

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

In the Matter of)
)
 M D)
_____)

OAH No. 13-0564-MDS
Agency No.

DECISION

I. Introduction

M D questioned the reduction of her Medicaid Personal Care Assistance (PCA) services time in the areas of transfers, locomotion, toileting, and personal hygiene, and believes she should also receive escort services.¹ Previously, Ms. D received 29.75 hours of PCA services per week. After her annual assessment, her PCA services were reduced to 11 hours per week. The reduction is due to the Division of Senior and Disabilities Services' (division) conclusion that Ms. D no longer requires the same level of assistance as she did in the past to perform certain activities of daily living (ADLs).² The division's conclusions as to the ADLs of transfers, toileting, and escort services are not supported by the record. The division's decision as to these ADLs is reversed with instructions to recalculate the number of authorized minutes of PCA services in accordance with this decision. All other aspects of the division's Consumer Assessment Tool (CAT) dated February 5, 2013 are affirmed.

II. Facts

Ms. D is a 48-year-old woman who is six feet tall and receives PCA services. She has been diagnosed with a number of conditions, including obesity, hypertension, and intravertebral disc disorder (lumbar and cervical) paralysis.³ In 2012 she suffered a broken leg, which has since mended, although it can be painful. Ms. D testified that her left side is weak and will experience spasms. The assessor noted that Ms. D's grip was strong on both the left and right, and except for placing her hands across her chest and standing up, she was able to complete the functional assessment.⁴ She walks with the assistance of either her walker or a cane. In the last year Ms. D moved into a new apartment, which is larger, so she can locomote more easily with

¹ Facsimile received at August 5, 2013 hearing from Ms. D's program coordinator.

² A recent regulatory change may have also resulted in a reduction of PCA time; however, Ms. D's challenge is limited to the assessor's factual conclusions and the resulting scores.

³ Exhibit E at 3.

⁴ Exhibit E at 4.

her walker. However, she prefers to use her cane while holding onto her PCA out of a fear that she might fall. The division has a record of one urgent care visit as a result of a fall; however, Ms. D and her PCA testified that she has fallen more than once. She has recently changed to a new care agency because the prior care agency was not filing incident reports each time she fell.

Ms. D testified that she is looking for a person to act as her power of attorney because she is suffering from early Alzheimer's and dementia. She has short term memory issues and keeps track of her appointments on a calendar. The division assessed her cognitive skills for daily decision-making as "modified independence," meaning that Ms. D has some difficulty in new situations.⁵

The division did not observe Ms. D outside of her apartment. Ms. D testified that she relies upon a wheelchair out of her home and that she cannot get into or out of a car without assistance. She also spoke of needing assistance in waiting rooms and during medical appointments.

PCA recipients are assessed annually with a CAT to determine what physical assistance is required to perform an ADL (performance) and how often physical assistance is required (frequency). Ms. D's 2013 assessment was conducted by Marianne Sullivan, RN. Ms. D's daughter, X Q, and PCA provider, N W, were present throughout the assessment.

Ms. Sullivan based her assessment on her observations, information gathered during the assessment, and what she reasonably believed could be inferred from those observations and information.

Ms. D submitted a document identifying those areas of the CAT she does not agree with. These are:

Activity	Prior Scores / Frequency	Current Scores / Frequency
Transfers	3/2 and 42	2/2 and 14
Locomotion	3/2 and 42	2/2 and 14
Toileting	3/2 and 42	0/0 and 0
Hygiene	2/2 and 7	0/0 and 0
Escort ⁶	60 min per week	0 min per week

⁵ Exhibit E at 5.

⁶ Ms. D believes the division marked the wrong box – it marked transportation and she believes it should be escort. Therefore, escort is addressed in this decision. Transportation is not needed because it is provided by Redi Rides.

III. Discussion

A. PCA Program

The purpose of the PCA program

is to provide a recipient physical assistance with activities of daily living (ADL), physical assistance with instrumental activities of daily living (IADL), and other services based on the physical condition of the recipient[. ⁷]

The division uses the Consumer Assessment Tool (CAT) to assess the level of assistance needed.⁸ The amount of time allotted for that assistance is determined by the Personal Care Assistance Service Level Computation.⁹ This document shows the amount of time allotted for each ADL or IADL depending on the level of assistance needed for each task.

The division may change the number of hours of allotted PCA time if there has been a material change in the recipient's condition.¹⁰ When, as in this case, the division wishes to reduce the amount of allotted time, the division has the burden of proving a change of condition justifying that reduction.¹¹

B. Ms. D's Assessment

Ms. D questions the reduction of PCA time in the areas of transfers, locomotion, toileting, hygiene, and escort.

1. Transferring

The assessor based her conclusions, regarding the amount of physical assistance Ms. D requires to complete the ADLs of toileting and transferring, on Ms. D's statement that she uses her cane or walker to help her get out of bed and mostly needs help getting off the couch. The assessor reasoned that, because Ms. D can transfer out of bed using her walker and cane, she can use these devices to transfer from surfaces other than her overstuffed couch. The assessor described how she would expect Ms. D to use the bathroom counter top to assist her when toileting.

⁷ 7 AAC 125.010(a).

⁸ 7 AAC 125.020(b).

⁹ 7 AAC 125.024(1).

¹⁰ 7 AAC 125.026(a). Time may also be reduced if the recipient was receiving time for services that are no longer authorized because of a change in regulation. 7 AAC 125.026(d)(3)(C).

¹¹ 7 AAC 49.135.

These conclusions were never verified by the assessor. The assessor did not walk through Ms. D's apartment or observe Ms. D transfer from any surface other than the couch. The unchallenged testimony is that it is the height of Ms. D's bed – 3 feet 6 inches – that permits her to transfer from the bed without assistance. This height is not replicated on her couch, other chairs, or the toilet.

In addition, the transfer the assessor did observe, from the overstuffed couch, required a one person weight bearing physical assist. The assessor did not observe Ms. D perform any transfers other than from the couch. Therefore, the reason given to support the assessor's scores (performance, support, and frequency) is not supported by the record. Ms. D requires extensive weight bearing assistance to get up when transferring from sitting to standing. Accordingly, the record supports a self performance/support score of 3/2.

Because of the faulty premise, the frequency score was also understated. The prior CAT assessed a weekly frequency of 42, or six transfers a day. This is a reasonable number. The division has not met its burden of proving a material change that would justify a reduction in PCA services for transfers.

2. Toileting

The ADL of toileting captures how a person moves to and from the toilet, transfers on and off the toilet, general hygiene care, and routine incontinence care.¹² For the ADL of toileting, as with the ADL of transfer, the record supports a self performance/support score of 3/2.¹³ She was previously scored at a 3/2. The current assessment scores 0/0. Ms. D is requesting a score of 2/2.

The prior CAT assessed a weekly frequency of 42 per week, or six times daily. However, the record continues to support a performance score of 3/2 because Ms. D requires a one person physical weight bearing support to transfer off of low surfaces. She is looking into getting a higher toilet seat which may provide her with more independence, but until then Ms. D requires extensive assistance. The prior CAT assessed a weekly frequency of 42 per week, or six times a day. This is a reasonable number. The division has not met its burden of proving a material change that would justify a reduction in PCA services for toileting.

¹² 7 AAC 125.030(b)(6); Exhibit E at 9.

¹³ Exhibit E at 9.

3. Locomotion

The ADL of locomotion is defined as walking with support between locations in the recipient's home.¹⁴ A performance score is based on what type of physical assistance must be provided for Ms. D to complete the ADL of locomotion. The division assessed a performance score of 2/2 with a frequency of 14 times a week. Her prior performance score was 3/2 with a frequency of six times per day, or 42 times a week.

During the assessment, Ms. Sullivan observed Ms. D demonstrate that she has limited weight bearing on her right leg because of pain, and moves "w/single wooden walking stick/cane in one hand and holding onto friends arm with the other."¹⁵ When she is home alone, Ms. D uses her walker, but prefers to use her cane with the assistance of her PCA. Ms. D is very concerned about falling. She reported falls to her prior care agency but they did not forward her reports to the division. The division has no record of the falls. It is possible that the falls were not severe enough to warrant an incident report. Regardless of the past falls, it is undisputed that Ms. D requires assistance (walker, cane, or person) to steady herself and has leg pain with weight bearing. Because Ms. D is highly involved in the ADL of locomotion and she can perform the task without weight bearing assistance, a performance score of 2/2 is appropriate. However, the division has not met its burden of proving a material change that would justify a reduction in the frequency score.

4. Escort/Transportation

The assessor's scoring of transportation is based on the person's involvement in the past 30 days; it was noted that Ms. D needed transportation.¹⁶ The assessor correctly scored transportation because it is provided by Redi Ride.

Ms. D believes the assessor should have marked that she needed escort to medical appointments. Escort services are included in other personal care services that may be provided.¹⁷ Escort includes, but is not limited to

Travelling with the recipient to and from a routine medical or dental appointment outside the recipient's home and conferring with medical or dental staff during that appointment.¹⁸

¹⁴ 7 AAC 125.030(b)(3).

¹⁵ Exhibit E at 7.

¹⁶ Exhibit E at 26.

¹⁷ 7 AAC 125.030(d)(9).

¹⁸ 7 AAC 125.030(d)(9).

Ms. D requires extensive weight bearing assistance to get up. As discussed above, Ms. D requires physical assistance with transfers and locomotion. She was not observed locomoting outside of the home. The division did not challenge Ms. D's testimony that she required more extensive assistance to locomote outside of the home. It is undisputed that Ms. D has memory impairment and has difficulty with new situations. A medical appointment is a new situation with new information to be processed and remembered.

While she does receive transportation services, she does not receive escort services within the scope of the regulation's definition of covered services. Ms. D was previously allowed time for escort services when attending medical appointments.¹⁹ The division has not proven a material change in her condition to justify the removal of time for this activity. Ms. D is eligible for PCA time for escorting her to medical and dental appointments.

5. Personal Hygiene

Ms. D needed limited assistance with personal hygiene in 2009, but her current assessment shows she reported that she was independent in this task.²⁰ Ms. D agrees with Ms. Sullivan that she can lift both hands over her head, but contends this does not make her independent. Because she has problems controlling her left side, Ms. D is requesting assistance with her hair, shaving, and nail care. The division has met its burden of proof as to personal hygiene based upon the functional assessment results. The division's score for this ADL is correct.

IV. Conclusion

The division has not met its burden of proving a material change in Ms. D's condition that would justify the decision of reducing the amount of PCA services she receives for transfers, toileting, and escort. Accordingly, the division shall recalculate her service level authorization in a manner consistent with the findings in this decision. If Ms. D disagrees with the new calculation, she may appeal that determination pursuant to 7 AAC 49.030.

//

//

//

//

¹⁹ Exhibit D at 4.

²⁰ Exhibit D at 3. Exhibit E at 10.

All other aspects of the division's Consumer Assessment Tool dated February 5, 2013 are affirmed.

DATED this 4th day of October, 2013.

Signed

Rebecca L. Pauli

Administrative Law Judge

Adoption

The undersigned, by delegation from of 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 14th day of October, 2013.

By: *Signed*

Signature

Lawrence A. Pederson

Name

Administrative Law Judge

Title

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