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

In the Matter of	)	
	)	
K. Q-U.	)	OAH No. 25-1210-MDS
	)	

FINAL DECISION[1]

I. Introduction

K. Q-U. is a disabled adult who receives Medicaid Home and Community Based Waiver (Waiver) benefits in the Intellectual and Developmental Disability (IDD) Waiver category. The Office of Public Advocacy (OPA) serves as Ms. Q-U.'s guardian.

After a series of disputes and mediations, the Division of Senior and Disability Services (Division) and OPA reached a final agreement on September 20, 2024. This agreement established that Ms. Q-U. would receive 11 hours per day of supported living services and 12 hours per week of day habilitation services, with no automatic reduction in hours.

In her 2025-2026 Person Centered Support Plan (PCSP), Ms. Q-U. requested a continuation of this same level of services. The Division approved the full amount of day habilitation services but reduced the supported living services from 11 hours per day to 6 hours per day. OPA requested a hearing to challenge this reduction.

After an extended period of mediation, Ms. Q-U.'s hearing was held August 28, 2025, and September 8, 2025. The evidence establishes that Ms. Q-U. continues to require 11 hours a day of supported living services. Because the Division bore the burden of proving the reduction of services was correct, and failed to meet that burden, the Division's reduction is REVERSED.

II. Facts

[1] A proposed decision was issued in this matter on November 3, 2025, the parties were provided the opportunity to file proposals for action, and this final decision now issues. The final decisionmaker, pursuant to AS 44.64.060(e), modified this decision by adding footnotes 36 and 37.

Ms. Q-U. has a Fetal Alcohol Spectrum Disorder (FASD) diagnosis, which "significantly impacts her communication, ability to support herself, social functioning, and independent decision-making."[2] She experiences cognitive limitations involving comprehension, focus, and problem-solving, and also has several other mental and behavioral health diagnoses.[3]

Ms. Q-U. struggles with debilitating anxiety that makes it difficult for her to be alone, can prevent her from leaving her apartment, and can cause regression in her functioning even with minor changes – such as shifts in the lunar cycle.[4]

Ms. Q-U. was removed from her biological mother's care as a young child due to abuse and neglect.[5] She experienced multiple placements in the foster care system before being adopted at age 10. Her home life remained troubled, leading to runaway attempts, police contacts, and admissions to Institute A[6] and the Alaska Psychiatric Institute (API).[7] Ms. Q-U. became homeless in 2018.[8] In 2019 the OPA became her court-appointed guardian.

In August 2020, Ms. Q-U. moved to Town A, where she lived with her biological mother and others in an abusive and exploitative environment.[9] She experienced food insecurity, financial exploitation, and severe domestic violence, including a strangulation when she was nearly nine months pregnant.[10] Although she briefly entered a domestic violence shelter, she returned to her mother's home after her baby was born where the exploitation and abuse continued.[11]

Ms. Q-U. did not receive services in Town A due to extremely limited options available off the road system. The only provider in Town A operated a group home, which was not a viable option for her as a new mother.[12] Due to the severe violence and exploitation she experienced, Ms. Q-U.'s guardian relocated her to Anchorage to protect her from continued abuse by her family and her child's father.

---

2 2022 Neuropsychological report, p. 8.

3 2022 Neuropsychological report, p. 7. *See also* 2017 Texas NeuroRehab Center Neuropsychological assessment, pp 6-7.

4 Testimony of Ms. L.. *See also* Testimony of Ms. T..

5 Testimony of Ms. Kinder.

6 In addition to other services, Institute A provides residential programs for minors who struggle with psychiatric issues.

7 *See* API records.

8 Testimony of Ms. Kinder.

9 Testimony of Ms. T.. *See also* Testimony of Ms. Kinder.

10 Testimony of Ms. Kinder.

11 Testimony of Ms. Kinder.

12 Testimony of Ms. Kinder.

Safety concerns have continued during Ms. Q-U.'s time in Anchorage. Although OPA obtained a protective order against the child's father, he and other family members have circumvented it by contacting Ms. Q-U. through third parties or appearing at her apartment. As of the date of this decision, the child's father was in supervised custody at an Anchorage halfway house.[13]

Prior to her current placement in Anchorage, Ms. Q-U. had never lived independently. She had previously resided in foster care, homeless shelters, residential facilities, and unstable family settings. As a result, she lacked basic hygiene and safety skills for herself and her child. She requested supported living services to help her transition to independent living, adjust to a new location, and to transition into assuming the responsibilities of motherhood.

Ms. Q-U.'s supported living plan includes goals and objectives to continue to improve her independence with activities of daily living and maintaining safety within her living environment. These objectives include keeping her living environment clean and free of clutter, putting away her meals, groceries, and cleaning supplies in their appropriate places, and utilizing safety skills daily as needed to keep herself and her baby safe in their living environment. Her goals also include becoming independent in her ability to plan and manage her time and money through planning and creating her list for groceries, cleaning supplies, and other needs for the week within her available funds. Goals under this section also focus on self-advocacy, self-expression and positive communication.[14]

Ms. Q-U.'s team provides supported living services to teach a variety of essential skills and to provide protective oversight. These services include safety measures, such as locking her door and not posting her location publicly; financial safety skills to prevent exploitation; coping skills for her extreme anxiety; and basic activities and instrumental activities of daily living (ADLs/IADLs), such as personal hygiene, household chores, cooking, and cleaning. Services are also used to develop her skills for motherhood.[15] When staff must intervene for safety reasons, they explain the basis for the intervention and work with Ms. Q-U. to develop strategies to prevent similar incidents in the future. Although she is eager to learn, Ms. Q-U. continues to require consistent coaching, redirection, and prompting to be able to complete these tasks.[16]

---

13 *Offender Information for C. X.*, VINElink

14 Ex. D, pp 11-12.

15 Testimony of Ms. T.; Testimony of Ms. L.; Testimony of Ms. Kinder. *See also* Ex. E.

16 Testimony of Ms. T..

A. Procedural History

Ms. Q-U. was approved for the Medicaid Waiver effective February 1, 2024. Her team soon filed an amendment to her PCSP requesting 12 hours per week of day habilitation and 112 hours per week (16 hours per day) of supported living services, citing "significant safety concerns" and "urgent relocation" as justification for the level of support. The amendment noted:

> K., who was living independently in Town A, is facing significant safety concerns that have prompted the filing of protective orders. It has been determined that it is no longer safe for her to continue living alone in Town A due to exploitation by her child's father and her family members. As a result, an urgent relocation is necessary to ensure K.'s safety and the well-being of her child. Given the emergent nature of the situation, a high level of Supported Living hours is being requested to provide K. and her child with the necessary support, oversight, and assistance during this transition. It is crucial to prioritize their safety and health during this period of upheaval. K. requires comprehensive supports and oversight to facilitate her transition and enable her to start afresh in a new environment where she can lead a healthy and supported life. This includes access to necessary services and assistance to establish a stable and secure living situation for herself and her child.[17]

On March 26, 2024, the Division approved the day habilitation request but only approved 42 hours per week (6 hours per day) of supported living, denying the remaining requested hours. OPA challenged this partial denial, and the parties entered mediation in OAH case number 24-0222-MDS.[18]

On May 22, 2024, the parties reached an initial agreement for 11 hours per day of supported living for six months, with an automatic reduction to 10 hours per day afterward.[19] For various reasons, this agreement was never implemented, resulting in a fair hearing request and a new mediation.

On September 20, 2024, in case number 24-0484-MDS, the parties reached a new, superseding agreement that was placed on-the-record. This agreement stipulated that Ms. Q-U. would receive 11 hours per day of supported living services, and explicitly stated, "there will not

---

17 Ex. F.
18 Ex. D, p. 9.
19 OAH No. 24-0222-MDS.

be an automatic drop-down in benefits. It'll be at 11 hours unless it gets changed in a subsequent plan of care."[20]

Following the mediation, the Division issued a "Qualified Approval of Support Plan" letter on October 2, 2024. This letter stated the Division's "expectation" that if the same level of service was requested after the "transitional period" the team would provide "thorough justification and documentation for the request."

On January 12, 2025, the Division received Ms. Q-U.'s PCSP renewal for the 2025-2026 plan year, which requested a continuation of the 11 hours per day of supported living services and 12 hours per week of day habilitation. Eventually, the Division approved the full amount of day habilitation but denied 5 hours of supported living, reducing the service to 6 hours per day. The Division's primary reasons for the reduction were (1) Ms. Q-U.'s "transitional period" had ended; (2) the PCSP lacked sufficient evidence of need for this level of services; and (3) supported living was not the appropriate service for her safety and mental health concerns.[21] OPA, on behalf of Ms. Q-U., appealed this reduction.

After an extended period of mediation, Ms. Q-U.'s hearing was held on August 28, 2025, and September 8, 2025. Ms. Q-U. was represented by her court-appointed guardians from the Office of Public Advocacy (OPA), Rebekah Kinder and Valerie White. OPA presented testimony from Ms. Kinder; G. L., the program director for Provider A and a care provider for Ms. Q-U.; and D. T., Ms. Q-U.'s care coordinator. The Division was represented by its fair hearing representative, Victoria Cobo-George, who presented testimony from Zachary Gieszler, a health program manager 2 supervisor. The record was held open so parties could file written closings.

Subsequently, the undersigned ALJ reviewed the audio recordings of the May 2024 and September 2024 mediation agreements. In doing so, it became apparent that the parties may not have had a full opportunity to address the terms from *both* mediations. An order was issued staying the case and inviting additional argument or evidence. That order included rough transcriptions of the relevant portions of the two agreements. The order concluded that:

> Based on these terms, the Division would have the burden to justify a reduction. However, because it does not appear that either party had a full opportunity to

[20] OAH No. 24-0484-MDS.

[21] Ex. D. *See also* Testimony of Mr. Gieszler.

> review the records of both mediations before the hearing, and the multiple adjustments could have confused the parties' recollection of the final agreement, the parties will be given an opportunity to respond to this preliminary finding.

That order gave the Division until October 24, 2025 "to file any argument or supporting evidence that conflicts with this interpretation" and OPA until October 28, 2025, to respond to any filing by the Division. The Division made no additional filings.

III. Discussion

A. Burden of Proof

The central issue in this case is whether the Division's denial of five hours of supported living services was correct. This determination first requires establishing which party bears the burden of proof. The Division argued that part of the mediation agreement required Ms. Q-U.'s team to support any request to maintain these services and, therefore, Ms. Q-U. should have the burden. The Division's argument relies on its October 2, 2024, "Qualified Approval of Support Plan" letter, which stated the Division's "expectation" that the team provide "thorough justification and documentation" for a renewal. However, while this is certainly a reasonable expectation, as OPA correctly notes, this letter was created unilaterally by the Division *after* the mediation; it reflects the Division's expectations, not a binding, mutual term of the agreement placed on-the-record.

The on-the-record agreement from September 20, 2024, in case number 24-0484-MDS, superseded the previous agreement from May 2024. The terms of the September agreement were clear: Ms. Q-U. would receive 11 hours of supported living, and "there will not be an automatic drop-down in benefits. It will be at 11 hours unless it is changed in a subsequent plan of care." Because the September 2024 agreement established a baseline of 11 hours of supported living services with no automatic reduction, the Division's denial of 5 hours is a reduction of existing services. When the Division seeks to reduce services, it holds the burden of proof to support that reduction.[22]

B. Applicable Legal Standard

The Medicaid program includes IDD Waiver, which pays for specified services that are "sufficient to prevent institutionalization and to maintain the recipient in the community."[23] The

[22] 7 AAC 49.135. *See also In re T.G.*, OAH No. 13-0286-MDS (Comm'r of Health & Soc. Servs. 2014) (available at https://aws.state.ak.us/OAH/Decision/Display?rec=2859).

[23] 7 AAC 130.217(b)(1).

Division must approve each individual service as part of the recipient's person-centered support plan (PCSP).[24]

The service at issue, supported living, is a type of habilitative service provided in the recipient's private residence.[25] Habilitative services are defined as "services that … help a recipient to acquire, retain, or improve skills related to activities of daily living … and the self-help, social, and adaptive skills necessary to enable the recipient to reside in a noninstitutional setting."[26] These services must be provided in accordance with the department's *Residential Habilitation Services Conditions of Participation* (Conditions of Participation).[27] Those mandatory conditions state, in pertinent part:

> Residential habilitation services may be 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. …
>
> The activities provided as residential habilitation services must be planned with the objective of maintaining or improving the recipient's physical, mental and social abilities rather than rehabilitating or restoring such abilities. These services must be individually tailored, and **may include personal care and protective oversight and supervision, in addition to skills development**.[28]

C. Analysis

The Division based its denial on three primary arguments: (1) Ms. Q-U.'s "transitional period" had ended; (2) the PCSP lacked sufficient evidence of need for this level of services; and (3) supported living was not the appropriate service for her safety and mental health concerns.

First, the Division argued that the 11 hours of supported living were agreed to only for Ms. Q-U.'s transition from Town A to Anchorage, and that this transition period had ended. This interpretation of transition is too narrow. The record establishes that Ms. Q-U. continues to actively work on developing the skills needed to transition from a life of abuse and exploitation to one of living safely and independently, as well as the skills required to transition into motherhood. Testimony from Ms. T. and Ms. L. established that Ms. Q-U. did not receive

---

[24] 7 AAC 130.217.
[25] 7 AAC 130.265(d).
[26] 7 AAC 130.319(6).
[27] 7 AAC 160.265(a)(2).
[28] Residential Habilitation Services Conditions of Participation, p. 1 (emphasis added) (available at https://health.alaska.gov/media/3pxnuklz/residentialhabilitationservicescop.pdf). *See also In re N.X.,* OAH No. 19-0381-MDS (Comm'r Health & Soc. Servs. 2019) (available at https://aws.state.ak.us/OAH/Decision/Display?rec=6496).

significant habilitative services until 2024. As a result, she had not learned even the most basic requirements for safe and healthy living, such as the importance of locking her door, keeping hazardous household items out of her child's reach, or even maintaining basic hygiene. By the time the current PCSP was submitted, Ms. Q-U. had received approximately four months of services at the requested level.

Second, the Division based its denial on what it viewed as insufficient documentation in the PCSP, or other supporting evidence demonstrating that Ms. Q-U. needed 11 hours of supported living a day. The Division partly relied on the PCSP's statement that Ms. Q-U. had been living "independently" in Town A. As discussed elsewhere, Ms. Q-U. was not living "independently" but was living with family and the father of her child in an environment that was extremely abusive and exploitative. A more accurate description is that she was living in Town A independent of services. While the PCSP should be accurate, and the Division should be able to rely on it in making its determinations, this error was known to the Division during the mediation that initially *established* the 11-hour level of service back in 2024.

Prior to her current placement, Ms. Q-U. had never lived independently; rather, she had lived in exploitative family situations, foster care, residential treatment facilities, and homeless shelters. Rather than showing a lack of need, the fact that Ms. Q-U. had not accessed significant habilitative services prior to 2024 underscores why this transition is significant and why she requires significant services to help her acquire and retain the skills necessary to live more independently.

Ms. Q-U. continues to have an ongoing need for the specific services being provided. Her supported living goals focus on increasing her independence with activities of daily living (ADLs), instrumental ADLS (IADLs), and safety. These goals include keeping her environment clean and free of clutter, properly storing meals and supplies, and utilizing safety skills to protect herself and her child. Additional objectives also target financial independence, such as planning a weekly budget, and skills for self-advocacy and positive communication.[29]

To achieve these goals, Ms. Q-U.'s team provides both skill-building and protective oversight. Services are used to teach a variety of skills, including safety measures (locking her door, not posting her location publicly); financial safety to prevent exploitation; coping skills for her extreme anxiety; and basic ADLs and IADLs like personal hygiene, household chores,

[29] Ex. D, pp. 11-12.

cooking, and cleaning. Services are also used to develop her skills for motherhood. While Ms. Q-U. is eager to learn, testimony established that she still requires consistent coaching, redirection, and prompting to complete these tasks.[30]

Testimony from Ms. L., who not only manages Ms. Q-U.'s team but also provides direct services, established that while she has made progress and can complete some goals 75 percent of the time, she still requires a significant amount of prompting to reach that level. Ms. T. testified that some days Ms. Q-U. is able to "breeze through" a particular task and then, the very next day, staff has to work on that same task "from the moment she opens her eyes till the moment they're going to sleep." Ms. Q-U. has simply not reached a level where she can achieve these goals without significant assistance.

Further, supported living services are not just for initial learning; they are also to help an individual "retain" skills, and "a skill need not be diminishing in order to be retained to prevent diminishment over time."[31] The PCSP highlighted the risk of Ms. Q-U. backsliding if services were reduced, noting that maintaining services at their current level is "essential to preserving the significant progress she has made and ensuring her continued success and safety in the community."[32] The plan explained:

> While K. does not frequently engage in behaviors that are immediately dangerous or aggressive, her care team has observed a clear pattern: when waiver supports are reduced or inconsistently available, K.'s overall well-being noticeably declines. These periods have been marked by heightened anxiety, emotional dysregulation, withdrawal, difficulty following routines, and increased confusion about safety and parenting responsibilities.
>
> K.'s stability is closely tied to the structure, consistency, and predictability provided by her waiver services. When those supports are diminished, her ability to manage daily tasks, make safe decisions, and care for her child deteriorates, placing both her and her daughter at risk. These are not just setbacks in development—they represent a return to patterns of instability and vulnerability that K. experienced prior to entering a supported living environment.[33]

In short, while Ms. Q-U. has made progress, she still requires significant services to acquire new skills, maintain any progress, and prevent regression.

---

[30] Testimony of Ms. L..

[31] *In re N.X.,* OAH No. 19-0381-MDS (Comm'r Health & Soc. Servs. 2019) (available at https://aws.state.ak.us/OAH/Decision/Display?rec=6496): "retaining skills is explicitly listed as a goal of supported living services; a skill need not be diminishing in order to be retained to prevent diminishment over time."

[32] Ex. E, p. 13.

[33] Ex. E, p. 13.

Finally, the Division contends that supported living services are not the appropriate service for addressing safety concerns or underlying mental health issues like anxiety. The Division argued that "Medicaid rules prevent habilitation from primarily providing protection, oversight and standby support."[34] This reflects an unduly narrow reading of the Conditions of Participation, which explicitly state that services "may include personal care and **protective oversight and supervision**" *in addition* to skill development.

Testimony from Ms. T. established that the team uses a "teachable moment" approach. Her services are not utilized solely as "standby support" rather, when staff intervene for a safety issue, they explain *why* they are intervening and work with Ms. Q-U. on strategies to avoid future incidents.[35] This combination of oversight, active intervention, and teaching is precisely the combination of skill development and "protective oversight" envisioned by the regulations. While supported living services must have the objective of maintaining or improving the recipient's physical, mental and social abilities, and cannot be a direct substitute for personal care services, the way Ms. Q-U.'s services are being utilized is within the requirements of the Conditions of Participation and all applicable regulations.

The Division argued that, at her requested level of services, Ms. Q-U. would need to be engaged in active teaching and training 13 hours a day. In addition to relying on a narrow definition of supported living services, the Division's position overlooks that Ms. Q-U. is unable to fully utilize her day habilitation services. Testimony from Ms. T. established that Ms. Q-U.'s anxiety is often severe enough to prevent her from leaving her apartment, which limits her ability to utilize her 12 hours a week of day habilitation services.[36] In addition, Ms. Q-U.'s daughter is approximately two years old and continues to breastfeed. The combination of Ms. Q-U.'s anxiety and the demands of caring for a young child makes utilizing her day habilitation hours very difficult. This makes her supported living services all the more critical, as they provide the stability and coping-skill development necessary for her to maintain her non-institutional placement and eventually engage more fully in her community.

---

[34] Division's closing statement.

[35] Testimony of Ms. T.. *See also* Testimony of Ms. L..

[36] *See also* 2022 Neuropsychological report, p. 7 ("she continues to struggle with mood and anxiety symptoms that impact her life, especially in the sense that she appears fearful about independently navigating her community.")

The Division did not establish that Ms. Q-U.'s care needs had decreased since the September 2024 agreement.[37] Nor did it demonstrate that her previous level of services was unnecessary, or that she otherwise no longer qualified for this level of service. Accordingly, the Division failed to meet its burden to prove its reduction of services was correct.

That said, Ms. Q-U.'s team should recognize that this level of support may not be warranted in future plan years. The primary justification for this level of support was to ensure the safety of Ms. Q-U. and her child while equipping her with the skills to navigate three significant transitions: adjusting to a new community, living more independently, and managing the responsibilities of motherhood. While the evidence reflects that Ms. Q-U. remains in that transitional period, it also shows that she is improving. Additionally, as her daughter grows older and becomes eligible for preschool, Ms. Q-U. may be able to engage in more types of services, or need less support overall.

IV. Conclusion

The Division had the burden of proof to show, by a preponderance of the evidence, that its reduction of Ms. Q-U.'s supported living services was correct. The Division failed to meet this burden. The evidence shows that Ms. Q-U. continues to require 11 hours per day of supported living services to acquire, improve, and retain the skills necessary to live safely and as independently as possible within the community. Therefore, the Division's reduction of Ms. Q-U.'s supported living services from 11 hours per day to 6 hours per day is REVERSED.

Dated: December 15, 2025

SIGNED
Eric M. Salinger
Administrative Law Judge

[37] To the extent the Division's argument was that Ms. Q-U. had a material change in her condition that warranted a reduction of services, it does not appear that the Division conducted the assessment required by 7 AAC 130.213(e). In the future, the Division should carefully review and apply the requirements of this provision.

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 December, 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 of publication. Names may have been changed to protect privacy.]