

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

In the Matter of)	Consolidated Cases
)	OAH No. 15-1221-MDS and
L S)	OAH No. 15-1415-MDS
_____)	Agency Nos.

DECISION ¹

I. Introduction

L S receives Medicaid Personal Care Assistance (PCA) services and applied for Medicaid Home and Community-Based Waiver program (Waiver) services. The Division of Senior and Disabilities Services (Division) assessed her on July 21, 2015 to determine her ongoing eligibility for PCA services and her eligibility for Waiver Services.

The Division denied Ms. S's application for Waiver services on August 23, 2015. Ms. S requested a hearing to challenge that denial.²

Ms. S subsequently requested that her PCA hours be increased on October 28, 2015. On October 30, 2015, the Division notified Ms. S that her PCA services would be reduced from 16 hours per week to 8.75 hours per week, and that her increase request would be handled separately. Ms. S requested a hearing to challenge the PCA services reduction.³

Ms. S's Waiver services and PCA services cases were consolidated. A consolidated hearing was held on January 19, 2016. Ms. S represented herself with the assistance of T Q and U D. Victoria Cobo represented the Division. The Division's assessor, Paula Ray, RN, testified for the Division.

Ms. S had the burden of proof to demonstrate that she qualifies for Waiver services. The Division had the burden of proof to demonstrate that her PCA services should be reduced. Ms. S failed to satisfy her burden with regard to her application for Waiver services. The Division's denial of her application is upheld.

The reduction of Ms. S's PCA services is upheld for the most part. However, transfers, locomotion to access medical appointments, and laundry assistance are not reduced. As a result, her PCA services should be recalculated consistent with this decision.

¹ All references to exhibits, unless otherwise stated, are to those contained in the Division's position statement for OAH Case No. 15-1415-MDS.

² OAH Case No. 15-1221-MDS.

³ OAH Case No. 15-1415-MDS.

II. Facts

The following facts were established by a preponderance of the evidence.

Ms. S is 61 years old. She lives by herself in a basement apartment.⁴ She has a complex medical history and numerous medical conditions, consisting of osteoarthritis, spinal stenosis, neuropathy, uncontrolled, yet stable, diabetes, kidney disease, ureteral disease, hypertension, cellulitis, and foot ulcers. She is morbidly obese and experiences mixed incontinence. She has had multiple toe amputations.⁵ Prior to hearing, Ms. S provided medical records and photographs showing foot and leg sores and ulcerations.⁶ Ms. S is very tall (6'5") and weighs 426 lbs.⁷

Ms. S was receiving 16 hours per week of PCA services. That level of services resulted from a 2014 assessment, which she challenged. After she challenged the 2014 assessment, she and the Division agreed that she should receive 16 weekly hours of PCA services.⁸ The Division then reassessed her on July 21, 2015. The reassessment served two purposes: first, to determine whether her PCA services should be changed; and second, to determine whether she should start receiving Waiver services.

Paula Ray, a registered nurse employed by the Division, conducted the July 2015 assessment. She documented the assessment on the Consumer Assessment Tool (CAT). The assessment found the following:

- Ms. S did not require hands-on physical assistance with body mobility, transfers, locomotion, locomotion to access medical appointments, eating, toilet use, personal hygiene or personal hygiene. She required limited physical assistance with dressing, and extensive assistance with bathing.⁹
- Ms. S was not receiving professional nursing services or specialized treatment. She was not receiving physical therapy.¹⁰

Based upon its assessment, the Division then denied Ms. S's application for Waiver services on August 23, 2015.

⁴ Ex. F, p. 1.

⁵ Ex. E; Ex. F, p. 3.

⁶ See Medical records and photographs received on December 29, 2015.

⁷ Ms. S's testimony.

⁸ Ex. D.

⁹ Ex. F, pp. 6 – 10.

¹⁰ Ex. F., pp. 13 – 15.

Ms. S had surgery for a hammertoe repair in September, 2015. She was hospitalized several weeks post-operation and was discharged in mid-October 2015. After her discharge, she requested a short-term increase in PCA services for toilet use, medical escort, and locomotion to access medical appointments.¹¹ Without addressing that request, the Division reduced her PCA services. Specifically, it removed time that she had previously received for transfers, locomotion to access medical appointments, personal hygiene, light meal, and medication assistance. It also reduced the amount of time that she had received for main meal preparation, housework, and laundry.¹²

Ms. S's specific areas of disagreement are addressed below:

1. Transfers

Ms. S was previously provided limited assistance (code of 2) with transfers 28 times per week. The July 2015 assessment found that she required only supervision/standby assistance (code of 1) with this activity, and her PCA assistance was eliminated. That finding was based upon statements made to the nurse assessor and the nurse assessor's observations of Ms. S transferring from her wheelchair to her electric lift chair during the assessment.¹³ Ms. S stated that she needed assistance with transfers. Her testimony was that this was hands-on assistance, but not weight-bearing assistance, given the difference between her size and the size of her PCA. She stated that she required this assistance four times daily, twice to transfer between her bed and wheelchair and twice to get in and out of her recliner.

Ms. S's medical records establish that she has very severe foot problems and peripheral neuropathy, which impact her ability to stand and transfer. Given her medical conditions, her testimony was credible. Accordingly, the Division has not met its burden of proof, and Ms. S should continue to receive limited assistance (code of 2) with transfers 4 times daily, for a total of 28 times per week.

2. Toileting

Ms. S was not receiving toileting assistance. She maintained that she should receive it. Her testimony was that she was able to use the toilet and cleanse herself, but required assistance with her clothing. The July 2015 assessment found that she required dressing assistance due to

¹¹ Ex. E.

¹² Ex. D.

¹³ Ex. F, p. 6.

her having compression stockings, but was able to otherwise dress herself.¹⁴ Compression stocking assistance is not required for toileting. Ms. S has the burden of proof on this issue. She did not meet it. Although it might be slightly difficult for her to adjust her clothing, she has not demonstrated that she requires toileting assistance.

3. Locomotion to Access Medical Appointments

Ms. S was previously allowed assistance to access medical appointments once weekly. The July 2015 assessment found that she no longer required physical hands on assistance with locomotion to access medical appointments. Ms. S lives in a basement apartment. She cannot use her wheelchair to go up the stairs to go outside the apartment. Her wheelchair has to be folded up. She testified that she uses a combination of crawling, and leaning to get up and down the stairs and to get in and out of the car. The Division had the burden of proof on this point. It did not satisfy it. Ms. S's testimony and the fact she lives in a basement apartment established that she continues to require limited PCA assistance once weekly with locomotion to access her medical appointments.

4. Personal Hygiene

Ms. S was previously allowed assistance with personal hygiene. The July 2015 assessment found that she no longer required that assistance. Ms. S disagreed. However, her testimony was that she was able to perform her personal hygiene activities without help. Accordingly, the Division has met its burden of proof on this issue.

5. Instrumental Activities of Daily Living

Ms. S was previously provided assistance with all of her instrumental activities of daily living (IADLs), which were light and main meal preparation, shopping, light housework, and laundry. The assessment found that her light meal assistance should be eliminated and that amount of time that she had received for main meal preparation, housework, and laundry should be reduced. Ms. S did not contest the change in those benefits with the exception of laundry. Her testimony is that she is able to participate with laundry, but requires physical assistance with it. This would not be total dependence, but would be properly classified as having a self-performance code of 2, with a support code of 3. In addition, she is incontinent and has accidents, which justifies additional help.

¹⁴ Ex. F, p. 8.

6. Other Disputed Issues

Ms. S also had her medication assistance removed. There was evidence that she has requires reminders for this activity. Ms. S also raised the point that she has a prescription for physical therapy. However, she testified that she is not receiving physical therapy because she has difficulty with transportation to and from physical therapy appointments. Foot and wound care were also discussed. Ms. S does not have any prescriptions for these.

III. Discussion

A. Waiver Eligibility

The Alaska Medicaid program provides Waiver services to adults with physical disabilities who require “a level of care provided in a nursing facility.”¹⁵ The purpose of these services is “to offer a choice between home and community-based waiver services and institutional care.”¹⁶

The nursing facility level of care¹⁷ requirement is determined in part by an assessment which is documented by the CAT.¹⁸ The CAT records an applicant’s needs for professional nursing services, therapies, and special treatments,¹⁹ and whether an applicant has impaired cognition or displays problem behaviors.²⁰ 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 3.²¹

The CAT also records the degree of assistance an applicant requires for activities of daily living (ADL), which include five specific categories: bed mobility (moving within a bed), transfers (i.e., moving from the bed to a chair or a couch, etc.), locomotion (walking or movement when using a device such as a cane, walker, or wheelchair) within the home, eating, and toilet use, which includes transferring on and off the toilet and personal hygiene care.²²

If a person has a self-performance code of 2 (limited assistance, which consists of non-weight bearing physical assistance three or more times during the last seven days, or limited assistance plus weight bearing assistance one or two times during the last seven days) or 3

¹⁵ 7 AAC 130.205(d)(1)(B) and (d)(2).

¹⁶ 7 AAC 130.200.

¹⁷ See 7 AAC 130.205(d)(2); 7 AAC 130.230(b)(2)(A).

¹⁸ 7 AAC 130.230(b)(2)(B).

¹⁹ Ex. F, pp. 13 – 15.

²⁰ Ex. E, pp. 16 - 17.

²¹ Ex. F, p. 29.

²² Ex. F, p. 6 – 10.

(extensive assistance, which consists of weight bearing support three or more times during the past seven days, or the caregiver provides complete performance of the activity during a portion of the past seven days), plus a support code of 2 (physical assistance from one person) or 3 (physical assistance from two or more persons), that person receives points toward his or her total eligibility score on the CAT. A person can also receive points for combinations of required nursing services, therapies, impaired cognition (memory/reasoning difficulties), or difficult behaviors (wandering, abusive behaviors, etc.), and required assistance with the five specified activities of daily living.²³

In order for a person who only has physical assistance needs to score as eligible for Waiver services on the CAT, he or she would need a self-performance code of 3 (extensive assistance) or 4 (total dependence) and a support code of 2 or 3 for three or more of the five specified activities of daily living (bed mobility, transfers, locomotion within the home, eating, and toileting).²⁴

The results of the assessment portion of the CAT are then scored. If an applicant's score is 3 or higher, the applicant is medically eligible for Waiver services.²⁵

As found above, Ms. S does not have extensive physical assistance needs with any of her five scored ADLs. She is not eligible for Waiver services based upon those. She does, however, require limited assistance with locomotion. This is insufficient to qualify her for Waiver services by itself.

The evidence shows that Ms. S has a prescription for physical therapy. This would qualify her for Waiver services, if she was actually receiving physical therapy five or more days per week. It would also provide her with one point toward her eligibility if she was receiving physical therapy three or four days per week.²⁶ She, however, is not actually receiving physical therapy due to transportation issues. As a result, her physical therapy is not a factor that can be taken into consideration.

Ms. S provided both photographs and medical records showing that she has ongoing issues with foot care, foot wounds, and cellulitis. As with physical therapy, this would either qualify her, or help to qualify her, for Waiver eligibility if she was receiving prescribed professional

²³ Ex. F, p. 29.

²⁴ Ex. F, p. 29.

²⁵ Ex. F, p. 29.

²⁶ Ex. F, pp. 14, 29.

services from a registered nurse for irrigation/medication application/sterile dressings.²⁷ However, there is no evidence in the record showing that she is actually receiving prescribed care from a registered nurse for those conditions. As a result, her foot care, foot wounds, and cellulitis are not factors that can be taken into account.

Ms. S had the burden of proof to establish that she was eligible for Waiver services. Although she requires limited assistance with transfers, this does not qualify her for Waiver services. Her foot and leg issues and physical therapy needs do not assist her in qualifying, because she is not actually receiving prescribed services in those areas.

B. PCA Assistance

The Division uses the CAT to also determine not only Waiver eligibility but also the amount of PCA services a person receives. The codes assigned to a particular ADL or Instrumental Activity of Daily Living (IADL)²⁸ determine how much PCA service time a person receives for each occurrence of a particular activity. For instance, if a person is coded as requiring extensive assistance (code of 3) with bathing, he or she would receive 22.5 minutes of PCA service time each time he or she is bathed.²⁹ The regulations do not provide the Division with the discretion to change the amounts specified for an activity.

The specific areas in dispute are:

1. Transfers

As discussed above, it is more likely true than not true that Ms. S requires limited assistance (code of 2) for transfers 28 times per week.

2. Toileting

As discussed above, Ms. S has not demonstrated that she requires toileting assistance.

3. Locomotion to Access Medical Appointments

As discussed above, Ms. S should continue to receive limited assistance with this activity once weekly.

4. Personal Hygiene

As discussed above, Ms. S no longer requires assistance with personal hygiene.

²⁷ Ex. F, pp. 13, 29.

²⁸ Instrumental Activities of Daily Living include light and main meal preparation, housekeeping, shopping, and laundry. They are scored slightly differently than the ADLs. Ex. D, pp. 7 – 8.

²⁹ See 7 AAC 125.024(a)(1) and the Division's *Personal Care Assistance Service Level Computation* chart contained at Ex. B, pp. 44 - 46.

5. Instrumental Activities of Daily Living

As discussed above, Ms. S can participate with laundry, but requires help (self-performance code of 2, support code of 3). Her incontinence, however, entitles her to receive an additional amount of assistance with laundry.³⁰

6. Other Disputed Issues

Ms. S no longer requires personal hygiene assistance. Personal hygiene assistance is a prerequisite for receiving for both medication assistance and for bandages/dressing assistance.³¹ As a result, she cannot receive medication assistance, even though there was some evidence that she requires reminders for this activity. Nor can she receive PCA assistance for bandaging/dressing her feet. In addition, given the lack of a prescription, she is not entitled to receive PCA assistance for foot care.

IV. Conclusion

Ms. S is not eligible for Medicaid Waiver services. The denial of her application is upheld.

As discussed above, the reduction in Ms. S's PCA services is upheld for the most part. However, she should continue to receive limited assistance with transfers 28 times per week, limited assistance with locomotion to access medical appointments once weekly, and physical assistance (self-performance code of 2, support code of 3) with laundry due to incontinence issues.

DATED this 3rd day of March, 2016.

Signed

Lawrence A. Pederson
Administrative Law Judge

³⁰ See Division's *Personal Care Assistance Service Level Computation* chart contained at Ex. B, p. 44.

³¹ See Division's *Personal Care Assistance Service Level Computation* chart contained at Ex. B, pp. 44 - 45.

Adoption

The undersigned, by delegation from the Commissioner of Health and Social Services, 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 17th day of March, 2016.

By: Signed _____
Name: Lawrence A. Pederson
Title/Agency: Admin. Law Judge, OAH

[This document has been modified to conform to the technical standards for publication.]