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

In the Matter of	)	
	)	
C. C.	)	OAH No. 23-0356-MDS
	)	

FINAL DECISION[1]

I. Introduction

This case concerns whether C. C., a disabled 16-year-old, is eligible for group home habilitation services and an acuity rate under the Medicaid Home and Community Based Waiver program. After C. had moved into a group home, a plan of care amendment was submitted seeking group home habilitation and an acuity rate for him. The Division of Senior and Disabilities Services (Division) denied the amendment, and C.'s parents appealed. Because Waiver applicants must be at least 18 years old to be eligible for group home habilitation services, and there is no legal basis for an exception to this requirement, C. is not eligible for group home habilitation services. Nor is he eligible for an acuity rate, because acuity is only available to individuals qualified for group home services. The Division's denial of the application for group home habilitation and acuity services is affirmed.

II. Background

The Medicaid program has a number of coverage categories, one of which is the Waiver program.[2] The Waiver program provides supports to individuals who would otherwise be institutionalized due to physical or intellectual disabilities.[3]

The Medicaid program pays for specified individual services to Waiver recipients.[4] The Division must approve each individual service as part of the Waiver recipient's support plan,

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1 The final decision, issued under the authority of AS 44.64.060(e)(1), incorporates minor editorial changes made to the September 25, 2023 proposed decision, in consultation with the administrative law judge.

2 7 AAC 100.002(d)(8); 7 AAC 100.502(d).

3 7 AAC 130.205.

4 7 AAC 130.205(a).

also referred to as a plan of care.[5] The approved service must be sufficient in amount, duration, and scope to meet the needs of the recipient and prevent institutionalization.[6]

Waiver recipients may be eligible for residential habilitation services to assist them in "acquir[ing], retain[ing], and improv[ing] the self-help skills necessary to maximize their independence and to live in the most integrated setting appropriate to the recipient's wishes and needs."[7] Residential habilitation services are rendered as either in-home, supported-living, family home, or group home habilitation services, depending on the age and residence of the recipient.[8]

Particularly high-needs waiver recipients approved to receive group home habilitation services may also qualify to receive an additional "acuity rate," which is paid to the provider.[9] Acuity is the highest level of care available in Alaska.[10] To qualify for an acuity rate, a recipient of group home habilitation services must, "because of the recipient's physical condition or behavior," need "direct one-to-one support from direct care workers whose time is dedicated solely to providing [those] services. . . to that one recipient 24 hours per day, seven days per week."[11] The request for an acuity rate add-on must be supported by documentation establishing the need for this extra level of support.[12]

In sum, an applicant may be eligible for services in a residential setting, *i.e.*, "residential habilitation services." That residential setting may be in a group home in specific circumstances, in which case the residential habilitation services would be "group home habilitation services." And around-the-clock, one-on-one services are an additional "acuity rate."

III. Facts

A. C.'s background and medical conditions

C.C. C. is a 16-year-old with multiple diagnoses, including autism spectrum disorder, attention deficit/hyperactivity disorder, oppositional defiant disorder, persistent depressive

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5 7 AAC 130.217.
6 7 AAC 130.217(b)(1) and (2).
7 Ex. B, p. 96.
8 7 AAC 130.265; Ex. B, p. 96.
9 7 AAC 130.267(a). An acuity rate is also available for recipients who receive residential supportive living services under 7 AAC 130.255. For simplicity in light of C.'s particular situation, this summary is limited to recipients of group-home habilitation services.
10 Testimony of P. Meadows.
11 7 AAC 130.267(b)(2).
12 7 AAC 130.267.

disorder, and intellectual developmental disorder.[13] He has a composite IQ of 44, with his intellectual ability below the 1st percentile.[14]

Due to his intellectual and developmental deficits, C. struggles behaviorally and socially. He displays significant behavioral problems, including aggression, irritability, and defiance, particularly when he does not get his way, his expectations are not met, or his routine has been disrupted. When he becomes agitated, he kicks, screams, hits, throws things, insults others, makes rude or lewd comments, or scratches or picks at himself until he bleeds, making it difficult to reason with him until he is deescalated.[15]

C. lived at home with his parents, K. B. C., and his four younger siblings until he was 12 or 13 years old. At that time, he was moved from the family home, which was then in Washington[16], and placed at Treatment Facility A.a residential treatment facility in Utah, due to an increased need for psychiatric treatment and intervention. He resided at Treatment Facility A.until August 2021, when he was transferred to Treatment Facility B.an autism residential treatment facility in South Carolina. He received a variety of therapies at Treatment Facility B.including occupational, speech, recreational, group, and individual therapy.[17]

The clinical staff at Treatment Facility B.eventually determined that C.'s situation had improved to the point that he no longer met the "medical necessity" threshold to remain at the facility.[18] Thus, the C.s were asked to apply for Waiver benefits well in advance of C. being discharged. In June 2022, Treatment Facility B. advised the C.s to begin planning for C.'s discharge.[19] The Division then mailed a notice to the C.s in October 2022 to choose a care coordinator and apply for Waiver benefits, but agency records show the notice was not received.[20] The Division mailed another notice in December 2022, which the C.s received. The December notice advised the C.s to submit a Waiver application within the next 30 days. Eventually, on February 7, 2023, the C.s were given a 30-day notice of discharge, advising that C. would be discharged on March 9, 2023. The notice explained that C. had

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13 Exs. S and X.
14 Ex. S.
15 Ex. 4, 7-8, 10, 14-15, 19, 21-39.
16 The C.s now live in City A., Alaska.
17 Ex. 41, p.6.
18 Ex. I, p. 8.
19 Ex. R, p. 5.
20 Ex. O; testimony of P. Meadows.

been at Treatment Facility B. for 544 days - longer than the typical 6- to 8-month duration for most residents – and his care team believed he had "maximized the therapeutic benefit of the program. . . and is ready to step down to a lower level of care."[21]

B. Application for assisted living home waiver under 7 AAC 75.415

The B.s then engaged K.Q. and S. T. of Anchorage Care Coordination as C.'s care coordinators, to assist them in applying for Waiver services and finding a suitable placement for C. Mr. T. identified Treatment Facility C.a assisted living home in City B., Alaska, as a potential placement option. Treatment Facility C. is licensed to serve residents 18 years of age and older with development or intellectual disabilities. Meanwhile, the discharge date from Treatment Facility B. was extended.

In Alaska, assisted living homes, by definition, provide housing and other services to assist adult residents with the activities of daily living.[22] To admit a minor into a home, a temporary variance is required under 7 AAC 75.415. Variances are approved by the Residential Licensing Section of the Division of Health Care Services – a separate division within the Department of Health from the Division of Senior and Disabilities Services. [23] To obtain a variance, safety plans must be developed to ensure the health and safety of the

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[21] Ex. U. This conclusion is corroborated by Treatment Facility B.'s Clinical Director C. D., who stated in a March 28, 2023 letter:

> C. "struggled with maintaining safe hands, profanity, and personal space" early in his hospitalization. Throughout his treatment he has shown signs of maturation exhibited by an increase in safe behaviors, appropriate words, and improved appropriate boundaries with both peers and staff. C. has made tremendous progress at Treatment Facility B. It is the clinical opinion of his current providers that the supervision level offered in a group home would be the least restrictive environment for C. While C. has met his treatment goals at Treatment Facility B., he would benefit from ongoing life skills that will carry him into adulthood."

Ex. J, p.6. Similarly, Medical Director and treating psychiatrist X. N. G., MD wrote:

> It is my medical opinion that c. C. is clinically appropriate for discharge from the PRTF level of care. C. was admitted to Treatment Facility B. on 08/13/2021 and has made progress in the program at Treatment Facility B. Myself and the team at Treatment Facility B. are in agreeance that the clinical recommendations is a step down level of care which could include a group home, if available, or home with services (medication management, school services, etc.)

Ex. J, p. 5.

[22] AS § 47.32.900(2)(A).

[23] Testimony of A. Newman; testimony of P. Meadows.

child and the adult residents, and the approval of each adult resident or their representative must be obtained.[24]

Here, Treatment Facility C. applied for a variance on April 6, 2023.[25] This variance was to authorize Treatment Facility C. to house and provide services to C., but it would not address whether the government would fund any of those services. The variance was approved, C. was discharged from Treatment Facility B., and he moved into Treatment Facility C. on April 17, 2023, where there were already three male clients in their twenties receiving group home services and acuity.[26] At Treatment Facility C., C. has been receiving one to one, around-the-clock care from staff dedicated for that purpose.[27]

C. Plan of care amendment

On April 23, 2023, after C. had already moved into Treatment Facility C., Mr. Q. submitted a support plan amendment seeking 324 daily units each of group home and acuity services for C. under the IDD Waiver program for the period of April 17, 2023 through March 5, 2024.[28] The support plan included a statement from Ms. C., which asserted in part:

> C. (C.) C. is a danger to himself and others. He has a fascination with violence and a pattern of homicidal ideations. When C. doesn't get his way from a request he's made, or an expectation he's set for himself, he engages in extremely violent and dangerous behavior. At home, C. strangled his dad and me, threw large objects at us, peed on us, tore apart drywall and threw those at use, too – and would even try to stuff it in our mouths. He has four young siblings at home (ages 6, 8, and 11) – they have always been aware of his behavior and have spent most of their time in a "safe room" where C. cannot hurt them. . .
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> The violence trend continued outside of the home environment, too – in a residential treatment facility, just a few months ago, C. was caught suffocating his roommate.
>
> Yes, you read that correctly. During the time when C. and his roommate were supposed to be sleeping, C. waited until his roommate was asleep, he then took his pillow, placed it over his roommate's mouth, and proceeded to lay on top of the pillow. As Treatment Facility B. (C.'s former institution) tells it: a

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24 7 AAC 75.415.
25 Ex. J.
26 Testimony of S. T.
27 Testimony of M. X.; testimony of D. N.
28 Ex. F.

> staff member walked by and saw what was happening, then proceeded to stop it. When asked "why" he did this, C. stated he was trying to help him sleep.
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> It's not clear when the 1:1 supervision was enacted at Treatment Facility B. – but I do know that it occurred after this incident and continued through his flight home.
>
> If C. lived at home, he would surely kill myself, K., or one of his three young siblings. My fight to get C. the treatment he needs has been one of a proactive nature to protect the lives of my family at home – and the life of C.. . .
>
> Please allow C. to grow and live his best life – he needs the supportive environmental of a group home with constant supervision. Please allow our children at home to experience their childhood through wondering, unharmed eyes – alongside their parents.
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> C. is Homicidal. He has threatened to kill staff at his Group Home, he has threatened to slit their throats.[29]

Records from Treatment Facility B.confirm the event with a sleeping roommate, but do not support the suggestion that C. clearly intended to kill the roommate.[30] Nor do the records from Treatment Facility B.support Ms. C.'s characterization of the level of care C. was receiving at that facility. [31]

Following an initial review of the support plan amendment by Health Program Manager Page Meadows, and a meeting with Division Director Anthony Newman, the Division issued a notice to the C.s on May 3, 2023, denying the request for group home services and acuity for C. The Division stated in part:

> Pursuant to 7 AAC 130.265(f), the department will consider residential habilitation services to be group home habilitation services if those services are provided to a recipient 18 years of age or older. C.'s

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[29] Ex. F, pp. 1-2.

[30] In an email reporting this incident to the C.s, which occurred on July 14, 2022, Treatment Facility B. therapist H. J. wrote that "it was unclear if [C.] was doing it out of pure malice or not. He states he was attempting to help the peer sleep, but we had to have a pretty intense conversation about how he could have easily killed his roommate if not caught in time." Ex. 18.

[31] Nursing summaries document incidents of poor behavior by C. and include a series of boxes to be checked for special precautions required due to the incident, one of which is for "1:1." The 1:1 box was never checked for any of the incidents documented in the nursing summaries, including incidents occurring after the pillow incident on July 14, 2022. Ex. 4, 7-9, 14-15, 19, 21-39. No documentation was provided from Treatment Facility B. or Treatment Facility A. showing that C. was receiving one-on-one supervision at either of those facilities. Testimony of P. Meadows.

> birthday is 00/00/2007 meaning he will only just be turning 16-years old on May 1st, 2023. Pursuant to 7 AAC 75.415, group homes may apply for a temporary variance to admit a specific child by name if they meet certain requirements under the regulation, and the proposed group home for C. Treatment Facility C. Alaska Care 2, has been approved for such a variance until 11/30/2024.
>
> However, a variance for the licensing requirements of assisted living homes does not waive the regulatory requirements for services under the Intellectual and Developmental Disabilities (IDD) Waiver. We must also note that regulations which have been properly authorized and publicized have the force and effect of law, and even though the administration of the IDD Waiver lies with the IDD Unit, the decision to override any regulatory requirements, including that group home services are provided to recipients 18 years of age or older, is at the discretion of the Director of Senior & Disabilities Services on a case-by-case basis.
>
> In this case, the Director of SDS would have to waive section 7 AAC 130.265(f) and allow a 16-year-old child to reside in a group home with three adult men who require constant 1:1 supervision to ensure their safety and the safety of others. The gravity of this requires should not be understated as it is not only a request to override a regulation which has the force and effect of a law, but also to waive an assurance SDS has given to the Centers for Medicare & Medicaid Services regarding the administration of the waiver program.
>
> Senior and Disabilities Services has a responsibility to promote the health, wellbeing, and safety for individuals with disabilities, seniors, and vulnerable adults. Our role is not one of a child protection agency, responsible for the placement of adolescent waiver recipients whose parents cannot care for them at home. We recognize the complexity of C.'s case, but the regulations are clear – group home services are provided to recipients 18 years of age or older.
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> SDS does not waive the regulatory requirements of 7 AAC 130.265(f). Therefore, the group home services are denied. As he will not be receiving group home services at this time, he is not qualified for the acuity designation, so the acuity rate is also denied.[32]

On May 24, 2023, the Division sent a corrected notice to the C.s, approving the request for 75 daily units each of group home services and acuity and denying the request

[32] Ex. D, pp. 5-6.

for the remaining 249 daily units. The corrected notice reiterated the Division's position that it cannot approve group home services for children, but added:

> Recognizing your child was placed in a home certified for Group Home in error, and your child is currently at risk of acute institutionalization if he were to be immediately discharged from his current group home, the Department of Health has agreed to pay for this service temporarily.
>
> Therefore, in light of this extraordinary situation and at the direction of the DOH Commissioner's Office, SDS approves group home services and the acuity add-on rate for a time limited duration for 75-days beginning April 17, 2023 through June 30, 2023. Again, during this time, you are required to work with C.'s Care Coordinator, Joseph Pahl, and Tammie Wilson of DFCS to identify a family habilitation home that can care for C. Family habilitation homes typically do not have a one-on-one service like the group home acuity payment. However, in consideration of C.'s needs, if requested SDS will at the direction of the Commissioner's office approve a 90-day acuity rate under 7 AAC 130.267 for the family habilitation home that accepts him to support his transition. [33]

D. Administrative appeal and evidentiary hearing

On May 25, 2023, the C.s requested a hearing to challenge the partial denial. The parties attempted to resolve the matter before hearing, but they were unsuccessful. A hearing was held over portions of three days: July 24, 2023, August 15, 2023, and August 29, 2023. The parties submitted additional documentation in advance of the third hearing day. Fair Hearing Representative Terri Gagne represented the Division; S. T. presented the C.s' position. Health Program Manager Page Meadows, IDD Unit Manager Heather Corde, Health Program Manager Samantha Sommer, and Division Director Anthony Newman testified on behalf of the Division. Audrey C., Care Coordinator S. T., Treatment Facility C. Administrator M. X., Treatment Facility C. Program Manager D. N., and N. Y., family advocate with Peninsula Independent Living Center, testified on C.'s behalf.

III. Discussion

[33] Ex. D, pp. 1-2.

A. C. is not eligible for group home habilitation services under the Medicaid Waiver program because he is not at least 18-years old.

The Division contends that 7 AAC 130.265(f) requires individuals to be 18 years of age or older to be eligible for group home habilitation services. Because C. is only 16 years old, he is ineligible. The Division acknowledged that it has "waived" the 18-year- old regulatory requirement and approved group home services for some minors previously, but only where they were 17 years old. Division Director Anthony Newman testified that whether to grant an exception to the age limit in 7 AAC 265.130(f) and approve group home services for a minor is made at the Director level, after consideration of the following factors: (1) whether a variance has been granted by the Residential Licensing Section to the assisted living home under 7 AAC 75.415 to allow a person under 18 to reside in the home; (2) whether the care coordinator has submitted a support plan with justification for the placement; (3) whether there are adult residents in the group home, and whether allowances have been made to ensure their safety; (4) whether the child is within a year of turning 18; and (5) whether other placement alternatives are available. The Director considered C.'s age – that he is not yet 17 – to disqualify him for an exception to the 18-year age limit in the regulation. When asked for his understanding of the source of the authority to exercise discretion to grant such an exception, Director Newman acknowledged that the regulation "does not speak to discretion on the part of the Director," but the Division's counsel advised that "there is allowed discretion by the executive branch in the execution of the law."[34] Because C. is not yet 17, the Division contends that the circumstances do not warrant providing an exception here.[35]

The C.s argue that C.'s situation merits an exception to the 18-year-old requirement. They claim that if exceptions have been allowed for 17-year-olds, an exception can be made for a 16-year-old, given C.'s exceptional circumstances. They testified about C.'s extreme behaviors when he lived with them at home, and described instances of aggressive behavior while he was at Treatment Facility B.[36] They presented testimony of Treatment Facility C.

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[34] Testimony of A. Newman.

[35] Testimony of A. Newman; testimony of P. Meadows; testimony of H. Chord.

[36] Weekly nursing summaries and parent updates reflect multiple instances of negative behaviors by C. while at Treatment Facility B., including hitting and grabbing peers and staff, yelling insults and threats, making lewd gestures, throwing chairs and other objects, banging on walls, and picking at scars until they bled. Ex. 3, 4, 7-8, 10, 14-15, 19, 21-39.

administration and staff demonstrating that C. has made great strides at Treatment Facility C. due to the continuous supervision afforded by the one to one, 24-7 arrangement there, which enables C. to be readily redirected when he starts engaging in risky behaviors.[37] They consider C.'s placement at Treatment Facility C. to be a "huge success story" and do not believe he would be successful living in a home with other children or without acuity.[38]

Because this case involves a request for new Waiver benefits, the C.s, as the applicants on C.'s behalf, have the burden of proving that C. is eligible for the benefits by a preponderance of the evidence.[39] Whether C. is eligible for group home services turns on 7 AAC 130.265(f), which states:

> The Department will consider residential habilitation services to be group-home habilitation services if those services are provided to a recipient **18 years of age or older** living full-time in a residence licensed as an assisted living home for two or more residents under AS 47.32 that provides 24-hour care.

The language of the regulation is clarified by the Residential Habilitation Services Conditions of Participation, which are incorporated by reference in 7 AAC 160.990(d)(45). The Conditions of Participation state that a provider "may render group home habilitation services for recipients **who are 18 years of age or older** and who live full-time in a residence that is licensed as an assisted living home for two or more residents."[40]

The language of 7 AAC 130.265(f), read together with the Conditions of Participation, makes clear that group home services are available to Waiver recipients who are 18 years of age and older – not to recipients younger than 18.

The C.s offered compelling reasons why C. would benefit by remaining at Treatment Facility C. But the fact remains that he is not 18. There is no provision in the Waiver regulations or elsewhere in the law that allows for an exception to the 18-year age limit.[41]

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[37] Testimony of M. X.; testimony of D. N. Mr. X. acknowledged that when Treatment Facility C. agreed to accept C., group home services and acuity had been requested but had not yet been approved for C. But Mr. X. believed the services would be approved based on his prior experience with other clients, including a 17-year-old client who had recently been approved for the same services. Describing C.'s situation as an "emergency placement" because "he had nowhere else to go," Mr. X. explained that Treatment Facility C. "decided to go ahead and house [C.] until we figured it out." Testimony of M. X.

[38] Testimony of B. C.; testimony of S. T.; testimony of M. X.

[39] 7 AAC 49.135.

[40] Ex. B, p. 99 (emphasis supplied.)

[41] Neither the C.s nor the Division identified any legal authority for the Division to grant a waiver or exception from the 18-year age requirement in 7 AAC 130.265(f). When asked about the legal basis for an

Although the Alaska Medicaid program previously allowed an "undue hardship" exception to the strict application of its regulatory requirements, that regulation was repealed in 2004.[42] By eliminating the language that provided for an exception, the agency demonstrated an intent to apply these regulations without a waiver or exception.

The Division lacks the authority to disregard its own regulations. "Administrative agencies are bound by their regulations just as the public is bound by them."[43] Under the regulations, C. is not eligible for group home habilitation services, and the Division has no discretion to grant an exception for him or for any other individual under the age of 18. This is the case even though Treatment Facility C. received a variance from Residential Licensing to admit C. into the group home. The variance allows for C. to reside in the group home if the C.s (and Treatment Facility C.) so choose. But the variance is issued by the Residential Licensing Section (not the Division) under an entirely different set of regulations governing assisted living homes (not the Medicaid Waiver regulations), and does not control whether an individual is eligible for group home habilitation services.[44] Although C. may continue living at Treatment Facility C., the Waiver program will not pay for the costs of any group home services provided.

The fact that the Division has granted exceptions to its regulatory requirements in the past does not mean the Division can or must disregard its regulations here. An administrative agency is not bound by a prior decision that it determines is incorrect.[45] If the Division indeed approved group home habilitation services to 17-year-olds after it repealed its regulatory authority to grant an exception, that decision would be contrary to

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exception, Mr. Meadows admitted, "I've searched everywhere from our own regulations to the Code of Federal Regulations, and I've never been able to find anything." Testimony of P. Meadows. Similarly, Ms. Chord explained that "we don't really have a mechanism to provide a variance to the regulations. They carry the weight of law. . . So in a situation like this, if the Director decides to waive the regulations, we're going against our own law, so it's really done very scarcely because it puts us at risk of losing our waiver with the Center for Medicare and Medicaid Services." Testimony of H. Chord.

42 *In the Matter of NH*, OAH No. 21-0508-MDX (2021) (discussing the "undue hardship" exception previously contained in 7 AAC 43.080a)).

43 *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 – 869 (Alaska 2010).

44 Care Coordinator S. T. admitted that C. was placed at Treatment Facility C. without prior approval by the Division of group home and acuity services, and he understood that the variance for Treatment Facility C. to accept C. did not guarantee the Division would approve the request for Waiver services. Mr. T. had successfully placed three minors in group homes before, all of whom were 17 years old. He described C.'s case as "unprecedented" in his experience because of C.'s age and unique behaviors. Testimony of S. T.

45 May v. State, Com. Fisheries Entry Comm'n, 168 P.3d 873, 884 (Alaska 2007).

the regulatory age requirement. The Division should not repeat the same error here. The regulation limits these services to adults. C. is not yet an adult.

B. Because C. is ineligible for group home habilitation services, he is also ineligible for acuity.

The Division asserts that C. is not entitled to acuity payments under the Waiver program because acuity is only available to recipients of group home habilitation services, and insufficient documentation was provided to support the need for acuity in any event. The C.s, on the other hand, urge that the request for acuity be approved because C. direly needs the support that acuity affords to help moderate his behavior problems. The C.s offered evidence of his experience at Treatment Facility C. to date, where he is thriving because of the one-to-one, around-the-clock support he is currently receiving.

The acuity regulation at 7 AAC 130.267 specifies the circumstances in which the Division will approve acuity payments. To be eligible for acuity, a Waiver applicant must be qualified for group-home habilitation services.[46] The regulation also establishes stringent documentation requirements for acuity to be granted.[47] The required documentation includes the applicant's "most recent medical and psychological evaluation conducted as part of an assessment" for Waiver benefits, and a "clinical record under 7 AAC 105.230(d)(6) documenting 24 hours of activity for each of the 30 days immediately preceding the date of the request," which was April 23, 2023 in this case. Although the record contains a December 2020 psychological evaluation of C. from Treatment Facility A., no more recent psychological evaluation or medical evaluation was submitted with the plan of care amendment. Moreover, although one-on-one observation logs were provided documenting 24-hours of C.'s activity from July 14, 2023 through August 13, 2023 at Treatment Facility C., no logs were provided from Treatment Facility B. for the 30-days period preceding the April 23, 2023 request for acuity payments, as required by 7 AAC 130.267(e). Because C. is not eligible for group home habilitation services, and the support plan application did not provide the required documentation, C. is ineligible for acuity payments under 7 AAC 130.267.

IV. Conclusion

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46 7 AAC 130.267(a)(B).

47 7 AAC 130.267(e).

There is no doubt that the C.s want what is best for their family. There is also no doubt that C. would continue to benefit from the direct one-on-one care and around-the-clock supervision that he is currently receiving at Treatment Facility C. While the C.s' desire for C. to receive this exceptionally high level of support is understandable, the facts of this case simply do not support a finding that C. qualifies for group home habilitation services and an acuity rate because he is not yet 18-years old.[48] Accordingly, the Division's denial of 249 daily units of group home habilitation services and 249 daily units of acuity payments is affirmed.

Recommended as modified this 19th day of October, 2023.

Signed
_____
Lisa M. Toussaint
Administrative Law Judge

Adopted by:

Signed
_____
Daniel R. Phelps II
Project Coordinator, Department of Health
Final decisionmaker by Delegation of the
Commissioner of Health

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.

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

[48] This decision reaches no conclusion as to whether C.'s circumstances could potentially qualify him for a different type of residential habilitation services, such as family home habilitation services under 7 AAC 130.265(b), which contains no minimum age requirement.