

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

In the Matter of)
)
 F K)
_____)

OAH No. 13-1128-MDS
Agency No.

DECISION

I. Introduction

F K receives Personal Care Assistance (PCA) services. He was re-assessed on April 11, 2013 to determine whether the number of hours of assistance he receives should be changed. The Division of Senior and Disabilities Services (division) determined that his PCA services should be reduced from 19.25 hours per week to 9.25 hours per week. Mr. K appealed that determination.

A hearing was held on September 16, 2013. Mr. K was assisted during the hearing by Mr. S F. The division was represented by a lay advocate, Ms. Angela Ybarra. The division did not meet its burden of proving a material change in Mr. K' condition to justify the reduction of PCA time and, therefore, must recalculate the number of hours of assistance he is eligible to receive.

II. Facts

Mr. K is legally blind.¹ He has been diagnosed with glaucoma, arthritis, and diabetes. Mr. K' lack of vision impairs his ability to move around his home, or to leave the home for shopping, medical appointments, or other activities. It is easier for him to see in bright sunlight, but even then he has difficulties as he can only see shadows and light. Mr. K' vision has deteriorated between the date of his assessment in April, and the division's determination on July 30, 2013.

Mr. K' apartment is on a single level of the third floor of his building. He is able to move around in his own home by holding onto the walls, but he will sometimes get disoriented, or fear that he might fall. He frequently relies on an assistant to guide him by placing his arm on the assistant's shoulder, or by having the assistant place a hand under Mr. K' shoulder.

¹ Testimony of Mr. K; Exhibit E 3; E 21. Unless otherwise noted, the factual findings are based on Mr. K' testimony.

Mr. K must walk down three flights of steps to go outside, something he does daily. His assistant will help him down the stairs, and help him get into the car. Without this help, Mr. K must sit on the stairs and lower himself down each step. If trying to walk independently, he can't see the stairs and is concerned he might miss a step going up or down, which could cause him to fall. When he goes to medical appointments, the assistant helps him into his van, drives him to the appointment, helps Mr. K into the examination room, and stays with him to help answer any of the doctor's questions.

Mr. K can mostly dress himself, but needs help picking out clothes as he cannot tell whether the clothing is color coordinated, or whether a particular item might be dirty or stained. He also needs help with buttoning his clothing because of his arthritis.

Because he cannot see the dials on his stove or oven, Mr. K is not able to cook or prepare his own meals. He is not able to do his own shopping because he cannot see the items he wishes to buy to assess their quality, and he cannot see the prices. He is unable to see his medication, so his assistant puts them in a pill case for the week, arranged so that Mr. K knows which pills to take next.

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[.²]

The division uses the Consumer Assessment Tool (CAT) to assess the level of assistance needed.³ The amount of time allotted for that assistance is determined by the Personal Care Assistance Service Level Computation.⁴ 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.⁵ When, as in the case, the division wishes to reduce

² 7 AAC 125.010(a).

³ 7 AAC 125.020(b).

⁴ 7 AAC 125.024(1).

⁵ 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).

the amount of allotted time, the division has the burden of proving a change of condition justifying that reduction.⁶

B. The Relevant Date for Determining Mr. K' Condition

Mr. K was assessed with the CAT on April 11, 2013.⁷ He was notified of the division's determination with a letter dated July 30, 2013.⁸ Mr. K testified that his vision became worse between April of 2013 and June of that year. At the hearing, the division argued that Mr. K' condition should be evaluated based on the date of the assessment. However, the decision being appealed is the one made on July 30th. 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 lengthy delay before the review of the CAT was completed and a decision was made. However, the result in this case is the same regardless of whether the date of the decision being appealed or the date the CAT was administered is used. The evidence of Mr. K' condition in June, along with the evidence from the 2012 and 2013 CATs, can be used to determine his need for services as of April 11, 2013: the date the CAT was administered.

C. Mr. K' Assessment

Mr. K questioned the reduction of PCA time in the areas of locomotion, dressing, meal preparation, shopping, medications, and medical escort.⁹

1. Locomotion¹⁰

The 2013 CAT scored Mr. K with a self-performance score of 1, indicating he needs supervision for this task.¹¹ Supervision is defined as oversight, encouragement or cueing, with physical assistance less than three times during the last seven days.¹² The assessor's notes state that Mr. K can

locomote independently. He sometimes needs his PCA to guide him to wherever he is going. He uses a cane outside. He says he gets disoriented. Ct was

⁶ 7 AAC 49.135.

⁷ Exhibit E.

⁸ Exhibit D.

⁹ Letter dated September 5, 2013; Testimony of Mr. K.

¹⁰ Locomotion is defined as how a person moves in his or her room, or between rooms on the same floor. Exhibit E 7.

¹¹ *Id.*

¹² *Id.* The notice sent to Mr. K incorrectly states that he was scored as independent with locomotion. See Exhibit D 2.

observed walking out of the kitchen into the living room on his own. He holds on to the walls/furniture to feel out the space around him.^[13]

In the previous CAT, the same assessor gave Mr. K a score of 2, indicating he needs limited assistance, which is defined as physical, help three or more times a week.¹⁴ The notes from the 2012 CAT say

Client needs help walking in his apartment as he became legally blind rapidly over a short period of time. He has not had time to adjust to blindness. He also needs help walking outside. Client was observed walking in his apartment. He was walking extremely slowly trying to find object to avoid bumping into and find walls to hold on to for balance and support.^[15]

The notes in both assessments indicate Mr. K can locomote in his apartment by holding onto walls and furniture. In the more recent assessment, however, Mr. K specifically indicated that he needs help from his assistant to guide him on occasion. Given this statement, it is not clear why his support score was reduced from a 2 (needing limited assistance) in 2012 to a 1 (needing supervision only) in 2013.

Based on the assessor's notes in the 2013 CAT, Mr. K needs physical assistance to locomote at least some of the time. Whether Mr. K should be scored with a 1 or a 2 partly depends on how often he needs that physical assistance. In 2012, Mr. K needed physical assistance at least three times per week.¹⁶ The division has not met its burden of proving that Mr. K's condition has improved so that he needs this assistance less often. Accordingly, he should have received a support score of 2 for locomotion.

The 2012 CAT also indicates that Mr. K needed physical assistance in locomotion 10 times per day, seven days per week.¹⁷ That assessment states that Mr. K "has not had time to adjust to blindness," suggesting a hope that Mr. K will ultimately adjust and need less physical assistance. The division did not prove that this adjustment had occurred as of the 2013 assessment. Accordingly, he should continue to receive PCA time for locomotion based on a frequency of 10 times per day.

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¹³

Id.

¹⁴

Exhibit F 7.

¹⁵

Id.

¹⁶

Id. He would not have received a score of 2 if he did not need physical assistance at least that often, and there was no evidence presented that the 2012 CAT was incorrectly scored.

¹⁷

Id.

2. *Locomotion for Medical Appointments*

Mr. K had previously been allotted PCA time for medical appointments twice a day, one day per week.¹⁸ Mr. K was not allotted any time for medical appointments in his most recent assessment because he was scored as needing only supervision with locomotion. As discussed above, Mr. K needs limited assistance with locomotion. Accordingly, he should receive time for assistance with locomotion for attending medical appointments.¹⁹

3. *Locomotion between Floors*

Mr. K testified about his need for assistance in moving from his third floor apartment to the ground level. He testified that he goes out every day, and needs help getting up and down the stairs. Unless there is a prescription for additional walking,²⁰ assistance for locomotion is generally limited to assistance within the recipient's own home, or assistance to attend a medical appointment.²¹ Mr. K does not appear to have received PCA time for this activity in his 2012 assessment.²² Mr. K has not shown that the division was wrong not to award time for that activity.²³

4. *Dressing*

Dressing is defined as how a person puts on, fastens, and takes off all items of street clothing.²⁴ In the 2012 assessment, Mr. K was scored as needing limited assistance in this area. The assessor noted "Client needs help with dressing d/t legal blindness."²⁵ In 2013, the assessor noted "Ct can dress on his own. He needs help picking out color coordinated clothes and to make [sure] he puts on clothes the right way."²⁶ He was scored as needing only supervision for this activity.²⁷ Mr. K testified that, because of his arthritis, he needs help buttoning his clothing. This is more than just oversight, encouragement, or cueing. He needs limited assistance with dressing twice a day (once to dress and once to undress), and is entitled to PCA time for this IADL.

¹⁸ Exhibit F 7.

¹⁹ Mr. K testified that he has an average of four medical appointments each month.

²⁰ See 7 AAC 25.030(b)(3)(B).

²¹ 7 AAC 25.030(b)(3).

²² See Exhibit F 7.

²³ Mr. K has the burden of proof when asking for additional services. 7 AAC 49.135.

²⁴ Exhibit E 8.

²⁵ Exhibit F 8.

²⁶ Exhibit E 8.

²⁷ The notice sent by the division incorrectly states that he was scored as independent in this area. See Exhibit D 3.

5. *Meal Preparation*

In 2012, Mr. K was dependent on others for his light meal and main meal preparation.²⁸ In 2013, he was scored as needing limited assistance with his main meal, and independent with difficulty in preparing light meals.²⁹ There are no notes in the CAT to explain this change. Mr. K testified that he was unable to prepare any meals, and that he either ate out or ordered food to be delivered if there was no one to prepare the meal for him. It is the division's burden to show the material change in condition justifying the reduction in PCA hours. The division has not met that burden here. Mr. K should be scored with a 3 for meal preparation, meaning he is fully dependent on others for light meal and main meal preparation.

6. *Shopping*

The 2012 CAT indicates that Mr. K was fully dependent on others for his shopping.³⁰ In 2013, he was assessed as only needing assistance with shopping.³¹ Again, there are no notes in the CAT explaining this change. Mr. K cannot see what he is buying, and cannot see the prices.³² The division has not proven a material change in Mr. K's condition that would justify the reduction in PCA time for shopping.

7. *Medications*

Mr. K testified that he cannot properly see his pills to ensure that he taking the correct pill at the correct time. He relies on his personal care assistant to put the pills in a weekly pill box. Personal care services include, but are not limited to,³³

assisting the recipient to self-administer routine oral medication, eye drops, and skin ointments; that assistance may include reminding the recipient and placing a medication within the recipient's reach[. ³⁴]

Having someone organize his pills in a pill box so that Mr. K may self-administer this medication fits within this covered service. He is totally dependent on someone else doing this task for him. He is entitled to PCA time for this task.

8. *Escort Services*

Escort services includes, but are not limited to

²⁸ Exhibit F 26.

²⁹ Exhibit E 26.

³⁰ Exhibit F 26.

³¹ Exhibit E 26.

³² Testimony of Mr. K.

³³ The use of "includes" in a statute or regulation is read to mean "includes but not limited to." *See AS 01.10.040(b).*

³⁴ 7 AAC 125.030(d)(1).

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.³⁵

Mr. K testified that he needs someone to help him into his van, drive him to medical appointments, assist him into the examination room, and remain with him during the appointment to provide information to his doctors. He is not able to attend medical appointments without assistance. This fits within the scope of the regulation's definition of covered services. Mr. K was previously allowed time for escort services when attending medical appointments.³⁶ The division has not proven a material change in Mr. K' condition to justify the removal of time for this activity. Mr. K is eligible for PCA time for escorting him to medical and dental appointments.

IV. Conclusion

The division has not met its burden of proving a material change in Mr. K' condition that would justify the decision reducing the amount of PCA services he receives. Accordingly, the division shall recalculate his service level authorization in a manner consistent with the findings in this decision. If Mr. K disagrees with the new calculation, he may appeal that determination pursuant to 7 AAC 49.030.

DATED this 24th day of September, 2013.

Signed

Jeffrey A. Friedman
Administrative Law Judge

³⁵ 7 AAC 125.030(d)(9).

³⁶ Exhibit D 4; D 6.

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 8th day of October, 2013.

By: Signed
Name: Jeffrey A. Friedman
Title: Administrative Law Judge

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