

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

In the Matter of)
) OAH No. 13-1597-MDS
 W X) Agency No.
_____)

DECISION

I. Introduction

W X receives Personal Care Assistance (PCA) services paid for by Medicaid. The division of Senior and Disabilities Services (division) reassessed her condition and reduced the weekly hours of services it would pay for. Ms. X contested that reduction and requested a hearing.

A hearing was held on March 4, 2014. With one exception, the division has not shown a material change of condition that justifies a reduction in PCA services in the areas that are disputed. At the same time, Ms. X has not met her burden of showing a need for the increased services she has requested.

II. Facts

Ms. X is 39 years old and lives alone in an apartment.¹ She has been diagnosed with several illnesses, including PTSD, asthma, diabetes, fibromyalgia, Sjogren's syndrome, Eagle syndrome, and irritable bowel syndrome.²

Registered Nurse Sharon Schober evaluated Ms. X's nursing needs and functional abilities using the division's Consumer Assessment Tool (CAT) on June 17, 2013.³ The division then determined that Ms. X was entitled to receive 6.25 hours of services each week, a reduction from her previous 14 hours of services each week.⁴

Ms. X submitted a letter on February 26, 2014, outlining the areas of disagreement. She contested the time allowed in the areas of bathing, toileting, main meal preparation, shopping, light housework, and medical escort.⁵

¹ Exhibit E1.
² Exhibit E2.
³ *Id.*
⁴ Exhibit D1.
⁵ Letter submitted by No Name.

David Chadwick was called to testify on behalf of the division. He stated that he had reviewed Ms. X's file and contacted her doctors' offices to verify the number of appointments she had, and also to ask questions about her functional abilities.⁶ Dr. D, a chiropractor, told him that Ms. X is deconditioned, but not frail. It is not hard for her to bend over, but it is hard for her to return to a normal upright position after bending. Mr. Chadwick said that according to Dr. D, Ms. X has very very low endurance.

Ms. X testified that her CAT evaluation was brief; the fastest she had ever had. She testified that Nurse Schober did not talk with her case worker or personal care assistant. Ms. X's friend, C S, also testified. She has seen changes in Ms. X's condition. She testified that over the past couple of years, her condition has become worse. Her functional abilities are steadily declining.

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[.]⁷

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

The different levels of assistance with ADLs are defined by regulation and in the CAT.¹⁰ 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 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

⁶ Hearsay evidence is admissible, 2 AAC 64.290, but because the person providing the information is not available for cross-examination, caution must be used in deciding how much weight to give that evidence.

⁷ 7 AAC 125.010(a).

⁸ 7 AAC 125.020(b).

⁹ 7 AAC 125.024(1).

¹⁰ 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.

¹¹ Exhibit E6.

¹² 7 AAC 125.020(a)(1); Exhibit E6.

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 has to rely entirely on the caretaker to perform the activity.¹⁴

The division may change the number of hours of allotted PCA services if there has been a material change in the recipient's condition.¹⁵ When the division wishes to reduce the amount of allotted time, 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, the recipient has the burden of justifying the need for the increase.¹⁷ Because the division notified Ms. X of its decision on October 11, 2013, her condition on that date is used when determining the amount of services she is eligible to receive.¹⁸

B. Bathing

The first area of disagreement with the assessment is in the ADL of bathing. For bathing, a support score of 2 is given if the recipient only needs help getting in and out of the tub or shower. A score of 3 is given if the recipient needs some amount of physical help with the bathing activity itself.

In 2012, Ms. X was given a score of 3 for bathing because she required "hands-on assistance to transfer in/out of tub, on/off bath chair, wash legs & feet."¹⁹ In 2013, she was given a score of 2. Nurse Schober noted

W sometimes needs help in & out of tub. She showers sitting on her bath bench. She washes her upper body and prefers to have her PCA help her with washing her feet rather than using a long-handled brush.^[20]

Ms. X testified that she needs assistance with bathing. Ms. S testified that she assists Ms. X when no one else is available, and that she had assisted her with bathing the prior week. Ms. S stated that when she assists, she turns on the water, helps Ms. X into the tub, and washes her legs, back, butt, and feet.

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 Exhibit F11.

²⁰ Exhibit E11.

As noted above, Ms. X has difficulty straightening up after bending over. She cannot bend forward enough to touch her feet,²¹ and can only reach part of the way around to her back.²² The division has not met its burden of proving a material change of condition in Ms. X's need for assistance with the ADL of bathing. Accordingly, she should be scored as continuing to need physical help with this activity, and should receive a score of 3/2.

C. Toileting

Ms. X has not previously received PCA services for the ADL of toileting. Thus, she has the burden of proving by a preponderance of the evidence that she should receive these services. In the CAT, Ms. Schober noted

W reports she does not need help with toileting; she is able to get on & off the toilet by herself & can cleanse herself. She is not incontinent & does not need to use Depends.^[23]

Ms. X testified that she was never asked about her toileting needs, and that does have a problem with incontinence. She testified that she does need help occasionally. To receive PCA services for this ADL, Ms. X must show that she needs at least limited assistance; she would need to show that she needs some physical help three or more times each week. While Ms. X may very well need physical assistance, she has not met her burden of proving that she needs that assistance at least three times each week. Thus, she is not entitled to additional time for this ADL.

D. Main Meal Preparation

Ms. X was scored as being able to prepare her own meals with difficulty.²⁴ In 2012, she needed some assistance, which means she needed supervision, reminders, or physical hands-on help.²⁵ Ms. S testified that Ms. X's condition has been deteriorating, and the division has not explained what has improved such that Ms. X is now able to perform this task without assistance. The division has not met its burden of proving a material change of condition, and Ms. X should continue to receive a score of 2/3 for this IADL.

E. Shopping

Ms. X was scored in self-performance as being able to shop on her own with difficulty. However, in the support code, Ms. Schober indicated that Ms. X needed physical

²¹ Exhibit E4.

²² Exhibit E4; Exhibit F4.

²³ Exhibit E9.

²⁴ Exhibit E27.

²⁵ Exhibit F26.

assistance.²⁶ At first blush, if someone needs physical assistance, she is not able to perform the task independently with difficulty. However, the Service Level Computation Chart²⁷ provides for an award of PCA services to someone who is independent with difficulty but still needs some physical assistance. Thus, a score of independent with difficulty must include someone who requires some physical assistance to perform the task with a reasonable degree of effort and efficiency.

Ms. X testified that she can ride in an electric scooter in the store, but that she needs help taking items off the shelf and carrying them. She was previously scored as being fully dependent with this IADL.²⁸ Dependent in an IADL means that the activity was fully performed by someone else. Based on her own testimony, Ms. X can be partially involved in this activity. Thus, Ms. X is not fully dependent. However, the division has not met its burden of proving that she is independent with difficulty. Ms. X should have been scored as needing assistance with shopping, a score of 2/3 instead of the 1/3 she was given.

F. Light Housework

The CAT refers to routine housework²⁹ as vacuuming, cleaning floors, trash removal, and cleaning a bathroom.³⁰ Ms. X was given a self-performance score of 2 in this IADL, and that score was used in computing the time allotted for housework.³¹ She was previously given a self performance score of 3 and a support score of 4.³² The division has not shown a material change of condition that justifies the change in its assessment.

G. Medical Escort

Ms. X has asked that escort time be added to her PCA Services. Time may be allowed for an assistant to travel with the recipient to and from a medical or dental appointment and to confer with the medical or dental staff during the appointment.³³ Escort services do not provide the transportation to or from an appointment, but instead may provide for a PCA to be present, if needed, while the recipient is traveling to or from that

²⁶ Exhibit E27.

²⁷ Exhibit B24.

²⁸ Exhibit F26.

²⁹ The CAT also provides for a score in the area of light housework, which includes washing dishes, dusting, and making the bed. The applicable regulation, 7 AAC 125.030(c)(3) allows for PCA services for light housework, including the tasks listed under routine housework and light housework on the CAT.

³⁰ See Exhibit E27.

³¹ Exhibit D6.

³² F26.

³³ 7 AAC 125.030(d)(9).

appointment. Ms. X has not met her burden of demonstrating that she needs this additional PCA service.

IV. Conclusion

Ms. X did not contest all of the changes in her PCA Service Level Authorization. In those that were contested, the division did not meet its burden of proving a material change in condition to justify a reduction except in the area of shopping, where Ms. X should have been scored with a 2/3, which is a reduction from her prior score of a 3/4. In addition, Ms. X has not met her burden of proving an increase for services for the ADLs of toileting or for medical escort.³⁴

Dated this 10th day of March, 2014.

Signed _____
Jeffrey A. Friedman
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 25th day of March, 2014.

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

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

³⁴ Ms. X may submit to the division a change of information with supporting documentation and request that additional services be added. She would have the right to request a new hearing if she disagreed with the division's determination based on that submission.