

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

In the Matter of	)	
	)	OAH No. 13-1051-MDS
F M	)	Agency No.
_____	)	

**DECISION**

**I. Introduction**

F M is a recipient of Personal Care Assistance (PCA) services. The Division of Senior and Disabilities Services (division) reassessed her condition and notified Ms. M that her PCA services would be reduced from 24.75 hours per week to 5.50 hours per week. Ms. M contested that determination, and requested a hearing.

The hearing was held on November 13, 2013. Ms. M testified on her own behalf, and called her ex-husband S M as a witness. The Division of Senior and Disabilities Services (division) was represented by its lay advocate, Shelly Boyer-Wood. Teresa Burnett and Sharon Girouard testified on behalf of the division.

The division met its burden of proving that some of the reductions were appropriate. However, a material change to justify other reductions was not proven. Accordingly, the division must recalculate the number of PCA hours for which Ms. M is eligible.

**II. Facts**

Ms. M has been diagnosed with several serious health conditions.<sup>1</sup> As a result of her illnesses, she has been receiving PCA services for about fifteen years.<sup>2</sup> Her PCA has been her former husband, S M. Mr. M testified that they were living in California when Ms. M first needed PCA services. The California social services told them that they should get divorced so that Mr. M could serve as his wife's PCA. Their divorce was effective on June 27, 2002.<sup>3</sup> They have continued to live together since that time.

On April 4, 2013, division nurse Elena Mitchell reassessed Ms. M's need for PCA services using the Consumer Assessment Tool (CAT).<sup>4</sup> On July 18, 2013, the division

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<sup>1</sup> Exhibit E3.  
<sup>2</sup> Testimony of F. M; S. M.  
<sup>3</sup> Dissolution of Marriage submitted by Ms. M after the hearing.  
<sup>4</sup> Exhibit E.

notified Ms. M that the amount of time authorized for her PCA services would be reduced.<sup>5</sup> On August 27, 2013, Ms. M fell and sustained multiple injuries.<sup>6</sup> As a result, her functional ability has declined.<sup>7</sup>

### III. Discussion

#### A. *The PCA Program*

The division's regulations state that the purpose of the PCA program is to: provide to 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, as determined through a functional assessment of self-performance and physical supports.<sup>[8]</sup>

The division uses the CAT to assess the level of assistance a recipient needs.<sup>9</sup> The amount of time allotted for that assistance is determined by the Personal Care Assistance Service Level Computation.<sup>10</sup> This document shows the amount of time allotted for each ADL or IADL depending on the level of assistance needed for each task.

The different levels of assistance are defined by regulation and in the CAT.<sup>11</sup> They are supervision, limited assistance, and extensive assistance. Supervision is defined as oversight, encouragement, or cueing three or more times a week, with physical assistance no more than two times a week.<sup>12</sup> Limited Assistance is defined as requiring direct physical help or guidance from another individual three or more times a week, with weight bearing support no more than two times a week.<sup>13</sup> Extensive Assistance is defined as requiring direct physical help with weight bearing support at least three times a week, or full assistance without any involvement from the recipient at least three times a week, but not all of the time.<sup>14</sup>

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<sup>5</sup> Exhibit D.

<sup>6</sup> Testimony of F. M.

<sup>7</sup> Testimony of F. M.

<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> The July 29, 2009 version of the CAT has been adopted by reference, 7 AAC160.900(d)(6), and therefore the definitions in the CAT have the same effect as a regulation.

<sup>12</sup> Exhibit E6.

<sup>13</sup> 7 AAC 125.020(a)(1); Exhibit E6.

<sup>14</sup> 7 AAC 125.020(a)(2); Exhibit E6.

The division may change the number of hours of allotted PCA time if there has been a material change in the recipient's condition.<sup>15</sup> 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.<sup>16</sup>

***B. The Relevant Date for Determining Ms. M's Condition***

Ms. M was evaluated with the CAT on April 4, 2013.<sup>17</sup> She was notified of the division's determination with a letter dated July 18, 2013.<sup>18</sup> Normally, the date the CAT is administered will be close to the date the assessment decision is made, and there will be little if any change in the recipient's condition between those dates. Here, there was a delay of more than three months before the review of the CAT was completed and a decision was made. However, it is the July 18, 2013 decision that is being appealed. This is consistent with a decision involving termination of a recipient's participation in the Choice Waiver program. In that case, the Commissioner's delegee determined that the relevant date for assessing the recipient's condition was the date of the division's decision to terminate waiver services.<sup>19</sup> It makes sense for the division to handle both Choice Waiver and PCA review decisions in a similar manner and accept new evidence about the recipient's condition up to the date it makes the decision concerning the amount of PCA services a recipient is entitled to receive. Similarly, when reviewing the division's decision, it makes sense to look at a recipient's condition on the date that decision was made. Thus, for purposes of this decision, the administrative law judge looks at the amount of PCA services Ms. M needed on July 18, 2013.

In August 2013, Ms. M sustained injuries to her head and left arm as the result of a fall in her home. Both she and her PCA testified that her ability to perform ADLs and IADLs declined after that fall. Because this occurred after July 18, 2013, that change is not considered for this hearing. Instead, Ms. M would need to submit a Change of Information requesting additional services based on her increased needs.

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<sup>15</sup> 7 AAC 125.026(a). The amount of time for PCA services 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).

<sup>16</sup> 7 AAC 49.135.

<sup>17</sup> Exhibit E.

<sup>18</sup> Exhibit D.

<sup>19</sup> *In re TC*, OAH No. 13-1204-MDS (Commissioner of Health and Social Services 2013), pgs. 5-9, available at <http://aws.state.ak.us/officeofadminhearings/Documents/MDS/HCW/MDS130204.pdf>

**C. *The Reduction in PCA Time is Affirmed in Part and Reversed in Part***

**1. Activities of Daily Living (ADL)**

As noted above, the division has the burden of proving a material change in Ms. M's condition to support each reduction in PCA hours.<sup>20</sup> Those reductions are summarized in Exhibit D.

The first change was in the ADL of transferring. Transfers occur when a person moves from one surface to another; for example, from a bed to a standing position, or from standing to sitting in a chair.<sup>21</sup> Ms. M was previously scored a 2/2 for transfers, meaning she needs limited assistance.<sup>22</sup> The division's assessment changed this score to 1/1, needing supervision only. The assessor noted on the CAT that Ms. M was seen standing up and sitting down twice without receiving assistance from her PCA.<sup>23</sup> Ms. M testified that she does better on some days than she does on others. She stated that she can get up by herself "sometimes" but that she often needs someone to hold her hand or her arm when she sits or stands up. This is not inconsistent with the assessor's observation that she was able to stand and sit independently during the assessment. Ms. M has required PCA services for 15 years, and there is nothing in her various diagnoses that suggests her ability to transfer would improve. The division has not met its burden of proving Ms. M no longer requires limited assistance at least once per day. She should have been scored with a 2/2 in this ADL.

The next change was in the ADL of dressing. Ms. M was previously scored a 2/2 in this category, also. The assessment concluded that Ms. M went from needing limited assistance twice a day to needing set up help only, a score of 1/1. The assessor noted that Ms. M said she got dressed independently that day, and was wearing her usual t-shirt and sweat pants. However, Ms. M testified that she needs physical help getting dressed. She is unable to lift her legs to get them into her pants. Her PCA assists her with her pants, and then she is able to pull them up herself. The division has not met its burden of proving Ms. M no longer needs limited assistance with dressing and undressing each day. She should have been scored with a 2/2 in this ADL.

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<sup>20</sup> As noted above, the material change must have occurred no later than July 18, 2013.

<sup>21</sup> Exhibit E6. Transfers to and from the toilet or bath are part of those ADLs, and not included within the ADL of transferring.

<sup>22</sup> Exhibit F6.

<sup>23</sup> Exhibit E6.

The ADL of eating is how a person feeds herself, regardless of skill, after the meal has been prepared. In the prior assessment, Ms. M reported that she sometimes had issues with swallowing, and received a score of 1/1.<sup>24</sup> In the current CAT, Ms. M was assessed as going from needing supervision to being independent, a score of 1/1. At the hearing, she testified that she sometimes chokes on her food, and swallowing can be difficult because of her thyroid problems. Based on the evidence in the record, there has been no material change in Ms. M's ability to eat by herself without supervision. The division correctly scored her with a 1/1 and that score is affirmed.

For the ADL of toileting, the assessment changed from needing limited assistance, 2/2, to needing supervision and set up help only, a score of 1/1. The prior assessment noted that Ms. M used the door handle to help her sit down and stand up, with her PCA providing "one arm guided assist."<sup>25</sup> This is consistent with how Ms. M described using the toilet during the hearing. She explained that she held onto the door knob and that her PCA would either hold her hand or her arm while she sat down and again when she stood up. The one arm guided assist constitutes limited assistance. Ms. M should have been scored a 2/2, with a frequency of six times per day, the same as the prior CAT.

For bathing, Ms. M was scored 2/2 on the previous CAT, meaning requiring physical assistance with the transfer only.<sup>26</sup> The current assessment determined that Ms. M no longer needed limited assistance and gave her a score of 1/1.<sup>27</sup> For the ADL of bathing, a self-performance score of 1 is used for supervision. A self-performance score of 2 indicates assistance is provided for transferring, and a score of 3 indicates some physical assistance is needed with the actual bathing activity. Ms. M testified that her PCA has helped her in and out of the bathtub for the last seven years. Based on the testimony in this case, Ms. M still needs some physical assistance transferring in and out of the tub. Accordingly, she should have received a score of 2/2 for this ADL.

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<sup>24</sup> Exhibit F9.

<sup>25</sup> Exhibit F9.

<sup>26</sup> Exhibit F11.

<sup>27</sup> Exhibit E11.

## 2. Instrumental Activities of Daily Living (IADL)

For the IADL of light meal preparation, Ms. M was assessed a score of 1/2, being able to perform this task with difficulty and requiring set-up help only.<sup>28</sup> She had previously been scored as 3/4, completely dependent.<sup>29</sup> Ms. M is not completely dependent on others in this regard – she can participate somewhat in preparing a light meal. Thus, the division did not meet its burden of proving she can perform this task entirely on her own. A score of 2 for this IADL is defined as “Assistance/done with help; Person involved in activity but help (including supervision, reminders, and/or physical ‘hands on’ help) was provided.”<sup>30</sup> Ms. M can perform this task with some help from her PCA. Thus, a reduction to a score of 2/3 in this IADL is appropriate.<sup>31</sup>

For the IADL of main meal preparation, Ms. M was assessed currently as needing limited assistance, a score of 2/3.<sup>32</sup> She was previously scored as dependent, 3/4.<sup>33</sup> As with light meal preparation, Ms. M can perform some of the tasks with help, and the division’s assessment that she should receive a score of 2/3 is upheld.

The 2013 assessment gave Ms. M a score of 2/3 for grocery shopping and concluded she was capable of performing this IADL with assistance.<sup>34</sup> Ms. M testified she does not like to go to the grocery store, but that if she did, she *could* sit in an electric grocery cart and participate in grocery shopping. Thus, the division correctly assessed her ability in this activity.

The 2013 assessment concluded that Ms. M could perform light housework independently with set-up help only, a score of 1/2, and routine housework with assistance, a score of 2/3.<sup>35</sup> The prior CAT concluded she was dependent on others for both types of housework, which is a score of 3/4.<sup>36</sup> Ms. M testified that she has problems with her balance and walking and that she cannot stand for very long. There are no notes in the 2013 CAT or in Exhibit D explaining why the division thought there was a material improvement

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<sup>28</sup> Exhibit E26.

<sup>29</sup> Exhibit F26.

<sup>30</sup> Exhibit E26.

<sup>31</sup> The testimony at the hearing was that Ms. M did not participate in meal preparation. However, the question to be answered is whether she is *capable* of assisting in that activity.

<sup>32</sup> Exhibit E26.

<sup>33</sup> Exhibit F26.

<sup>34</sup> Exhibit E26.

<sup>35</sup> *Id.*

<sup>36</sup> Exhibit F26.

in Ms. M's ability to perform housework. Therefore, based on the evidence, the division has not met its burden of proving her improvement in this IADL. Accordingly, Ms. M's scores should have remained at 3/4 for both light and routine housework.

Although not identified in Exhibit D, Ms. M's assessment scores for laundry changed between the two assessments. Previously she had been scored as dependent, 3/4, but in her 2013 assessment, she was scored as being able to perform laundry with assistance, a score of 2/3. Ms. M said the laundry wouldn't get done if her PCA didn't do it, but she could perform some of the tasks associated with laundry, such as sorting and folding. Accordingly, the division has met its burden of proof for changing this IADL and the 2/3 score is affirmed.

In her previous assessment, Ms. M had services for transportation and an escort for medical appointments.<sup>37</sup> In the current CAT, the division removed PCA services for her escort to medical appointments, finding that she only needed transportation. However, Ms. M is not able to access transportation or medical appointments without assistance. She cannot transfer into and out of vehicles without help, and she needs assistance with sitting down and standing up in the medical office. PCA services that the division pays for include "traveling 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."<sup>38</sup> The division has not met its burden of proving that escort services should be removed, so this PCA service should be restored.

#### **IV. Conclusion**

It was the division's burden to prove a material change of condition justifying a reduction in Ms. M's PCA services. The division met that burden as to some of the Activities of Daily Living and Instrumental Activities of Daily Living, but not as to all of them. Accordingly, the division must recalculate the number of PCA hours for which Ms. M is eligible, consistent with the findings discussed above. If Ms. M disagrees with that

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<sup>37</sup> Exhibit F26.

<sup>38</sup> 7 AAC 125.030(d)(9).

new calculation, she would have appeal rights as to the limited issue of whether the time was properly calculated.

Dated this 23<sup>rd</sup> day of December, 2013.

*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 2<sup>nd</sup> day of January, 2014.

By: *Signed* \_\_\_\_\_  
Name: Kay L. Howard  
Title: Administrative Law Judge

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