

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

In the Matter of)
)
 F X)
_____)

OAH No. 13-1030-MDS
Agency No.

DECISION

I. INTRODUCTION

Following a reassessment in 2013, the time allotted for F X’s personal care assistance was reduced from 34 hours to 15.5 hours. Ms. X appealed.

The 2013 reassessment eliminated personal care assistance time for body mobility, and reduced the frequency for personal hygiene assistance to once per day. Both of these reductions are consistent with the governing regulations, and are affirmed. The evidence showed, however, that Ms. X is more dependent on assistance than was indicated in the 2013 assessment for dressing, toileting, personal hygiene, shampooing, and bathing. She also needs more toileting time than was allotted in the 2013 assessment. The time allotted for all of these tasks should be increased.

II. FACTS

F X is 69 year old woman who suffers from severe Rheumatoid Arthritis, and has several other medical issues.¹ Because of her severe condition, she remains in bed most of the day, and only spends a short period of time out of bed in her wheelchair. She can do some activities of daily living—for example, she can feed herself—but for most activities she needs extensive assistance or is dependent on an assistant.

The Department of Health and Social Services, Division of Senior and Disability Services, will provide a personal care assistant to help eligible recipients with activities of daily living.² To determine the level of assistance a recipient needs, the Division will assess the recipient using a standardized assessment format, called the Consumer Assessment Tool (CAT). Under the CAT, the assessor will assign a numerical score for each of several activities of daily living (ADLs)—tasks like walking, eating, and so on—and for several instrumental activities of

¹ Division Exhibit E at 3.

² 7 AAC 125.010.

daily living (IADLs)—tasks like cooking, housework, and so on. Scores are divided into two categories, a “self-performance” score, and a “support” score. (The meaning of the score received is defined differently for ADLs than for IADLs). As a general matter, personal care assistance minutes are assigned for scores that show that the recipient needs actual hands-on assistance to accomplish the ADL or IADL. Scores that show independence or need for only supervision, set-up help, or cueing will not qualify for assistance.³

The parties agree that Ms. X qualifies for personal care assistance—the only question here is how many hours per week Ms. X should receive. In 2012, Ms. X was assessed under the CAT as needing 34 hours per week.⁴ On March 28, 2013, Ms. X was reassessed by Registered Nurse Denise Kichura to qualify for only 15.50 hours per week.⁵ The Division notified Ms. X of the reduction in services on July 8, 2013.

Ms. X disputed the reassessment, and requested a fair hearing. A telephonic hearing was held on October 10, 2013. Angela Ybarra represented the Division. Ms. X represented herself, assisted by her care coordinator P Z. Ms. Kichura was not available to testify. Anita Halterman testified on behalf of the Division, and explained the CAT and the regulatory basis for the scoring.

III. DISCUSSION

Only some of the issues assessed in the 2013 CAT are in dispute. During the hearing, the parties generally agreed on the following rulings regarding the issues in dispute. For those issues where the time allotted was decreased because of regulatory requirements, Ms. X stated she understood the outcome. For those issues where the testimony revealed that Ms. X’s activity should receive a higher support score or additional time, Ms. Halterman stated that she understood the testimony, and had no objection to the higher score. The issues discussed at hearing, and the rulings on those issues, are as follows:

- *Body Mobility.* Ms. X clearly is non-ambulatory and clearly needs assistance to turn and move in bed. However, the Department’s publication *Personal Care Service Level Computation*, which is adopted into regulation, explains that the frequency of assistance for body mobility will be reduced by the frequency provided for other ADLs that involve body

³ For a full explanation of how the CAT is scored, and what the numerical scores mean for ADLs and IADLs, see, for example, *In re LB*, OAH No. 12-406-MDS at 7-8 (2012 Comm’r Health and Soc. Serv.) available at <http://aws.state.ak.us/officeofadminhearings/Documents/MDS/PCA/MDS120406.pdf>.

⁴ Division Exhibit A at 2.

⁵ *Id.*

movement.⁶ Thus, if a recipient requires assistance for twelve or more times per day for other ADLs involving movement, such as bathing, toileting, locomotion, dressing, or transfers, the recipient will not be given any separate time for body mobility. Here, Ms. X receives assistance for more than twelve ADLs involving movement, and is not entitled to additional time for body mobility. Therefore, the Division's determination to award zero minutes for body mobility is affirmed.

- *Dressing.* Ms. Kichura scored Ms. X as needing limited assistance in dressing.⁷ The evidence showed, however, that because of the limitations in her mobility, Ms. X could do little more than extend her arms, and needed extensive assistance in order to be dressed. The ADL of dressing should be given a self-performance score of three and a support score of two.

- *Toileting.* In 2012, Ms. X was scored as being fully dependent on assistance for toileting, and was designated as needing to use the toilet eight times per day.⁸ Ms. Kichura scored Ms. X as needing extensive assistance for toileting, and designated Ms. X as needing to use the toilet six times per day.⁹ The evidence showed that Ms. X is bedridden and that "toileting" for Ms. X means that her incontinence products are changed by the personal care assistance while Ms. X remains in bed. Although Ms. X told the assessor that she will turn herself in bed to help the changing process, the evidence showed that Ms. X cannot assist in the actual changing process because of the limited mobility of her hands.¹⁰ In addition, Ms. X testified that if she was changed only six times per day, she was often wet, and that the bed and her clothes were wet also.¹¹ The ADL of toileting should be given a self-performance score of four and a support score of two, and should be allotted at eight times per day.

- *Personal Hygiene.* Ms. Kichura scored Ms. X as needing limited assistance in personal hygiene.¹² The assessment asserts that Ms. X could wash her hands and face.¹³ Ms. X testified, however, that while she could maneuver her hands into the water, when she tried to dry her hands by herself she would drip water on the floor and on her clothes because she could not

⁶ *Personal Care Service Level Computation*, adopted by reference in 7 AAC 160.900; available at <http://dhss.alaska.gov/dsds/Documents/pca/PCA%20Service%20Computation.pdf>.

⁷ Division Exhibit E at 8.

⁸ Division Exhibit F at 9.

⁹ Division Exhibit E at 9.

¹⁰ X testimony.

¹¹ *Id.*

¹² Division Exhibit E at 10.

¹³ *Id.*

effectively hold the towel.¹⁴ She could not brush her hair.¹⁵ This evidence shows she needs extensive assistance with personal hygiene. The ADL of personal hygiene should be given a self-performance score of three and a support score of two. The Division's determination that personal hygiene is limited to once per day is consistent with the regulatory requirement, and is affirmed.¹⁶

- *Shampooing.* In 2012, Ms. X was allotted time for shampooing.¹⁷ In 2013, Ms. X was not allotted time for shampooing separately from bathing.¹⁸ The evidence showed that Ms. X's bathing activity is a sponge bath and that shampooing is a separate activity.¹⁹ Because Ms. X cannot lift her arms over her head, she is dependent on others to perform this activity. The ADL of shampooing should be given a self-performance score of four and a support score of two, and allotted time for three times per week.

- *Bathing.* In 2012, Ms. X was scored as being fully dependent on assistance in order to bathe.²⁰ Ms. Kichura scored Ms. X as only needing physical help for part of the bathing activity.²¹ The testimony showed that Ms. X was given sponge baths while in bed.²² She could not effectively participate in this activity and was totally dependent on her personal care assistant. The ADL of bathing should be given a self-performance score of four and a support score of two.

IV. CONCLUSION

The Division correctly determined that Ms. X should not be allotted personal care assistance time for body mobility, and that assistance with personal hygiene should be provided once per day. The 2013 assessment was in error, however, on the self-performance scores for dressing, toileting, personal hygiene, shampooing, and bathing, and on the frequency of toileting. No other aspects of the 2013 assessment were in dispute.

¹⁴ X testimony.

¹⁵ *Id.*

¹⁶ *See Personal Care Service Level Computation.* Although the 2012 assessment allowed four times per day for personal hygiene, Ms. Halterman testified that was an error.

¹⁷ Division Exhibit D at 6.

¹⁸ *Id.*

¹⁹ X testimony; Z testimony.

²⁰ Division Exhibit F at 11.

²¹ Division Exhibit E at 11.

²² X testimony; Z testimony.

The Division's decision is affirmed in part and reversed in part, and remanded with instructions to recalculate the time for Ms. X's personal care assistance consistent with this decision.

DATED this 11th of October, 2013.

By: Signed
Stephen C. Slotnick
Administrative Law Judge

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 6th day of November, 2013.

By: Signed
Signature
Terry L. Thurbon
Name
Chief Administrative Law Judge
Title

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