



On March 15, 2013, the division received a Change of Information from Ms. X that was sent by facsimile from No Names, where Ms. X lives.<sup>6</sup> Ms. X's signature is on the document, dated March 15, 2013. The COI is a request for "additional hours," based on a prescription written by U P, PA-C. The prescription is for "Rx for patient to walk 1 hour daily, on an ongoing basis."<sup>7</sup>

The division denied Ms. X's request for additional time and she filed an appeal.

### III. Discussion

#### A. *The 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.<sup>[8]</sup>

The division uses the CAT to help it assess the level of assistance needed for a particular recipient.<sup>9</sup> The amount of time allotted for assistance in each area is determined by the Personal Care Assistance Service Level Computation chart.<sup>10</sup> The Service Level Computation chart shows the amount of time allotted for each ADL or IADL depending on the level of assistance needed for each task.<sup>11</sup>

The different levels of assistance in Ms. X's January 16, 2013 assessment are not at issue in this appeal. It is limited specifically to the narrow issue whether she is entitled to additional PCA time for walking based on the COI she submitted on March 15, 2013.

The division may change the number of hours of allotted PCA service if there has been a material change in the recipient's condition.<sup>12</sup> When the division wishes to reduce the amount of time allotted to the recipient, the division has the burden of proving a change of condition justifying that reduction.<sup>13</sup> When the recipient is seeking additional time for specific services, he or she has the burden of justifying the need for the increase.<sup>14</sup> In this case, Ms. X has the burden of proof because she is requesting additional time for the COI.

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<sup>6</sup> Exhibit F2.  
<sup>7</sup> Exhibit F4.  
<sup>8</sup> 7 AAC 125.010(a).  
<sup>9</sup> 7 AAC 125.020(b).  
<sup>10</sup> 7 AAC 125.024(1).  
<sup>11</sup> 7 AAC 125.026(d)(3)(C).  
<sup>12</sup> 7 AAC 125.026(a).  
<sup>13</sup> 7 AAC 49.135.  
<sup>14</sup> *Id.*

**B. Amendment Request: Range of Motion Exercises, Walking, and Foot Care**

The regulation governing PCA service plan amendment requests (known as "Changes of Information" or "COIs") is 7 AAC 125.026. The regulation provides in relevant part:

(a) If the department confirms that a recipient has had a material change in condition, the department may increase, reduce, or terminate services or the number of hours of service authorized under 7 AAC 125.010 - 7 AAC 125.199.

. . . .

(d) For purposes of this section, a material change in condition is confirmed if the department had determined in its records that . . . (1) the recipient's medical condition has changed since the last assessment . . . .

Under 7 AAC 125.026(a), there is a threshold that must be met before a change to a recipient's PCA service level authorization can be made by the Department. That threshold is the Department's confirmation "that [the] recipient has had a material change in condition." The phrase "material change in condition" is defined, for purposes of the PCA program, by 7 AAC 125.026(d). Subsection (d) specifies the different situations which "confirm" that there has been a "material change in condition." These scenarios are:

- (1) the recipient's medical condition has changed since the last assessment;
- (2) the recipient's living conditions have changed since the last assessment, including an improvement in the physical living environment, supportive services, or caregiver services;
- (3) the recipient was receiving personal care services based on a prescription for foot care, walking and simple exercises, or range of motion or stretching exercises, and that amendment has expired;
- (4) the recipient was receiving personal care services under a time-limited amendment to the recipient's personal care service level authorization, and that amendment has expired; or
- (5) the recipient's PCA services are no longer authorized under 7 AAC 105 - 7 AAC 160 due to a regulation change.

Again, based on the language of 7 AAC 125.026(a), only if the department first confirms that a recipient has had a material change in condition, as defined by 7 AAC 125.026(d), can it then "increase, reduce, or terminate services or the number of hours of service authorized[.]" In this case, Ms. X submitted a COI / PCA service plan amendment request on March 15, 2013. The COI was supported by a document from a PA-C that states "Rx for patient to walk 1 hour daily."<sup>15</sup>

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<sup>15</sup> Exhibit F4.

On June 20, 2013 the division issued a notice denying Ms. X's COI. That notice states that

Upon review of this COI request it is denied for the provider did not use the PTF that would have supplied additional information necessary to process this request and the client was assessed recently as independent in locomotion. There was no other clinical information submitted or received that would indicate a change [in] this client's ability to walk on her own.<sup>[16]</sup>

Although the term "PTF" was not explained in the division's notice to Ms. X, the notice did make a threshold determination under 7 AAC 125.026(a) that Ms. X had failed to demonstrate a material change in condition. It concludes essentially that Ms. X was recently assessed as independent in locomotion (in the January 16, 2013 CAT), and that since then, there had been no medical documentation to indicate she could no longer walk on her own.

Ms. X believes that the central issue in her appeal is whether she submitted a new walking prescription before the January 20, 2012 prescription expired. She testified that she provided a new prescription for walking on or about December 31, 2012, and that she gave it to one of the division staff that attended her January 2013 assessment. There is no evidence of that prescription in the record. However, even if there were, Ms. X has not met her burden of proof in this appeal.

Under 7 AAC 125.026(d), a material change in condition is confirmed if the department has determined that the recipient's medical condition has changed since the last assessment. In this case, the preponderance of the evidence does not indicate that Ms. X's medical condition changed between her January 2013 assessment, when she was scored as independent in locomotion, and her March 2013 amendment request. A new prescription or treatment does not create a material change in condition.

Because Ms. X failed to prove, by a preponderance of the evidence, that a material change in condition occurred between the date of her assessment and the date of her amendment request, the division was correct to deny her PCA service plan amendment request pursuant to 7 AAC 125.026.

#### **IV. Conclusion**

The division was correct to deny Ms. X's service plan amendment request (seeking additional PCA time for walking) because she failed to demonstrate a material change in her

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<sup>16</sup> Exhibit D2.

condition to justify the amendment. Accordingly, the division's decision denying Ms. X's service plan amendment request is affirmed.

Dated this 3<sup>rd</sup> day of April, 2014.

*Signed* \_\_\_\_\_

Kay L. Howard

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 17<sup>th</sup> day of April, 2014.

By: *Signed* \_\_\_\_\_

Name: Kay L. Howard

Title: Administrative Law Judge

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