

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

In the Matter of	)	
	)	
Q.T	)	OAH No. 25-2433-MDS
_____	)	

DECISION

I. Introduction

Q.T is an elder suffering from dementia and various physical ailments who applied for the Alaska Medicaid Alaskans Living Independently Waiver (“Waiver”). The Division of Senior and Disabilities Services (“Division”) assessed her eligibility on June 23, 2025. On July 14, 2025, the Division notified Ms. T that she did not qualify for Waiver because she did not need a nursing facility level of care. Ms. T requested a fair hearing to challenge that determination.

Ms. T experiences a number of physical impairments and some cognitive deficits. While Ms. T’s care team presented some evidence that her condition is deteriorating, at the time of the Division’s decision her health care needs did not require the nursing facility level of care that is necessary to qualify for Waiver. Accordingly, the Division’s decision is AFFIRMED.

II. Background

A. Procedural History

On June 23, 2025, Ms. T was assessed over video by David Chadwick, a Health Program Manager 2 and assessment supervisor for the Division, to determine her eligibility for Waiver. Based on that assessment and a review of various medical records, the Division determined that Ms. T did not have functional limitations or cognitive impairments that rose to the level of needing a nursing home level of care. Accordingly, it determined she was not eligible for Waiver. Ms. T requested a hearing on this determination.

After mediation efforts ultimately proved unsuccessful, a hearing was held on October 14, 2025. Ms. T appeared at the hearing and was assisted by K.U—one of her care workers. Also appearing to assist Ms. T were L.N, Ms. T’s co-guardian and nephew; D.B, co-guardian and daughter of Ms. T; and O.N, sister of Ms. T. M.P, Ms. T’s care coordinator, also appeared and took the lead for Ms. T in the hearing. The Division was represented by Victoria Cobo-George and David Chadwick, the assessor in this case.

At hearing, the parties consented to an extension of the applicable deadlines in this matter by 30 days.¹

B. Relevant Facts

Ms. T is a 68-year-old woman² diagnosed with dementia, kidney disease, and various other issues with symptoms including leg pain.³ She currently resides in an assisted living facility in Anchorage.

Ms. T can be verbally abusive to her caregivers but exhibits no other significant behavioral issues and did not present any behavioral issues at all at the time of the denial.⁴ Similarly, she has short-term memory issues and is diagnosed with dementia, but is appropriately responsive to her environment, still able to remember events and communicate, and make some independent decisions about her daily life.⁵ Ms. T was also not undergoing any qualifying therapies at the time of the evaluation or decision.⁶

At the time of the denial Ms. T did not need extensive assistance with any “shaded” activities of daily living (ADLs). Ms. T could lay down and roll side to side in bed without assistance and use the side railing to sit up in bed.⁷ To get around her home, Ms. T uses a walker and a carer will place a hand on her body to provide reassurance and balance support.⁸ This support is not weight-bearing. Ms. T demonstrated the ability to transfer between surfaces with the assistance of her walker or an armrest during the evaluation. During transfers staff provided supervision and ensured she has access to her walker but provide no weight bearing support.⁹

During her assessment, Ms. T was able to walk to the bathroom with limited assistance. Once in the bathroom she could stand up and sit down with staff supervision and her walker.¹⁰ However, Ms. T cannot fully bend over and needed assistance from staff to clean herself.¹¹ Finally, Ms. T can feed herself and drink from a glass of water without difficulty.¹²

IV. Discussion

¹ 7 AAC 49.180.

² Ex. E at 2.

³ *Id.* at 4.

⁴ *Id.* at 16 – 17. U Testimony.

⁵ *Id.* at 15 – 16.

⁶ Ex. E at 13 – 14.

⁷ *Id.* at 7.

⁸ *Id.* at 8.

⁹ *Id.*

¹⁰ *Id.* at 7 – 8.

¹¹ *Id.* at 9.

¹² *Id.* at 9.

A. *Method for Assessing Eligibility*

The Alaska Medicaid program provides Waiver services to adults with physical disabilities who require “a level of care provided in a nursing facility.”¹³ The nursing facility level of care¹⁴ requirement is determined by conducting an assessment using the Consumer Assessment Tool (CAT).¹⁵ Because the CAT is adopted by reference at 7 AAC 160.900(d)(6), it is itself a regulation.¹⁶ The CAT records an applicant’s needs for professional nursing services, therapies, and special treatments,¹⁷ and whether an applicant has impaired cognition or displays problem behaviors.¹⁸ Each of the assessed items is coded and contributes to a final numerical score. For instance, if an individual required five days or more of therapies (physical, speech/language, occupation, or respiratory therapy) per week, he or she would receive a score of 3.¹⁹

The CAT also records the degree of assistance an applicant requires for ADLs, which include five specific “shaded” ADL categories: bed mobility (moving within a bed), transfers (i.e., moving from the bed to a chair or a couch, etc.), locomotion within the home (walking or movement when using a device such as a cane, walker, or wheelchair), eating, and toilet use (including transferring on and off the toilet, clothing management, and cleansing).²⁰

For a person who only has physical assistance needs to score as eligible for Waiver services on the CAT, they would need a self-performance code of 3 (extensive assistance) or 4 (total dependence) for three or more of the five shaded ADLs (bed mobility, transfers, locomotion within the home, eating, and toileting).²¹

A person can also receive points for combinations of required professional nursing services, therapies, severely impaired cognition (memory/reasoning difficulties), or extensive difficult behaviors (wandering, abusive behaviors, etc.), and if they require either limited or extensive assistance with the five “shaded” activities of daily living.²²

¹³ 7 AAC 130.205(d)(4).

¹⁴ See 7 AAC 130.205(d)(4); 7 AAC 130.215.

¹⁵ 7 AAC 130.213.

¹⁶ Adopting January 29, 2009, version of the CAT.

¹⁷ Ex. E.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

Once these criteria are analyzed by the assessor the results of the assessment portion of the CAT are then scored. If an applicant's score is a 3 or higher, the applicant is medically eligible for Waiver services.

B. Burden of Proof

As an initial applicant, Ms. T had the burden to show that she qualified for Waiver.²³ The relevant date for purposes of assessing the state of the facts is, in general, the date of the agency's decision under review.²⁴ For this case that date is July 14, 2025, which is when the Division issued the notice informing Ms. T that her Waiver application was denied.²⁵

C. Ms. T's Eligibility

When the CAT is being used to determine Waiver eligibility, the results from each of the relevant areas are entered into an algorithm that determines whether the applicant needs a nursing facility level of care. Waiver eligibility requires that an applicant have a total score of three or more in that algorithm. That score can be reached through various scenarios, all of which are set out in the CAT itself.²⁶ Relevant to this matter, an applicant can earn points by demonstrating severe cognitive issues, severe behavioral issues, a need for therapeutic treatments, or a need for extensive assistance with the shaded ADLs.²⁷

While it is undisputed that Ms. T faces challenges, qualification for Waiver requires an applicant to show that they require a level of care that is normally provided in a skilled or intermediate nursing facility. At hearing, Ms. P identified various medical records suggesting doctors had previously found Ms. T in need of an assisted living facility level of care, but failed to demonstrate that the nursing facility standards of the CAT were met.²⁸ Similarly, while Ms. B argued that Ms. T should qualify for the waiver program based on her history of falling, dementia, and the negative repercussions of living in an assisted living facility, she did not provide evidence that the CAT criteria were met. Finally, and most crucially, while Ms. U testified Ms. T has been deteriorating, the standard at hearing is whether the requester qualified at the time the Division made its decision. Moreover, even if the Division did account for those

²³ 7 AAC 49.135.

²⁴ See 7 AAC 49.170; *In re T.C.*, OAH No. 13-0204-MDS (Commissioner of Health & Soc. Serv. 2013) (available at <https://aws.state.ak.us/OAH/Decision/Display?rec=2856>).

²⁵ Ex. E at 1.

²⁶ *Id.* at 32 – 33.

²⁷ *Id.*

²⁸ See, e.g., Ex. G at 435.

changes there is no evidence in the record that her deterioration is severe enough to meet the requirements of Waiver eligibility.²⁹ Accordingly, and as broken down by issue below, the Division correctly denied Ms. T's Waiver application since she failed to demonstrate her condition required a nursing facility level of care.

D. Cognitive Issues

Significant cognitive issues can be combined with other factors to meet Waiver eligibility requirements.³⁰ In order to receive a point towards waiver eligibility, among other factors, a CAT section C4B must be scored at a 13 out of 16 or higher.³¹ During his assessment, Mr. Chadwick determined that Ms. T had short-term memory issues but was generally able to make decisions regarding daily tasks outside of new situations.³² He scored her cognition section as a 3.³³

At hearing, Ms. T's care team argued that what Mr. Chadwick perceived as an inability to hear was actually a cognitive issue, and that Ms. T should have been scored higher as she was having a "good day" on the day of the assessment and had been diagnosed with dementia. They also argued that a low SLUMS score indicated that Ms. T had serious cognitive issues.³⁴

However, even if all of the issues caused by perceived hearing difficulties were actually caused by cognitive deficits, Ms. T still did not rise to the level of scoring the necessary 13.³⁵ That finding is supported by the CAT itself, which shows that such a score would require symptoms such as constant confusion, getting lost at home, inability to speak, and failure to remember a spouse. There is no evidence in the record that Ms. T is suffering from such severe cognitive issues. Accordingly, the Division correctly determined that Ms. T could not receive any points towards qualifying for waiver due to cognitive issues.

E. Behavioral Issues

Similar to cognitive issues, patterns of wandering, verbal, or physical abuse can be combined with other issues to meet eligibility requirements.³⁶ In order to receive a point in the nursing facility algorithm, among other factors, CAT section D2B must be scored at a 14 out of

²⁹ U Testimony.

³⁰ Ex. E at 32.

³¹ *Id.* at 15, 32.

³² *Id.* at 15.

³³ *Id.* at 16.

³⁴ The Saint Louis University Mental Status (SLUMS) is a screening test for cognitive disfunction.

³⁵ Chadwick Testimony.

³⁶ *Id.* at 32.

20 or higher.³⁷ Mr. Chadwick did not receive reports of Ms. T exhibiting any behavioral issues during his assessment and scored Ms. T as a 0.³⁸

At hearing, Ms. U testified there had recently been an increase in verbal abuse from Ms. T. However, like cognitive issues, the standard for behavioral issues contributing to Waiver eligibility is high. Even if the standard at hearing allowed for reviewing behavioral changes since the decision, physically abusive patients that create constant unmodifiable difficulties in their living situation only score a 9.³⁹ As a result, an increase in verbal abuse, standing alone, would not be severe enough to score a 14 and no other information in the record suggests Ms. T is developing other severe behavioral issues. Thus, Ms. T cannot receive any points towards qualifying for waiver due to behavioral issues.

F. Special Therapies

An individual can also receive points towards qualifying for Waiver if they are completing certain types of therapy three or more times per week.⁴⁰ Ms. T was not undergoing any therapies at the time of the evaluation.⁴¹ At hearing, Ms. T's care team stated that she was completing wound care therapy twice a week. While Ms. T had also been completing physical therapy at one time, her care team conceded that Ms. T is no longer in physical therapy. To earn a point towards eligibility Ms. T would have needed to be engaged in therapy three or more times a week. As no evidence in the record supports such a claim, she cannot receive points at this time towards waiver qualification for therapies.

G. Shaded ADLs

Finally, an individual can qualify for waiver if they can demonstrate a need for extensive assistance with certain ADLs. The "shaded" ADLs considered to determine eligibility are: (1) bed mobility; (2) transfers; (3) locomotion within the home; (4) eating; and (5) toileting.

The applicant's ability to perform these ADLs over the seven days prior to the evaluation is scored as follows:

0. INDEPENDENT - No help or oversight - or - Help/oversight provided only 1-2 times during last 7 days.

³⁷ *Id.* at 16 – 18, 32.

³⁸ *Id.* at 16 – 18.

³⁹ *Id.* at 17.

⁴⁰ Ex. E at 32.

⁴¹ Ex. E at 13 – 14.

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.
5. CUEING - Spoken instruction or physical guidance which serves as a signal to do an activity are required 7 days a week. Cueing is typically used when caring for individuals who are cognitively impaired.
8. Activity did not occur during entire 7 days.⁴²

To qualify for Waiver based on shaded ADL scores alone, an applicant must have a score of 3, extensive assistance, or 4, total dependence, in three shaded ADLs.

During his assessment, Mr. Chadwick determined Ms. T was capable of independently performing the ADLs of bed mobility and eating. He assigned her a score of 1, needing supervision, for transfers; and scores of 2, needing limited assistance, for locomotion and toileting.⁴³ Accordingly, to meet her burden and demonstrate she qualifies for Waiver, Ms. T needed to demonstrate here that she was scored incorrectly in at least three ADLs.

In support of the argument that Ms. T should qualify, Ms. U testified that Ms. T's condition has degraded since her evaluation and that she now requires increased assistance for bed mobility, toileting, and bathing. Unfortunately, bathing is not a shaded ADL considered as part of this analysis. Moreover, while the Division appeared willing to consider Ms. T's current condition in its analysis, the standard at hearing is Ms. T's condition at the time the Division denied her application.

Since Ms. T did not successfully demonstrate that she qualified for a point due to therapies or cognitive or behavioral issues, she needed to demonstrate that the Division scored her incorrectly on at least three shaded ADLs to qualify for Waiver. No evidence demonstrates that Mr. Chadwick's initial evaluation of at least three ADLs was incorrect. Moreover, even if

⁴² *Id.*

⁴³ *Id.* at 11.

Ms. T could successfully demonstrate she now requires extensive assistance in the ADLs of bed mobility and toileting, she would still not qualify for Waiver, because that is only two of the required three shaded ADLs. Each of the shaded ADLs is addressed in detail below.

1. Bed Mobility

Bed mobility is defined as how a “person moves to and from lying position, turns side to side, and positions body while in bed.”⁴⁴ Mr. Chadwick observed that Ms. T could lay down and roll side to side without assistance and that she could get up by using the side railing on her bed.⁴⁵ Accordingly, Mr. Chadwick determined she could independently complete this ADL. Ms. T and her care team both agreed during the assessment that she was independently capable of bed mobility.⁴⁶

Ms. U testified that she now helps Ms. T put her legs on the bed when she lies down. However, even if Ms. T now needs such assistance and if changes in need could be accounted for, it appears to be assistance directly described under category 2, limited assistance, as “guided maneuvering of limbs.” That is still insufficient to meet the standard to qualify for Waiver by being scored a 3 on three shaded ADLs.

2. Transfers

Transfers are defined as how a “person moves between surfaces,” such as from a sitting to a standing position.⁴⁷ During the assessment Ms. T and her care team reported that she can get up with the assistance of her walker or an armrest, but that a carer needs to be with her to ensure she has her walker.⁴⁸ Mr. Chadwick observed Ms. T transferring using her walker with supervision.⁴⁹ No testimony was provided that Ms. T’s performance at transferring was incorrectly determined during the assessment. Therefore, the Division assessment that Ms. T only requires supervision to complete the ADL of Transfers was correct.

3. Locomotion

The shaded ADL of locomotion is defined as how a person “moves between locations in their room and other areas on the same floor.”⁵⁰ If a person uses an assistive device such as a

⁴⁴ Ex. E at 7.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

cane, walker or wheelchair, self-sufficiency in using these devices can establish self-performance for this ADL.⁵¹ At the evaluation, Mr. Chadwick observed Ms. T using a walker to get around her home. A caregiver had a hand on her body to provide reassurance and balance support the entire time.⁵² No evidence in the record suggests Ms. T's performance at locomotion was incorrectly determined during the assessment. As a result, the Division was correct in scoring Ms. T as requiring limited assistance for the ADL of locomotion.

4. Eating

Eating is defined as “how a person eats and drinks regardless of skill.”⁵³ Notably, it is not the same as meal preparation, which is separately scored and is not relevant to this decision.⁵⁴ Ms. T reported during the assessment that she could feed herself and demonstrated that she can drink without difficulty.⁵⁵ Mr. Chadwick therefore found she could complete this ADL independently.⁵⁶ No evidence in the record suggests Ms. T's performance at eating has declined or was incorrectly determined during the assessment. As a result, the Division was correct in scoring Ms. T as independent for the ADL of Eating.

5. Toileting

Toileting is a complex process that combines transfers, dressing, and cleansing.⁵⁷ During her assessment, Ms. T demonstrated that she could walk to the bathroom with limited assistance and stand up and sit down with supervision and her assistive device.⁵⁸ Ms. T reported she needs assistance to clean herself, and this was supported by Mr. Chadwick's observation that she was unable to fully bend over.⁵⁹ Mr. Chadwick determined that the assistance in locomotion and cleansing while toileting was sufficient to meet the standard for needing limited assistance, but not extensive assistance, and was thus insufficient to demonstrate a need for Waiver.⁶⁰

At hearing, Ms. U testified that due to the deterioration of Ms. T's condition her care team does have to bear her weight to assist her onto the toilet. While it is possible that Ms. T may have deteriorated to the point where sufficient weight-bearing assistance is necessary to find she

⁵¹ *Id.*

⁵² *Id.* at 8.

⁵³ *Id.* at 9.

⁵⁴ *Id.* at 28.

⁵⁵ *Id.* at 9.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.* at 7 – 8.

⁵⁹ *Id.* at 9.

⁶⁰ *Id.*

needs extensive assistance with toileting, this would not be sufficient to qualify for Waiver here. First, Ms. T's eligibility is determined based on her condition on the date of the denial. Second, even if Ms. T was found to need extensive assistance in toileting, that is only one ADL and Ms. T needed to demonstrate that she needs that level of assistance in three of the shaded ADLs.

H. Overall ADL Eligibility Picture

Ms. T needed to demonstrate it was more likely than not that the Division was incorrect in finding she did not need extensive assistance or more in three shaded ADLs at the time of their decision. However, she only provided testimony challenging the Division's findings for two shaded ADLs, and that testimony focused on changes since the evaluation. Accordingly, even evaluating her witnesses' claims in the most positive possible light she fails to meet her burden, and Ms. T cannot qualify for the Waiver program on the basis of ADL limitations alone.

V. Conclusion

Ms. T has significant physical limitations and cognitive deficits, and Ms. T's care team has reasonable and sincere concerns for her well-being. As the Division discussed at hearing, there may be other kinds of assistance Ms. T qualifies for, and she is encouraged to apply for those.

However, the standards to qualify for Waiver are high. While Ms. T may be deteriorating, and she may qualify in the future, she failed to meet her burden to show she met the qualifications for Waiver on the date of the Division's denial. As a result, the Division's decision to deny her application for Waiver is AFFIRMED.

Dated: November 13, 2025

Signed

Garrison A. Todd
Administrative Law Judge

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.

By: Signed

Name: Amanda Woody

Title: Policy advisory to the Chief Medical Officer

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