

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

In the Matter of)
)
 G H)
_____)

OAH No. 13-1327-MDS
Agency No.

DECISION

I. Introduction

G H disagrees with the Division of Senior and Disabilities Services' (division) reduction of his Personal Care Assistance (PCA) services from 13.75 hours per week to 1.25 hours per week. The division's reduction is affirmed because the division has shown it is more likely that as of August 23, 2013 Mr. H was not eligible for more than 1.25 hours per week.

II. Facts

Mr. H is 76 years old and lives with his wife. Mr. H has had an ileostomy and has a colostomy bag. His primary diagnosis is chronic airway obstruction, and his secondary diagnoses include esophageal reflux, coronary atherosclerosis, abnormal weight loss, and leukocytosis.¹

Mr. H was receiving 13.75 hours of PCA services based on a June 12, 2012 assessment that found he required limited assistance with dressing, extensive assistance with toileting, limited assistance with bathing, assistance for light meal preparation, and was dependent with regard to main meal preparation, routine housework, grocery shopping, and laundry.²

Recipients of PCA services are assessed annually to determine ongoing eligibility. Mr. H's annual assessment occurred in his home on May 1, 2013. Denise Kichura, RN, performed the assessment, recording her observations and impressions in the Consumer Assessment Tool (CAT). Present throughout the assessment were Mr. H's wife, his care coordinator, and a representative of his PCA agency.³

The CAT is a form aimed at assessing a person's needs to complete defined activities of daily living (ADL) and independent activities of daily living (IADLs), the type and amount of physical assistance to complete each, and the number of times assistance was needed with each

¹ Exhibit E at 3 (listing of diagnosis).

² Exhibit D at 2 – 3; 6 – 7; Exhibit F at 26, 31.

³ Exhibit E at 2.

per week. According to the notes in the CAT,⁴ Ms. Kichura determined that Mr. H was capable of performing all of his own ADLs (bed mobility, transfers, locomotion, toileting, dressing, eating, personal hygiene, and bathing) without requiring physical assistance. As to IADLs, Ms. Kichura determined that Mr. H continued to require assistance for light meal preparation, and was dependent with main meal preparation, routine housework, grocery shopping, and laundry.⁵

On August 23, 2013 the division issued its assessment decision, concluding that Mr. H was eligible for 1.25 hours of PCA services, a reduction of 12.5 hours. The only division-authorized PCA time was for locomotion to medical appointments and for laundry.⁶

Mr. H's daughter, H Q, who provides PCA services to her father, testified. Ms. Q explained that Mr. H does not want to appear weak so he will not accept assistance when others are around. She did not dispute that the assessor's observations at the time of assessment accurately reflected Mr. H's physical abilities as of May 1, 2013, or that these observations remained valid as of August 23, 2013. Ms. Q testified that the family is concerned because in the weeks leading up to the hearing, Mr. H has had a sudden decline in his physical ability and motor skills, resulting in the need for increased physical assistance. The family is also concerned because his wife does not drive and requires transportation to complete the shopping.

III. Discussion

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.^[7]

The division uses the CAT to assess the level of assistance needed for each ADL or IADL.⁸ The level of assistance determines the amount of time authorized for each ADL or IADL task.⁹ Because the division's assessment results in a reduction in PCA services, the division has the burden of supporting its action.¹⁰

The time period for assessing Mr. H's need for physical assistance to complete ADLs ends the date of the assessment decision, August 23, 2013. Ms. Q agrees that the assessment

⁴ Ms. Kichura did not testify at the hearing.

⁵ Exhibit E at 27, 32.

⁶ Exhibit D at 1 – 7.

⁷ 7 AAC 125.010(a).

⁸ 7 AAC 125.020(b).

⁹ 7 AAC 125.024(1).

¹⁰ 7 AAC 49.135.

decision accurately represented Mr. H's physical abilities as of that date. Ms. Q testified that it was only after the assessment date that Mr. H's physical ability declined. The decline in Mr. H's condition may justify an amendment to his PCA hours through a change of information, but the recent change does not support an increase in PCA hours in August of 2013.

Because Mr. H was independent for the most part with his ADLs as of August 23, 2013, the division has met its burden of proof and established that he is only entitled to receive PCA time for locomotion to medical appointments, as allowed by the division.

As to the reduction in IADLs, the relevant PCA regulation does not allow a person to receive PCA time for IADLs if they reside with a spouse who is capable of performing them.¹¹ Mr. H lives with his wife, who helps to care for him. Other than laundry, there was no evidence showing that she cannot perform the regulatory IADLs. As a result, the division was correct to deny him PCA time for IADLs other than laundry.

Finally, neither Mr. H nor his wife can drive so they require transportation to and from the store for shopping. However, Ms. H does not require physical assistance to travel to the store and shop. As a result, the inability to drive does not result in eligibility for PCA time for shopping.

IV. Conclusion

The division has established by a preponderance of the evidence that its assessment correctly reflected Mr. H's condition and need for assistance as of the date of its decision. Therefore, the division's PCA reduction is affirmed in its entirety.

DATED this 18th day of November, 2013.

Signed _____
Rebecca L. Pauli
Administrative Law Judge

¹¹ 7 AAC 125.040(a)(13)(B).

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 3rd day of December, 2013.

By: Signed
Signature
Rebecca L. Pauli
Name
Administrative Law Judge
Title

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