

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

In the Matter of)
)
 M U)
_____)

OAH No. 13-1745-MDS
Agency No.

DECISION

I. Introduction

M U receives 8 hours per week of Medicaid Personal Care Assistance (PCA) services. She sought to increase her authorized PCA services through two service plan amendments. The Division of Senior and Disabilities Services (division) denied her requests because the medical documentation submitted did not support a change. Ms. U appealed and a hearing was held on February 25, 2014. All parties participated in person. Ms. U testified as did her PCA, P T. The division offered the testimony of Angelika Fey-Merritt and Sam Cornell, RN.

This decision concludes, that while Ms. U established that there was a material change in condition, she did not establish by a preponderance of the evidence that her need for assistance to complete the activities of daily living and instrumental activities of daily living has changed. The denial is affirmed.

II. Facts

Ms. U receives 8 hours of PCA services per week to assist with dressing, bathing, main meal preparation, shopping, light housework, and laundry.¹ She was authorized to receive those services based on an assessment of her needs that occurred on July 1, 2013.² At that time she lived with her husband in an apartment.³ She is now widowed and has moved into another apartment. Ms. U has no family to assist her.

¹ These activities are categorized as Activities of Daily Living (ADL), Instrumental Activities of Daily Living (IADL), and Other Personal Care Services (OPCS). ADLs are defined by regulation and include body mobility, transfer, locomotion, dressing, eating, toilet use, personal hygiene, and bathing. 7 AAC 125.030(b). IADLs are also defined by regulation and include light and main meal prep, light housekeeping, laundering, and shopping, 7 AAC 125.030(c). OPCS's include administering medication, documentation, care of respiratory equipment, escort services, wound care, and when prescribed by a physician, range-of-motion (ROM) exercises. 7 AAC 125.030(d).

² Exh. E.

³ Exh. E p. 1.

On August 22, 2013, Ms. U was seen by internist John C. Boston.⁴ The examination was generally unremarkable with the exception of diabetes, high blood pressure, dizziness, arthritis, and urinary incontinence.⁵ He reviewed her August 16, 2013 x-rays and noted fluid on the left knee, minor spur formation throughout the lumbar spine with degenerative changes at L4 – S1 and the lower thoracic region.⁶

On October 8, 2013, Ms. U, through her PCA Agency, submitted a request to change her PCA Service Level Authorization (also known as "Changes of Information" or "COIs"). The agency wrote that Ms. U “needs more hours for transfer, locomotion-multilevel, locomotion – access medical appt., toilet use, personal hygiene, light meal preparation, ROM, walking exercise, etc.”⁷ The COI was supported by a physical therapist’s initial evaluation performed on September 27, 2013.⁸ She was referred to physical therapy by John C. Boston, D.O., for a recent increase in pain, stiffness, and extreme muscle tightness.⁹ The physical therapist reviewed Ms. U’s medical chart and, as part of her initial evaluation, noted Ms. U had recent X-rays showing severe arthritis in her left knee and L4 – S1 facet degeneration, osteopenia, and degeneration of the lower thoracic spine. No other medical records were provided.

On November 14, 2013, Ms. U’s PCA Agency submitted a second COI that was identical to the October COI in all but one area. The November COI informed the division that there had been a change in Ms. U’s living situation; effective August 1, 2013, Ms. U had moved to a new apartment, was widowed, and had no relatives to assist her.¹⁰

On November 25, 2013, the division denied both COIs. The division wrote that there was no change to Ms. U’s need for physical assistance, no supporting records, and no prescription for ROM or walking.¹¹

Throughout the hearing, Ms. U was observed transferring out of a chair and locomoting independently with the aid of a walker. She testified that she prepared her own snacks and agreed with the assessment of her need for physical assistance set forth in the most recent CAT.

⁴ Exh. F pp. 16 – 19.

⁵ Exh. F pp. 18, 10.

⁶ Exh. F pp. 17, 18.

⁷ Exh. F p. 1. ROM is frequently used to refer to range of motion. In this context, it is reasonable to conclude that the PCA agency was asking for time to complete range of motion exercises.

⁸ Exh. F. pp. 3 – 8.

⁹ *Id.*

¹⁰ Exh F p. 9.

¹¹ Exh. D pp. 1, 2.

The focus of her complaint is that the time provided is not adequate to complete the ADLs and IADLs.

III. Discussion

Before turning to the specific facts of this case, it is appropriate to review 7 AAC 125.026, the regulation governing COIs. The regulation provides in relevant part:

(a) If the department confirms that a recipient has had a material change in condition, the department may increase, reduce, or terminate services or the number of hours of service authorized under 7 AAC 125.010 - 7 AAC 125.199.

....

“Under 7 AAC 125.026(a), there is a threshold that must be met before a change to a recipient's PCA service level authorization can be made by the division.”¹² That threshold is the division’s confirmation “that [the] recipient has had a material change in condition.”¹³ The phrase “material change in condition” is defined, for purposes of the PCA program, by 7 AAC 125.026(d). Subsection (d) specifies four different situations which “confirm” that there has been a “material change in condition.” These scenarios are:

- (1) the recipient’s medical condition has changed since the last assessment;
- (2) the recipient’s living conditions have changed since the last assessment, including an improvement in the physical living environment, supportive services, or caregiver services; or
- (3) (A) the recipient was receiving personal care services under a time-limited amendment to the recipient's personal care service level authorization, based on a prescription for foot care, walking and simple exercises, or range of motion or stretching exercises, and that amendment has expired; or

(B) the recipient’s PCA services are no longer authorized under 7 AAC 105 - 7 AAC 160 due to a regulation change.

Only if the department *first* confirms that a recipient has had a material change in condition, as defined by 7 AAC 125.026(d), can it then consider whether to “increase, reduce, or terminate services or the number of hours of service authorized[.]”¹⁴ However, not every material change in condition will result in a change to the amount of PCA services authorized.

¹² *In re L.D.*, OAH Nos. 13-0306-MDS and 13-0781-MDS (Consolidated) (Commissioner of Health and Social Services 2014), page 14 (Material Change 7 AAC 125.026(d)(1)).

¹³ *Id.*; 7 AAC 125.026(a).

¹⁴ *Id.*; 7 AAC 125.026(a).

Where, as in this case, the recipient is seeking additional time for specific services, the recipient has the burden of justifying the need for the increase.¹⁵

A. *Ms. U's change in living condition is a material change in condition.*

In its decision letter, the division cited to subsection (d)(1), writing that the COI must “include and be supported by medical or other relevant documentation of the recipient’s condition. (7 AAC 125.026(d)(1)).” Implicit in this statement is that the division applied subsection (d) and concluded that Ms. U failed to establish a material change in condition because she failed to establish a change in medical condition. The determination letter does not recognize the change in living condition.

The “material change” examples are conjoined with the word “or.” This means that any one of the regulatory examples will confirm a material change in condition. The November 2013 COI informs the division that Ms. U has moved to a different apartment, now lives alone, and has no family to assist her. This is a change in her living conditions, and therefore, a material change under 7 AAC 125.026(d)(2). Whether the change warrants an increase in the number of service hours authorized is the *second* step.

B. *Ms. U has not met her burden of proving that, more likely than not, she is eligible for additional PCA time.*

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[.¹⁶]

The division uses the consumer assessment tool (CAT) to help it assess the level of assistance needed.¹⁷ The amount of time allotted for needed assistance is determined by the Personal Care Assistance Service Level Computation.¹⁸ 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.

¹⁵ *Id.*

¹⁶ 7 AAC 125.010(a).

¹⁷ 7 AAC 125.020(b).

¹⁸ 7 AAC 125.024(1).

When she was evaluated in July, the division found that Ms. U only needed physical assistance with the ADLs of dressing¹⁹ and bathing,²⁰ and with the IADLs of main meal preparation, housework, shopping, and laundry.²¹ She did not have a current prescription for PCA assistance with range of motion or walking exercises.²²

The division's written explanation for why it denied Ms. U's request for more time is cryptic, but does explain that the division believed there was insufficient supporting documentation to support an increase in PCA time.²³ Ms. U did provide an Initial Evaluation from a physical therapist indicating she needs assistance with her ADLs,²⁴ that she could benefit from physical therapy, and was scheduled to receive therapy twice a week for four weeks.²⁵ A medical report from her physician was also submitted.²⁶

At the hearing, Ms. U explained that she did not disagree with the scores on her CAT, but that the time provided was simply insufficient. Ms. T agreed and described how she regularly returns to Ms. U's on her own time to make sure Ms. U is properly cared for. Neither the testimony nor the documents submitted with her change of information prove by a preponderance of the evidence that Ms. U needs either a greater level of assistance or a higher frequency of assistance with ADLs or IADLs. Nor has she proven that she needs PCA assistance with range of motion or walking exercises. While her physical therapist may have recommended the performance of those exercises, she is only eligible to receive PCA time for them if there is a prescription for those exercises.²⁷ Ms. U did not submit a prescription.

Time allowed for each ADL and IADL is calculated based on a specific number of minutes for each task. The amount of time allowed was set by regulation when the Service Level Computation chart was adopted. For example, with the ADL of dressing, a person who needs limited assistance will be allowed 7.5 minutes of PCA time for each time assistance is provided.²⁸ Ms. U was assessed as needing limited assistance with dressing

¹⁹ Exhibit E18.
²⁰ Exhibit E19.
²¹ Exhibit E26.
²² Exhibit E5.
²³ Exhibit D1 – D2.
²⁴ Exhibits F3 & F6.
²⁵ Exhibit F7.
²⁶ Exhibit F16 – F19.
²⁷ 7 AAC 125.030(e).
²⁸ Exhibit D4.

one time each day, seven days a week.²⁹ Even if because of her unique needs she actually needs more time than 7.5 minutes each day, she is not eligible to receive that additional time. The time is set by regulation. Similarly, someone who needs limited assistance with shopping may only receive 30 minutes per week of PCA time for that IADL, even if completion of that task takes more time.

The only way to receive more time for an ADL or an IADL is for Ms. U to show through testimony or documentation that she needs a greater level of assistance or needs a greater frequency than what was previously determined.³⁰ Because at this hearing she did not dispute the assistance levels and frequencies shown in her July CAT, and because the additional evidence presented did not show that those levels and frequencies were incorrect, Ms. U did not meet her burden of proof in this matter.

IV. Conclusion

Based on the evidence presented at the hearing, Ms. U has not shown a material change of condition that supports an increase in her PCA time. While she may submit a new Change of Information form with new or additional documentation, the division's determination based on the October and November Change of Information requests is affirmed.

Dated this 21st day of March, 2014.

Signed _____
Rebecca L. Pauli
Administrative Law Judge

²⁹ Exhibit E8.

³⁰ For example, she might be able to provide evidence that shows she needs assistance with dressing and undressing two times each day instead of just dressing one time each day.

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 4th day of April, 2014.

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

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