

One of Ms. U's physicians submitted a letter stating, in part, that she has difficulty in performing activities because of:

relatively severe and multifactorial spinal stenosis at multiple levels involving both the central spinal canal and the neuroforaminal. This causes intermittent radicular symptoms down the lower extremities, which occur more frequently when her pain is flared and cause cramping, and loss of sensation in the lower extremities. She also has multilevel facet hypertrophy, degenerative disc disease and spondylosis of the lumbar spine.^[4]

Another physician notes that she has:

multiple diagnoses including morbid obesity (s/p gastric bypass surgery), diabetes, hypertension, symptomatic heart arrhythmia, osteoarthritis, as well as memory difficulties.^[5]

Although dated later, these letters support inferences as to Ms. U's physical condition as of the date of the division's decision.

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.^[6]

The division uses the CAT to help it assess the level of assistance needed.⁷ The amount of time allotted for needed assistance is determined by the Personal Care Assistance Service Level Computation chart.⁸ 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.⁹

The different levels of assistance with ADLs are defined by regulation and in the CAT.¹⁰ The assistance level called "supervision" is defined as oversight, encouragement, or cueing three or more times a week, with physical assistance no more than two times a week.¹¹ "Limited

⁴ Letter dated September 13, 2013, from Alaska Spine Institute.

⁵ Letter dated August 27, 2013, from Providence Health Services.

⁶ 7 AAC 125.010(a).

⁷ 7 AAC 125.020(b).

⁸ 7 AAC 125.024(1).

⁹ The amount of time Ms. U was allowed for each task may be less than what she was allowed before the Service Level Computation chart was adopted. However, the division is now required to use those specific time allowances, and any reduction based on those new time allowances are proper reductions because a greater amount of time is no longer authorized. 7 AAC 125.026(d)(3)(C).

¹⁰ The July 29, 2009 version of the CAT has been adopted by reference, 7 AAC 160.900(d)(6), and therefore the definitions in the CAT have the same effect as a regulation.

¹¹ Exhibit E6.

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.¹²

“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.¹³ Full assistance means the recipient is “dependent” and has to rely entirely on the caretaker to perform the particular activity.¹⁴

The division may change the number of hours of allotted PCA service if there has been a material change in the recipient’s condition.¹⁵ 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.¹⁶ When the recipient is seeking additional time for specific services, he or she has the burden of justifying the need for the increase.¹⁷ Because the division notified Ms. U of its decision on August 14, 2013, her condition on that date is used when determining the amount of services she is eligible to receive.¹⁸

B. Body Mobility

Body mobility is the activity of positioning or turning in a bed or chair.¹⁹ Under current regulations, PCA time for body mobility is allowed only if the recipient is not ambulatory.²⁰ Ms. U acknowledged during her testimony that she is able to walk short distances using a cane or walker. Accordingly, she is not entitled to PCA time for this ADL, and the division was correct to remove time for this service.²¹

C. Transfers

A transfer is the movement between surfaces, such as standing up from a bed, or sitting down into a chair, but not including those transfers that are to or from a toilet.²² Ms.

¹² 7 AAC 125.020(a)(1); Exhibit E6.

¹³ 7 AAC 125.020(a)(2); Exhibit E6.

¹⁴ 7 AAC 125.020(a)(3); Exhibit E6.

¹⁵ 7 AAC 125.026(a).

¹⁶ 7 AAC 49.135.

¹⁷ *Id.*

¹⁸ *See In re T.C.*, OAH Case No. 13-0204-MDS (Commissioner of Health and Social Services 2013), page 7 (notice sent to recipient is the decision under review), available at <http://aws.state.ak.us/officeofadminhearings/Documents/MDS/HCW/MDS130204.pdf>

¹⁹ 7 AAC 125.030(b)(1)(A).

²⁰ 7 AAC 125.030(b)(1)(A).

²¹ *See In re L.Y.*, OAH No. 13-1174-MDS (Commissioner of Health and Social Services 2013), page 8.

²² Exhibit E6.

U previously required extensive assistance seven times a day for this ADL, and the current assessment finds that she needs only limited assistance twice a week.²³

The division's explanation for this reduction is:

Ct states she sleeps in her lift recliner except for a couple of nights when she sleeps on the sofa to stretch out. She needs help getting up from the sofa as it does not recline. She uses her walker for balance.²⁴

Ms. U testified that she sometimes falls asleep and naps in her chair, and sometimes stretches out on the couch, but that she sleeps in her bed. She testified that she receives assistance getting into and out of bed, and that she also needs assistance to get out of her lift recliner. There is one note in the CAT that states "Observed ct transfer independently." Ms. U and her caregiver, Ms. H, testified that there was no opportunity for this observation since she never left her chair. Even if she had been observed transferring one time, the question for this assessment is whether Ms. U needed weight bearing assistance at least three times over seven days.²⁵ The notes in the CAT, even if they accurately reflect what Ms. U said, do not address the level of assistance needed to get out of the recliner or off the sofa. Nor do those notes address whether Ms. U ever sits on any other furniture during the day and whether she requires assistance to get on or off that furniture. Nothing in the CAT notes show how often Ms. U needs assistance with transfers. Because the evaluator was not called as a witness, the only evidence of what occurred during the administration of the CAT comes from Ms. U, Ms. H, and the notes in the CAT. Although Ms. Burnett also testified, she had no personal knowledge of what occurred except for what was written in the CAT notes. Given the lack of explanation in the CAT for why transfers were reduced in both level of assistance and frequency, the division has not met its burden of proving a change of circumstances in Ms. U's need for assistance with transfers.

D. Locomotion

The ADL of locomotion refers to how a person moves from room to room within her own home, and includes self-sufficiency in a wheelchair if the person uses one.²⁶ Time for locomotion to the bathroom for toileting is part of the toileting ADL, so those locomotions are not included here. The division's assessment concluded that Ms. U no longer needs

²³ Exhibit D7.

²⁴ Exhibit D 2 (quoting notes from CAT).

²⁵ See Exhibit E6.

²⁶ Exhibit E7.

extensive assistance with locomotion in her own home, and instead only needs supervision.²⁷ Its explanation states that Ms. U can locomote on her own using a walker, and the evaluator's notes state that Ms. U was observed walking in her home with her walker.²⁸ As noted above, Ms. U and Ms. H testified that Ms. U never left her chair during the assessment. In addition, Ms. U testified that she can move around her home with her walker, but that she needs someone to walk with her because she easily loses her balance. Based on Ms. U's testimony, she needs physical assistance while walking with her walker at least three times in a seven day period. This meets the definition of limited assistance. She would need this assistance at least four times a day, or 28 times each week.

E. Locomotion to Medical Appointments

The division also assessed Ms. U as no longer needing physical assistance to locomote to medical appointments.²⁹ This decision was based on Ms. U's ability to locomote in her own home.³⁰ However, moving short distances within one's own home is different than locomotion to a medical appointment. Ms. U previously needed extensive assistance to locomote to medical appointments. The employee who evaluated Ms. U did not testify at the hearing, and there are no statements in the CAT that show what material change has occurred so that Ms. U no longer needs this assistance. The division did not meet its burden of proving the reduction in PCA time for locomotion to medical appointments.

F. Dressing

The most recent assessment found that Ms. U no longer needed extensive assistance with dressing, but that she did need limited assistance. Ms. U described how her caregivers helped her dress and undress. Her description did not indicate a need for weight-bearing assistance. Accordingly, even though she is provided with a great deal of help with dressing each day, that help meets the definition of limited assistance. The division met its burden of proof as to this change in Ms. U's PCA services.

²⁷ Exhibit D7.

²⁸ Exhibit D2 – D3.

²⁹ Exhibit D7.

³⁰ Exhibit D3.

G. Toileting

This ADL covers how a person uses the toilet, which includes cleaning and adjusting clothing afterwards.³¹ Ms. U previously needed limited assistance with toileting eight times a day. The new assessment left the level of assistance the same, but reduced the frequency to once a day, four times a week.³² Based on the CAT notes, this is because Ms. U was independent with this ADL except that she needed help four nights per week because of incontinence.³³

Ms. U denied being independent with her toileting during the day. She testified that she did not need weight bearing assistance because she had a raised toilet and could use the nearby counter for support. However, she did testify that she “sometimes” needed help with cleaning herself after using the toilet. Based on this testimony, the division did not meet its burden of proof for reducing the frequency of assistance from 56 times a week to four times a week. But because Ms. U testified that she only sometimes needed assistance during the day, a reduction to 28 times each week is appropriate.

H. Personal Hygiene

Personal hygiene includes “combing hair, brushing teeth, shaving, applying makeup, washing/drying face, hands and perineum” but does not include baths or showers.³⁴ The division had previously scored Ms. U with a self performance score of 2 for limited assistance and a support score of 3, meaning physical assistance was provided. Her new assessment scored her with the same self performance score of 2, but with a support score of 2, meaning set up help only.³⁵ Because her self performance score remained the same, and because the same amount of time is allotted for hygiene regardless of whether the support score is a 2 or a 3, this change did not result in a reduction of PCA services.

However, the division also changed the frequency of this task from once a day to once a week. The stated reason for this reduction was that Ms. U only needed assistance with her nail care.³⁶ In her testimony, Ms. U stated that she needed help with washing her hair. However, she also indicated that her hair was washed in the tub when she had a bath.

³¹ Exhibit E9.

³² Exhibit D7.

³³ Exhibit D3.

³⁴ Exhibit E10.

³⁵ Exhibit D7.

³⁶ Exhibit E10.

She is not entitled to additional PCA time for that activity. Other than washing her hair, Ms. U agreed that she only needed help with her nail care. Since that can be done once a week, the division has met its burden of proof for this reduction.

I. Bathing

Ms. U's more recent assessment reduced her time for bathing solely because the regulations now specify a specific amount of time allowed for each bath or shower.³⁷ Ms. U testified that she agreed with the division's assessment of her need for assistance for this task. Because the change conformed the amount of time to the amount allowed by regulation, the division has met its burden of proof for this change.

J. Light Meal Preparation

The division reduced the amount of time allowed for PCA services for this task because it concluded that Ms. U no longer needed physical assistance.³⁸ The CAT does not explain what change occurred such that she now only needs set up help with light meal preparation. She was scored as being dependent on assistance from others with her main meal, and Ms. U testified that she could not prepare a light meal without help. The division has not met its burden of proof for this reduction.

K. Medication

Personal care services include time for:

assisting the recipient with the administration of routine oral medication, eye drops, and skin ointments; that assistance may include reminding the recipient and placing a medication within the recipient's reach.^[39]

The division removed time for assistance with medication because Ms. U "did not prepare but did self-administer all medications."⁴⁰ There is no dispute that Ms. U does not prepare her medications. Preparation for self-administration fits within the type of assistance that does qualify under the regulation cited above. The division did not meet its burden of proof for this reduction.

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³⁷ Exhibit D3 – D4.
³⁸ Exhibit D4.
³⁹ 7 AAC 125.030(d)(1).
⁴⁰ Exhibit D4.

L. Escort

Ms. U had previously been authorized for 60 minutes each week for a PCA to escort her to medical appointments. In her current assessment, that time was removed.⁴¹ Other than the conclusory statement that she was assessed as not needing escort services, there is no explanation for the removal of this time. The division did not meet its burden of proof for this reduction.

M. Range of Motion Exercises

Ms. U had previously qualified for PCA services to assist her with range of motion exercises. This service is included within the covered services for PCA time if the exercises are prescribed by a physician or other qualified health care professional.⁴² Ms. U acknowledged during her testimony that she no longer had a prescription for range of motion exercises. The division has met its burden of proof for this reduction.

IV. Conclusion

As discussed above, the division has met its burden of proof to justify some of the reductions in Ms. U's PCA time, but has not met its burden as to all of the proposed reductions. Ms. U's authorized PCA services should be readjusted based on the discussion in this decision.

Dated this 28th day of March, 2014.

Signed _____
Kay L. Howard
Administrative Law Judge

⁴¹ Exhibit D4.
⁴² 7 AAC 125.030(e).

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 11th day of April, 2014.

By: Signed _____
Name: Christopher M. Kennedy
Title: Administrative Law Judge

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