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

In the Matter of	)	
	)	
E. T.	)	OAH No. 26-0456-MDS
	)	

DECISION

I. Introduction

E. T. appeals the decision of the Division of Senior and Disability Services ("SDS" or "Division") that he is not eligible for the Alaskans Living Independently ("ALI") Waiver program ("Waiver"). SDS evaluates ALI applicants using a "Consumer Assessment Tool" or CAT. These measure an applicant's needs in various areas of daily living. To qualify for the ALI program, Mr. T. had to receive a score of "3." Mr. T. received a zero on the CAT. Mr. T. is generally capable for a man his age but has legitimate concerns around his mental health. Even if the CAT graded him at the maximum level for his mental health concerns, he would only receive a "1" on the CAT and still not be eligible for ALI Waiver. Therefore, the Division's conclusion that Mr. T. is not eligible for the ALI Waiver program is AFFIRMED.

II. Background and Factual Findings

Mr. T. is a 72-year-old male. He was honorably discharged from the military, though he did not serve 180 days prior to his discharge.[1] He has vascular dementia, cerebrovascular events (including transient ischemic attack, or "TIA"), mixed anxiety and depressive disorder, and bilateral tinnitus.[2] He lives with his cat, Ms. Stinkers, in a second-floor apartment.[3] He takes the stairs, but has an elevator available to him.[4] Mr. T. is able to live quite independently. He can readily get up and down and change positions and takes care of his own toileting.[5] Despite not having teeth, Mr. T. is able to eat steak and corn on the cob when he wants.[6] Even with the vascular dementia diagnosis, Mr. T. was able to represent himself well at the hearing, understand the proceedings, and asked nuanced questions of witnesses. Mr. T. drove his van from the Region A to Anchorage to attend the hearing and walked from his van to the elevator and took the elevator to OAH's offices on the 19th floor. At the end of the hearing, he said he was going to treat himself to a meal at the Restaurant A. During the hearing he stood from an office chair on

---

1 T. testimony.
2 Ex. G at 21; Ex. E at 4.
3 T. testimony.
4 Ex. E at 8.
5 T. testimony. This tribunal also observed Mr. T. to readily get up and down and move about the courtroom.
6 T. testimony.

rollers several times and walked around the courtroom. He also wheeled himself around the courtroom on the chair. He demonstrated some difficulty hearing, which was accommodated by people speaking a bit louder, more slowly, or moving closer to the speaker. Mr. T. was told to interrupt the proceedings if there was anything he did not hear, and he did so.

On April 23, 2026, SDS employee Robert Tasso performed the CAT examination of Mr. T.. Based on the back-and-forth questions at the hearing, the two had a good rapport. Mr. Tasso has been a State of Alaska employee for ten years and has worked for SDS eight years. He has a bachelor's degree in psychology, a master's degree in public administration, and is working on a doctorate degree.

In the CAT, Mr. Tasso found Mr. T. had no issues with bed mobility,[7] no issues with transfers (moving between surfaces, such as from a bed to a chair),[8] locomotion (moving between locations in his room),[9] dressing,[10] eating,[11] toileting,[12] personal hygiene,[13] minor issues with bathing caused by his anxiety and depressive disorder,[14] and no issues taking prescribed medication.[15] Mr. T.'s assessment was, thankfully, reflective of a person with a high level of independence, ability to care for himself, and to care for his affairs. Mr. T. stated at the hearing that he did not dispute any of these physical findings.

Mr. T. does experience significant difficulty sleeping. He wakes up to nightmares or sees ghosts that he both knows are not real but seem real to him in the moment.[16] He has conflicted with his landlord on multiple occasions and believes he is being discriminated against. The CAT found him to sleep "noticeably more or less than 'normal.'"[17] It found that Mr. T.'s "[a]ttitudes, habits and emotional states limit the individual's type of living arrangement and companions."[18] Mr. Tasso also rated Mr. T. as "sometimes (1-3 times in the last 7 days) disruptive or aggressive, either physically or verbally, or is sometimes extremely agitated or anxious."[19] Mr. T. believes

---

7 Ex. E at 7.
8 *Id.*
9 *Id.* at 8.
10 *Id.*
11 *Id.*
12 *Id.* at 9.
13 *Id.*
14 *Id.* at 10.
15 *Id.* at 21.
16 T. testimony.
17 Ex. E at 17.
18 *Id*.
19 *Id.*

that his CAT scores for sleep patterns, behavioral demands on others, and danger to self or others were scored too low. He bases this on his nightmares and difficulties with his landlord.

Mr. T. presented documents showing that he has contacted the City A Police Department ("CITY A-PD") to tell them he is suffering from the onset of dementia.[20] He has called the CITY A-PD to determine how loud he plays his music while sitting in his van, with the responding officer advising Mr. T. "to turn his radio down and get headphones."[21] On May 30, 2026, Mr. T.'s apartment manager asked CITY A-PD to check on Mr. T.'s welfare. It did so, reporting to the manager that Mr. T. was "alive and well."[22] On March 12, 2026, Mr. T. called the police at 1:26 a.m. to report a robbery in progress.[23] Midway through the call, "he advised that he has Alzheimer's (sic) and that the incident was not real."[24] There is no evidence in the record that Mr. T. has Alzheimer's Disease, rather he has been diagnosed with dementia,[25] unspecified dementia,[26] or vascular dementia.[27] He has complained to the police multiple times about difficulties with persons in his apartment complex, though CITY A-PD took no further action after responding to these calls.[28] He has written letters to Adult Protective Services,[29] the federal Office of Fair Housing and Equal Opportunity,[30] the Alaska Attorney General,[31] and Region A Residential Services[32] alleging discrimination by his landlord. None of these entities have responded to his letters.

III. Discussion

A. Burden of Proof

Mr. T. is an applicant for Waiver benefits. He therefore has the burden of proving by a preponderance of the evidence that he is eligible for Waiver benefits.[33] The applicant can meet this burden using any evidence on which reasonable people might rely in the conduct of serious affairs,[34] including such sources as written reports of firsthand evaluations of the patient. The

---

20 Ex. 1 at 1.
21 *Id.* at 5.
22 *Id.* at 3.
23 *Id.* at 7.
24 *Id.*
25 Ex. G at 23.
26 Ex. 1 at 17.
27 Ex. E at 4.
28 Ex. 1 at 9, 16.
29 *Id.* at 20.
30 *Id.* at 22.
31 *Id.* at 24.
32 *Id.* at 26.
33 7 AAC 49.135.
34 2 AAC 64.290(a)(1).

relevant date for purposes of assessing the state of the facts is, in general, the date of the agency's decision under review.[35] For this case, that date is May 13, 2026, the date of the notice informing Mr. T. that his Waiver application was denied.[36]

B. Method for Assessing Eligibility

The Alaska Medicaid program provides Waiver benefits to adults with physical disabilities who require "a level of care provided in a nursing facility."[37] The nursing facility level of care[38] requirement is determined by an assessment which is documented by the Consumer Assessment Tool.[39]

The CAT records an applicant's needs for professional nursing services, therapies, and special treatments, and whether an applicant has impaired cognition or displays problem behaviors.[40] Each of the assessed items is coded and contributes to a final numerical score. For instance, if an individual required 5 days or more of therapies (physical, speech/language, occupation, or respiratory therapy) per week, he or she would receive a score of 3.[41]

The CAT also records the degree of assistance an applicant requires for Activities of Daily Living (ADLs).[42] The CAT provides applicants with a two-part numerical score to reflect their ability to perform the activity and need for assistance in doing so. The score consists of a self-performance code, which rates a person's ability to perform the activity, followed by a support code, which reflects the degree of assistance required to do so.

The ADLs measured by the CAT are bed mobility, transfers, locomotion, dressing, eating, toilet use, personal hygiene, and bathing.[43] For ADLs, the possible self-performance codes relevant to determining an applicant's level of need are as follows:

> **0 – "Independent."** This code is used if help or oversight was provided no more than twice in the prior seven days.
>
> **1 – "Supervision."** This code is used if the person requires only "oversight, encouragement, or cueing" while performing the activity.
>
> **2 – "Limited Assistance."** This Code is used if the person is "highly involved in the activity" and "received physical help in guided maneuvering of limbs, or other

---

35 *See* 7 AAC 49.170; *In re T.C.,* OAH No. 13-0204-MDS (Commissioner of Health & Soc. Serv. 2013) (available at http://aws.state.ak.us/officeofadminhearings/Documents/MDS/HCW/MDS130204.pdf).

36 Ex. D, p. 1.

37 7 AAC 130.205(d)(4).

38 *See* 7 AAC 130.205(d)(4); 7 AAC 130.215.

39 7 AAC 130.215(4).

40 Ex. E.

41 Ex. E, p. 32.

42 Ex. E, pp. 7 - 10.

43 Ex. E, pp. 7 - 10.

non-weight-bearing assistance" three or more times in the last seven days or received physical help in guided maneuvering of limbs plus weight bearing assistance no more than twice in the last seven days.

3 – "Extensive Assistance." This code is used where the person performed part of the activity, but over the past seven days received weight-bearing support and/or full caregiver performance of the activity three or more times.

4 – "Total Dependence." This code is used where there has been full staff/care giver performance of the activity during the entire prior seven days.[44]

For ADLs, the possible support codes used to determine a service level are as follows, with each option reflecting the "most support provided" over each 24-hour period during the prior seven days.

0 – The person required no set up or physical help.

1 – The person required only setup help.

2 – The person required a one-person physical assist.

3 – The person required a physical assist from two or more people.[45]

C. Mr. T.'s Waiver Eligibility

Waiver eligibility requires that an applicant have a total score of three or more on the CAT. That score can be arrived at through several scenarios, all of which are set out in the CAT itself.[46] For instance, if Mr. T. required nursing services seven days per week, or had therapy five or more times per week, or if he required extensive physical assistance with three or more of five specific ADLs (bed mobility, eating, locomotion, transfers, and toileting, also called the "BELTT ADLs"), he would qualify for Waiver benefits.[47]

Mr. T. did not meaningfully dispute his scoring on the BELTT ADLs or allege that he qualifies through the majority of paths to Waiver approval. Instead, Mr. T.'s only argument for why he should receive Waiver benefits is that his behavioral concerns were underscored.

An applicant could qualify for Waiver by showing that specific problem behaviors occur at least 4 days a week, *and* either that professional nursing is needed at least 3 times a week to manage the behavior,[48] *or*, that his behaviors are rated 14 or higher on the supplemental screening

44 Ex. E, p. 7.
45 Ex. E, p. 7.
46 Ex. E, pp. 32 - 33.
47 Ex. E, p. 32, question NF 1.
48 Ex. E at 33.

tool.[49] This path also requires a showing that limited one-person physical assistance is required for at least two ADLs.[50]

Mr. T.'s behavioral concerns are real, but they are not severe enough to qualify for Waiver. On the CAT, Mr. T.'s total behavioral score was 4 out of a possible 20. Mr. T.'s ratings for wandering, behavioral demands on others, danger to self or others, and awareness of needs/judgment were all accurate. While Mr. T. may be underscored in the subcategory of "Sleep Patterns," increasing the CAT score in this subsection does not change his eligibility for the Waiver. Even if Mr. T. received the highest score possible in that subsection, he would still be well below a total behavioral score of 14.

Additionally, scoring a 14 or higher is not enough to qualify for Waiver on its own. Even if all four subcategories of behavior concerns received the maximum score, which they should not, Mr. T. would have only received an overall CAT score of 1. An applicant who does not receive professional nursing services to manage their problem behaviors must still require limited one-person physical assistance in at least two of the BELTT ADLs. As Mr. T. is independent for all of his BELTT ADLs, he does not qualify for the Waiver.

To be clear, the tribunal accepts that Mr. T. has dementia and has meaningful difficulties with his neighbors and landlord. The tribunal accepts that Mr. T. has significantly altered sleep, including dreams that seem real to him in the moment and that he can see ghosts in those dreams. Mr. T. testified passionately about accepting that his life is drawing to a close and that he wants dignity in his final time. His quoting of the Serenity Prayer was sincere, and the tribunal fully appreciates the tears Mr. T. shed in the hearing. It may be that there are other services for which Mr. T. may qualify. He might benefit from the assistance of psychologists, psychiatrists,[51] or other services for mental health or aging. Mr. T. is encouraged to reach out to SDS to discuss other services he might qualify for. But eligibility for Waiver is based on criteria contained in the CAT. Based on this tribunal's independent review of the testimony and exhibits, Mr. T. does not meet the CAT criteria for Waiver.

IV. Conclusion

[49] *Id.*
[50] *Id.*
[51] Receiving care from a psychiatrist is simply accepting help from a doctor for mental health.

There is no dispute that Mr. T. requires assistance managing his behavioral and mental health. However, to qualify for the Waiver, applicants must meet a minimum score on the CAT. In determining if an applicant qualifies, the CAT evaluates a narrow subset of challenges and has strict scoring requirements within them.

In this case, Mr. T.'s condition during the qualifying period did not meet the criteria necessary to qualify for Waiver services. Accordingly, the Division's denial of his application for Waiver is AFFIRMED.

DATED: July 14, 2026.

By: SIGNED
Robert H. Schmidt
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 10th day of September, 2026.

By: SIGNED
Name: Robert Schmidt
Title: Administrative Law Judge

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