to rely on constant supervision as the primary mechanism for ensuring Ms. L. cannot access sharp objects or elope. As discussed above, however, that supervision is not actually continuous. The PCSP contains no information about other techniques used to ensure the control of sharp objects or elopement behavior. It contains nothing about cameras or monitoring equipment, whether other children in the home are also supervised or restricted from accessing sharp objects, whether sharp objects are physically secured, or whether there are any egress alarms. As a result, the PCSP does not account for the possibility that another child could give Ms. L. a sharp object or leave one accessible in her room. Nor does it discuss whether she could elope out her bedroom window when she is unsupervised. These flaws compound the failure to analyze the safety of Ms. L.'s roommate as they undermine the PCSP's stated safety controls. Moreover, this demonstrates that the PCSP failed to adequately evaluate the criteria of 7 AAC 130.265(c)(1)(D), because the stated control mechanism for ensuring the home was appropriate—24/7 supervision—was not actually implemented.

*D. OCS's Defenses Fail to Rebut the Determinative Flaw in Ms. L.'s PCSP.*

OCS raises three arguments in defense of the application.

1. <u>The Roommate Was Not Present on the Requested Start Date</u>

OCS first argues that the omission of any roommate discussion is excusable because, as of October 1, 2025—the requested start date for family home habilitation—Ms. L. did not have a roommate.[35] This argument is unpersuasive for three reasons.

First, Ms. L. had a roommate in September 2025: Z.O.B., the same individual who became her roommate again later.[36] Thus, the possibility of a roommate was known to OCS before it submitted its initial PCSP.

Second, Ms. L. had only eight days without a roommate between November 12, 2025, and January 16, 2026.[37] It strains credulity to suggest that OCS was unaware of at least a strong

[35] M. D. testimony.
[36] Ex. 4.
[37] *Id.*

possibility that Z.O.B. or another child would be sharing Ms. L.'s room when it filed the initial PCSP on November 2, 2025—merely ten days before another child became Ms. L.'s roommate.[38]

Third, the PCSP was updated after the initial submission, as evidenced by, among other things, its discussion of Z.O.B. who did not return to the home until December 11, 2025.[39] Accordingly, OCS had both the knowledge and the opportunity to address the roommate situation in the updated PCSP and did not do so.

It would be unreasonable to require SDS to evaluate applications solely on conditions at the home on the requested start date of coverage—particularly when the PCSP was not submitted more than a month after that date. Such an approach would invite manipulation and prevent SDS from assessing the actual conditions at the home or verifying the accuracy of submissions through site visits.

2. Estoppel Based on SDS Staff Statements

OCS next argues that SDS should be estopped from denying the application because OCS relied on representations by SDS staff. Specifically, OCS contends that Mr. Sheagren told OCS that the additional information it submitted "looks good," and that information about locked knives and egress alarms was not required in the PCSP. Without clearly identifying it was attempting an estoppel argument, OCS argues it relied on those assurances.[40]

Estoppel against a government agency can involve a complex factual inquiry, including whether reliance on a single employee's statement was reasonable prior to formal review, the extent of any resulting prejudice, and the broader implications of applying estoppel in the specific regulatory context.[41] That analysis is unnecessary here however, because the timing of these statements demonstrates they have no bearing on the determinative issue here.

Mr. Sheagren's "looks good" response was sent in reply to OCS's response to a December 30, 2025, information request.[42] Even if that statement could be treated as official confirmation that OCS had satisfied all outstanding requests, it is irrelevant to the roommate issue because the information request had nothing to do with a roommate. SDS did not discover

[38] Ex. D at 1, Ex. 4.
[39] Ex. F at 34.
[40] *See* Ex. 2; *see also* C. Sheagren testimony.
[41] *Crum v. Stalnaker,* 936 P.2d 1154, 1157 (Alaska 1997).
[42] Ex. 2.

that Ms. L. had a roommate until it reviewed a critical incident report describing the January 1, 2026, incident—which occurred after the date of that information request.[43]

Similarly, Mr. Sheagren's statements on recorded calls characterizing knife security and egress alarms as matters of interest rather than requirements—while potentially confusing and misleading—were made before SDS was aware a roommate existed. The absence of knife security documentation and egress alarms may reinforce the significance of the PCSP's failure to evaluate the roommate's safety, but those omissions are not the basis on which the denial is upheld here.

3. Ms. L.'s Interests and OCS's Cooperation

Finally, OCS raises the importance of Ms. L.'s continued access to services and placement stability, and notes that OCS has continually worked to provide all information SDS requested. These are legitimate concerns—particularly as Ms. L. had no control over the omissions that led to the denial. However, SDS has already conceded that Ms. L.'s placement is appropriate now that they have received the necessary information and Ms. L. no longer has a roommate. Thus, there is no risk that Ms. L. will lose her current placement and no ongoing dispute about the sufficiency of the information SDS received.

## IV. Conclusion

The failure of Ms. L.'s PCSP to disclose that she had a roommate—let alone evaluate how that roommate's safety would be ensured given Ms. L.'s documented history of homicidal ideation and threats toward foster siblings—left SDS unable to approve the application for family home habilitation and acuity services under 7 AAC 130.265(c)(1)(E)(ii). Accordingly, SDS's partial denial of Ms. L.'s is AFFIRMED. Nonetheless, OCS has now moved Ms. L.'s roommate, and SDS concedes that OCS has since addressed the deficiencies in Ms. L.'s application. Accordingly, the application can now be approved with services covered from January 17, 2026, the date Ms. L.'s roommate was permanently moved.

Dated: May 18, 2026

By: *Signed*
Signature
Garrison A. Todd
Name
Administrative Law Judge
Title

[43] C. Sheagren testimony.

# 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 3rd day of June, 2026.

*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.]