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

In the Matter of	)	
	)	
LIVING STONE HOME CARE, LLC	)	OAH No. 25-1360-MPC
	)	

DECISION

I. INTRODUCTION

Living Stone Home Care, LLC is an assisted living home that has been certified to provide Medicaid Residential Supported Living services to a few of its residents. Providers must regularly obtain recertification to continue providing these services. Twice in recent years, the Department of Health, Division of Senior and Disabilities Services ("Division") denied recertification for failure to comply with various regulatory requirements, then later entered settlement agreements allowing Living Stone to be recertified for probationary periods. The Division has now denied recertification for a third time because of Living Stone's continued failure to comply with regulatory requirements. The Division documented this noncompliance during multiple site visits. Living Stone takes issue with the Division's treatment of Living Stone and with certain regulatory requirements, but did not provide evidence that contradicts the Division's findings of noncompliance. Accordingly, the Division's decision is affirmed.

II. BACKGROUND

The Division approves assisted living homes to provide various types of Medicaid services, subject to regular recertification. Living Stone has been a certified provider for many years.[1] As of April 2025, Living Stone had 18 General Relief residents plus four residents receiving Residential Supported Living services — a type of Home and Community-based Waiver Services ("RSL Waiver Services").[2] This matter concerns the RSL Waiver Services only.

Living Stone applied for RSL Waiver Services recertification on March 17, 2025.[3] This application followed two prior recertification denials by the Division, both of which were

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1 Mavis Slone testimony.
2 R. 000617.
3 R. 000526-47.

appealed and later resolved by settlement agreements in 2020 and 2023.[4] Both settlement agreements imposed a number of conditions and provided a process for Living Stone to obtain a one-year probationary certification for RSL Waiver Services.[5]

A central issue in the prior recertification denials and subsequent settlement agreements was Living Stone's obligation to have an approved Program Administrator.[6] Since the 2020 settlement agreement, Living Stone has submitted seven Program Administrators to the Division for approval and the Division rejected four as unqualified.[7] Living Stone's most recent probationary certification started April 4, 2024. Two weeks later, its Program Administrator notified the Division she was leaving.[8] Living Stone submitted a new Program Administrator for approval in May, but the Division found he did not meet the qualifications.[9] Living Stone then submitted a different Program Administrator, who the Division approved on June 14, 2024.[10] Six months later, that Program Administrator notified the Division he would be leaving.[11] Living Stone's owner, Mavis Slone, would like to serve as Program Administrator herself.[12] The Division, however, has had continued concerns about her qualifications, which requires not just education and experience, but the knowledge and skills necessary to carry out an RSL Waiver Services program.[13] In the 2023 settlement agreement, Living Stone agreed that Ms. Slone could not serve as the Program Administrator during the one-year probationary certification period.[14] On its March 2025 recertification application, Living Stone listed Ms. Slone as its Program Administrator.[15] The day after receiving that application, the Division emailed Ms. Slone to tell her that she would not be approved as Program Administrator.[16] Living Stone proposed a new

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4 R. 000623-27; R. 000635-38.
5 *Id.*
6 *Id.*
7 R. 000617.
8 R. 000612.
9 R. 000612.
10 R. 000612.
11 R. 000613.
12 Mavis Slone testimony.
13 R. 000600-03 (Residential Supported-Living Services Conditions of Participation, incorporated by reference in 7 AAC 160.900(46)).
14 R. 000635. The settlement agreement further required Ms. Slone to complete a training program. Living Stone focused on these training requirements during the hearing, but the Recertification Denial does not list Ms. Slone's completion of the training program as a reason for denying Living Stone's recertification.
15 R. 000526.
16 R. 000616. The Recertification Denial on appeal here does not deny Ms. Slone's request to be approved as Program Administrator, so that is not at issue here. The 2023 settlement agreement restricted Ms. Slone from serving as Program Administrator only during the probationary certification period. If Ms. Slone would like to challenge the Division rejecting her as Program Administrator, one option would be to request an appealable

Program Administrator, but as of the time of the Recertification Denial had not provided complete paperwork for appointing this person as Program Administrator.[17]

The Division has also had concerns about Living Stone operating in compliance with an operations manual and maintaining required files and paperwork.[18] The Division conducted several site visits during the most recent probationary certification period. During a June 18, 2024 site visit, the Division learned of a recent fire during which the home failed to safely and successfully evacuate all residents, found Living Stone was not operating in compliance with its approved operations manual, and also raised concerns with Ms. Slone allowing the then-Program Administrator to do his job and providing him sufficient support.[19] The Division conducted another site visit on December 13, 2024. The Division found staff and resident files were incomplete and that Living Stone had been restricting access to soap, toilet paper, and towels without approval.[20] The next site visit was February 26, 2025. The Division found insufficient documentation for Medicaid billing, that staff files remained incomplete, that a policy to track critical incident reports by spreadsheet had not been implemented, and that staff were unfamiliar with Medicaid Waiver service plans.[21] During the next site visit, on April 4, 2025, the Division found documentation remained insufficient for Medicaid billing, resident quarterly reports previously found to be incomplete had been backdated, a recipient file with outdated and incomplete paperwork, that Ms. Slone had still not implemented a policy to track critical incident reports by spreadsheet, and that the home did not have a complaint box that it had reported having in its prior renewal applications.[22]

The Division denied recertification because Living Stone and Ms. Slone demonstrated an inability or unwillingness to comply with Medicaid regulations, certification requirements, and Living Stone's operations manual and because they had not complied with the terms of the 2023 settlement agreement ("Recertification Denial").[23] The Division has since clarified that while its recertification denial discusses the settlement agreement, its denial is not based on breach of this

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decision from the Division, since it appears it merely advised her by email that she could not be Program Administrator under the 2023 settlement agreement.

17 R. 000615, 000617.
18 R. 000636-37.
19 R. 000612; Melissa Mosier testimony.
20 R. 000613; Melissa Mosier testimony.
21 R. 000615.
22 R. 000616-17; Melissa Mosier testimony.
23 R. 000617.

agreement, but on failure to comply with regulatory requirements, many of which were captured in the agreement, and that its decision would have been the same even if the settlement agreement did not exist.[24]

III. DISCUSSION

This case is not about whether Living Stone provides its residents with good care or whether the residents are happy and healthy. Nor is this case about whether Living Stone can continue to serve residents. Indeed, most of Living Stone's residents are General Relief residents, unaffected by the Recertification Denial or this appeal. This case is also not about the Division denying Ms. Slone's attempts to become Program Administrator. Any Program Administrator denials are separate from the recertification process. This case is solely about whether Living Stone has been following the rules to continue providing RSL Waiver Services for its few RSL Waiver residents.

A. Living Stone Has the Burden.

Living Stone contends the Division has the burden, citing to the Administrative Procedures Act.[25] This type of matter is not listed among those subject to the APA's adjudicatory provisions.[26] The APA's provisions on burdens are thus inapplicable.

Living Stone further argues the Division should bear the burden because it considers the Division a "petitioner" and Living Stone a "respondent."[27] Those monikers are not applicable here. This matter is an appeal of a recertification denial.[28] Living Stone's appeal right falls under OAH jurisdiction.[29] OAH regulation states that "[u]nless otherwise provided by applicable statute or regulation, the burden of proof and of going forward with evidence is on the party who requested the hearing or made the motion under consideration, and the standard of proof is preponderance of the evidence."[30] As the appellant, Living Stone requested the hearing

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24 Counsel statements at hearing; Melissa Mosier testimony. The denial of recertification references 7 AAC 105.460, which is the regulation on appeals of sanctions. Counsel for the Division confirmed prior to the hearing that this was in error.

25 Living Stone Closing at 3 (citing AS 44.62.460).

26 AS 44.62.330.

27 Living Stone Closing at 3-4.

28 *See* 7 AAC 130.220(g).

29 *Id.* (referring to "the provider's right to appeal the decision under AS 44.64); AS 44.64.030(44).

30 2 AAC 64.290(e).

and thus bears the burden. It has not cited an applicable statute or regulation that provides otherwise.

Living Stone further cites several cases to assert that the Division has an "initial burden."[31] None of those cases hold that an agency has an "initial burden" when its decision is appealed to a higher agency decision maker.[32]

Living Stone has the burden.

B. The Division has Documented Living Stone's Inability or Unwillingness to Meet Certification Requirements.

The Division will deny recertification if documentation shows the provider is unable or unwilling to meet certification requirements.[33] The Recertification Denial identifies a number of requirements Living Stone has been unable or unwilling to meet:

- **Maintaining a Program Administrator**: RSL Waiver Service providers must have a Program Administrator who (1) manages the daily operations of the home or provides onsite management for at least 20 hours per week; (2) either meets the regulatory requirements for an assisted living home administrator or has a high school education and one year of experience; (3) has the knowledge and skills necessary to carry out an RSL Waiver Services program; and (4) has the ability to evaluate and develop service plans, supervise staff, and organize, evaluate, and present information orally and in writing.[34] Program Administrator duties include training and supervision, implementing policies, submitting critical incident and other reports to the Division, developing and implementing corrective action plans, developing and overseeing implementation of plans of care, ensuring direct service workers are complying with plans of care, and evaluating the quality of care provided.[35]

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31 Living Stone Closing at 4.

32 *Stevens v. State, Alcoholic Beverage Control Bd.*, 257 P.3d 1154, 1159-60 (Alaska 2011) (rejecting argument that statute placing burden on licensee violates due process); *Sawicki v. Haxby*, 186 P.3d 546, 548-49 (Alaska 2008) (addressing which parent bears burden in child support dispute); *West v. Municipality of Anchorage*, 174 P.3d 224, 227 n. 24 (Alaska 2007) (noting burden applicable in a civil contempt proceeding).

33 7 AAC 130.220(f)(4). There are other potential grounds for denying recertification, but the Division's decision explicitly relies on subsection (f)(4). R. 000617.

34 R. 000600 (Residential Supported-Living Services Conditions of Participation, incorporated by reference in 7 AAC 160.900(46)).

35 R. 000600-01 (Residential Supported-Living Services Conditions of Participation, incorporated by reference in 7 AAC 160.900(46)).

Living Stone has continually struggled to hire and maintain a Program Administrator. Over the past five years, Living Stone has submitted seven prospective Program Administrators for approval, four of which were rejected for not meeting qualifications.[36] In the most recent one-year probationary certification period, two Program Administrators have quit.[37] In the 2023 settlement agreement, Living Stone agreed that if a Program Administrator was to leave, it would appoint a new qualified Program Administrator thirty days prior to the departure.[38] Nonetheless, it appears Living Stone did not have a Program Administrator when it applied for recertification and had not had one for some months. Instead, Living Stone listed Ms. Slone as the Program Administrator on its application. The Division informed Ms. Slone by email that it would not approve her as Program Administrator, and as of the Recertification Denial Living Stone had not submitted complete paperwork for another Program Administrator.[39]

Even when Living Stone had a Program Administrator during its latest probationary period, those Program Administrators failed to fulfill a number of duties. For example, a Program Administrator is responsible for training and managing direct service workers.[40] Yet during one of the site visits, the Division found that staff were unfamiliar with Medicaid Waiver service plans.[41] As another example, the Program Administrator is responsible for implementing policies and procedures.[42] Living Stone adopted policies and procedures for tracking critical incident reports by spreadsheet and collecting complaints in a complaint box, yet site visits revealed those procedures had not been implemented.[43]

Ms. Slone admits she has struggled to hire and retain Program Administrators, in part because her home serves particularly challenging residents.[44] She takes great issue

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36 R. 000617.
37 R. 000612-13.
38 R. 000636.
39 R. 000615-17.
40 R. 000601 (Residential Supported-Living Services Conditions of Participation, incorporated by reference in 7 AAC 160.900(46)).
41 R. 000615.
42 R. 000600 (Residential Supported-Living Services Conditions of Participation, incorporated by reference in 7 AAC 160.900(46)).
43 R. 000615-17.
44 Mavis Slone testimony.

with the Division's authority over Program Administrator approval and the Division not approving her to serve as the Program Administrator.[45] To the extent the Division has denied such a request, it is not a decision that is on appeal here. Nor is the wisdom of the Division's regulations on appeal. The issue here is whether Living Stone is unwilling or unable to meet requirements. Living Stone is required to have a Program Administrator who meets certain qualifications and performs certain duties. They have not had a qualified Program Administrator during the entirety of the past probationary period and did not have one as of the time of the Recertification Denial. When it did have one, the Program Administrator did not fully perform required duties. Ms. Slone herself admits her Program Administrators did not "do their job" or "take their job seriously."[46] She blames the Division for this, arguing she could do a better job and that the Division's oversight impedes her ability to ensure Program Administrators fulfill their duties. Ms. Slone may not like the current regulations, but those regulations are what Living Stone must comply with to remain certified to provide RSL Waiver Services. The regulations specify that the Division oversees Program Administrator qualifications and approval. And the regulations require Living Stone to make sure it has a Program Administrator, that the Program Administrator fulfills their duties, and that Living Stone complies with all regulatory requirements, including requirements that a provider adopt and implement policies and procedures. Living Stone did not do so.

- **Implementing Policies and Procedures**. Developing and implementing policies and procedures is a critical condition for participating in the RSL Waiver Services program.[47] This includes procedures for critical incident reporting.[48] As its procedure for critical incident reports, Living Stone chose to track these incidents by spreadsheet. Yet during multiple site visits, the Division found Living Stone had not implemented this procedure.[49] Ms. Slone admitted at the hearing that that her Program Administrators were supposed to track critical incident reports by spreadsheet, but did not, and that

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45 *Id.*
46 *Id.*
47 R. 000592-99 (*Provider Conditions of Participation for Home and Community-Based Waiver Services and Community First Choice Chore Services* incorporated by reference in 7 AAC 160.900(44)).
48 7 AAC 130.224(b).
49 R. 000615-17; Melissa Mosier testimony.

Living Stone was not implementing the spreadsheet at the time of the site visits.[50] Another procedure a provider must develop and implement is complaint management.[51] Living Stone chose a complaint box as part of its procedure, but during a site visit the Division found Living Stone had neither acquired nor installed a complaint box.[52] These examples show Living Stone was not operating in compliance with its policies and procedures, as required by regulation.

- **Incomplete Staff and Resident Files**. A provider must maintain certain staff and resident files.[53] Living Stone further stated it would complete, update, and organize its staff and recipient files as a corrective action, in response to a January 2025 notice of noncompliance.[54] On multiple site visits, however, the Division found both staff and resident files to be incomplete or out of date.[55] Ms. Slone admitted Living Stone's files were "messed up" and incomplete but blamed it on past Program Administrators.[56] It is entirely possible a Program Administrator failed to maintain complete files. But the responsibility for having these files lies with Living Stone. It is up to Living Stone to ensure its employees, including the Program Administrator, fulfill any file-keeping obligations. The Division's observations during site visits show Living Stone failed to meet this requirement.

- **Insufficient Documentation for Medicaid Billing**. Providers must maintain certain records to support Medicaid billing.[57] During multiple site visits, the Division found Living Stone's records were insufficient.[58] Ms. Slone explained that she has always been the only person taking care of Medicaid billing.[59] She testified at some length about no longer being able to bill after the Recertification Denial, but did not offer any

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50 Mavis Slone testimony.
51 R. 000592 (*Provider Conditions of Participation for Home and Community-Based Waiver Services and Community First Choice Chore Services* incorporated by reference in 7 AAC 160.900(44)).
52 R. 000617.
53 R. 000592-99 (*Provider Conditions of Participation for Home and Community-Based Waiver Services and Community First Choice Chore Services* incorporated by reference in 7 AAC 160.900(44)).
54 R. 000615.
55 R. 000615-17.
56 Mavis Slone testimony.
57 7 AAC 105.230; R.000594 (*Provider Conditions of Participation for Home and Community-Based Waiver Services and Community First Choice Chore Services* incorporated by reference in 7 AAC 160.900(44)).
58 R. 000615-17.
59 Mavis Slone testimony.

explanation or contrary evidence to the Division's findings that Living Stone's records were insufficient.[60]

The Division thus documented Living Stone's inability or unwillingness to certification requirements. Ms. Slone feels strongly that the Division has not provided sufficient assistance to get Living Stone into compliance and for her to be approved as its Program Administrator.[61] Division representatives explained that they have provided Ms. Slone more than the typical amount of assistance.[62] To the extent Ms. Slone is suggesting the Division is biased against her or Living Stone, Administrative decision makers are presumed to be impartial.[63] "To show [agency] bias, a party must show that the [agency] had a predisposition to find against a party or that the [agency] interfered with the orderly presentation of the evidence."[64] Ms. Slone's grievances with the process did not provide evidence that the Division had a predisposition against her or interfered with Living Stone's recertification process. By the same token, the Division's testimony that it has worked with Living Stone more than other providers did not weigh into this decision. The issue is whether there is documentation of Living Stone being unwilling or unable to meet certification requirements. There is. And Living Stone did not offer evidence that contradicts the Division's site visit findings.

IV. CONCLUSION

For the foregoing reasons, the Division's Recertification Denial is affirmed.

Dated: September 24, 2025

SIGNED
Rebecca Kruse
Administrative Law Judge

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60 *Id.*

61 Mavis Slone testimony.

62 Summer Wheeler testimony.

63 *See*, *e.g.*, *Gottstein v. State, Dep't of Natural Res.*, 223 P.3d 609, 628 (Alaska 2010) ("[A]gency personnel are presumed to be impartial until a party shows actual bias or prejudgment.").

64 *AT&T Alascom v. Orchitt*, 161 P.3d 1232, 1246 (Alaska 2007).

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 22nd day of October, 2025.

By: SIGNED
Name: Daniel R. Phelps II
Title: Process Improvement Manager
Office of the Commissioner
Alaska Department of Health

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