

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

In the Matter of )

T G )

) OAH No. 13-1756-MDS  
) Agency No.  
)

**DECISION**

**I. Introduction**

T G applied for Personal Care Assistance (PCA) services. The Division of Senior and Disabilities Services (division) granted her application, and approved 4.5 hours of services per week. Ms. G appealed, contending she should receive more hours.

A telephonic hearing was held on January 8, 2014. Ms. G testified in support of her appeal. The division was represented by lay representative Angela Ybarra. The proceedings were translated between Samoan and English by interpreters provided by the Office of Administrative Hearings. The division's determination is upheld except, as discussed below, in the areas of transfers and toileting.

**II. Facts**

Ms. G is 50 years old,<sup>1</sup> and has been diagnosed with insulin dependent diabetes and associated peripheral circulatory disorders.<sup>2</sup> Her functional capacity was evaluated by Registered Nurse Scott Chow on October 17, 2013, using the division's Consumer Assessment Tool (CAT).<sup>3</sup> Based on the evaluation, the division issued its November 21, 2013, notice allowing Ms. G 4.5 hours of PCA services each week.<sup>4</sup> This consisted of 105 minutes for dressing, 105 minutes for bathing, 45 minutes for light housework, and 15 minutes for laundry each week.<sup>5</sup>

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<sup>1</sup> Exhibit E1.  
<sup>2</sup> Exhibits C4, E3  
<sup>3</sup> Exhibit E.  
<sup>4</sup> Exhibit D.  
<sup>5</sup> Exhibit D3.

### 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[. <sup>6</sup>]

The division uses the CAT to help it assess the level of assistance needed.<sup>7</sup> The amount of time allotted for needed assistance is determined by the Personal Care Assistance Service Level Computation chart.<sup>8</sup> 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.<sup>9</sup> Supervision is defined as oversight, encouragement, or cueing three or more times a week, with physical assistance no more than two times a week.<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup> Full assistance means the recipient has to rely entirely on the caretaker to perform the activity.<sup>13</sup>

Because Ms. G is seeking additional services, she has the burden of proving her eligibility for that increase.<sup>14</sup> Because the division notified Ms. G of its decision on November, 21, 2014, her condition on that date is used when determining the amount of services she is eligible to receive.<sup>15</sup>

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<sup>6</sup> 7 AAC 125.010(a).

<sup>7</sup> 7 AAC 125.020(b).

<sup>8</sup> 7 AAC 125.024(1).

<sup>9</sup> 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.

<sup>10</sup> Exhibit E6.

<sup>11</sup> 7 AAC 125.020(a)(1); Exhibit E6.

<sup>12</sup> 7 AAC 125.020(a)(2); Exhibit E6.

<sup>13</sup> 7 AAC 125.020(a)(3); Exhibit E6. Bathing and the IADLs have their own assistance level definitions.

<sup>14</sup> 7 AAC 49.135.

<sup>15</sup> 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). *In re T.C.* is available at <http://aws.state.ak.us/officeofadminhearings/Documents/MDS/HCW/MDS130204.pdf>.

## **B. Ms. G's Functional Ability**

### ***1. Ms. G's Testimony***

Ms. G testified that she had previously been found to be totally disabled. She asserted that she was simply unable to do many of the tasks that Mr. Chow found she was capable of, and argued that she needed more PCA hours. That Ms. G is disabled, however, does not determine the amount of PCA services she should receive. Each person's allowable amount of time is based on his or her specific needs.

Ms. G testified that she is unable to raise her hands above her head and that she has a lot of pain in her leg, which is nearly paralyzed. She testified that her daughter helps her into the bath or shower, and that she needs assistance washing her back. She reports that she has trouble eating, and her hand shakes when she holds a spoon. She says that she normally uses a wheelchair, but her doctor has told her she needs to exercise, so she will use her crutches and her daughter will help her move around the house.

### ***2. Transfers***

Ms. G testified that she needs her daughter's assistance to stand up from a chair. Her daughter will hold her hand and place a hand on Ms. G's back to assist and help her balance.<sup>16</sup> This is consistent with Mr. Chow's observations during the CAT evaluation. He noted "Observed SF stand up from a seated position daughter in law to holding her hand, touch SF's back when she sat in wheelchair."<sup>17</sup> Mr. Chow observed and reported guided maneuvering of limbs or other non-weight-bearing assistance. Since this occurs at least three times each week, Ms. G should receive a self-performance score of 2 and a support score of 2<sup>18</sup> for transfers. No testimony was provided as to how many times per day Ms. G receives transfer assistance, but a reasonable estimate would be that she needs help with transfers at least four times each day. This would allow Ms. G an additional 70 minutes per week of PCA service.<sup>19</sup>

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<sup>16</sup> Testimony of Ms. G.

<sup>17</sup> Exhibit E6.

<sup>18</sup> A support score of 2 indicates physical assistance provided by one person.

<sup>19</sup> Exhibit D4 (4 per day times 7 days a week = 28 transfers per week. The service level computation chart allows 2.5 minutes for each limited assistance transfer).

### 3. *Locomotion*

This ADL refers to how a person moves between locations in their own home or room, on a single floor.<sup>20</sup> Ms. G testified that she is pushed in her wheelchair. Mr. Chow wrote in the CAT that he observed Ms. G propel herself.<sup>21</sup> It is Ms. G's burden to prove that Mr. Chow's observations were incorrect, or that while she might have been able to locomote on her own during the evaluation, she needed physical assistance moving in her wheelchair at least three times each week. She has not met her burden of proof.

### 4. *Dressing*

Mr. Chow concluded that Ms. G needed physical assistance with dressing two times per day, every day.<sup>22</sup> To receive more time for this task, Ms. G would need to present persuasive evidence that she needs extensive, weight bearing assistance at least three times a week, or that she was completely dependent on others to dress her at least one time each week.<sup>23</sup> There is no dispute that Ms. G needs assistance getting dressed and undressed each day, but she has not shown that she needs "extensive" assistance as defined in the CAT.

### 5. *Toileting*

Toileting includes how one uses the toilet room, including transfers on and off of the toilet. According to his notes, Mr. Chow was told that Ms. G needed some assistance with toileting. He stated that she was "able to transfer with guided assist[.]"<sup>24</sup> A guided assist meets the definition of limited physical assistance. The need for limited assistance in transferring on and off the toilet is consistent with the score for transfers in section B 2, above. Based on his notes and Ms. G's testimony, she should be scored as needing limited assistance from one person for this ADL. There was no evidence as to the required frequency of toileting, but a minimum estimate would be at least four times each day. Ms. G should be allowed an additional 168 minutes per week for assistance with toileting.<sup>25</sup>

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<sup>20</sup> See Exhibit E7.

<sup>21</sup> Exhibit E7.

<sup>22</sup> Exhibit E8.

<sup>23</sup> See Exhibit E8.

<sup>24</sup> Exhibit E9.

<sup>25</sup> Exhibit D4 (4 per day times 7 days a week = 28 times per week. The service level computation chart allows 6 minutes for each toilet use when a person needs limited assistance.)

**6. Bathing**

Mr. Chow concluded that Ms. G needed physical assistance getting into and out of the shower every day. To receive more time for this task, Ms. G would have to require physical assistance with actually washing herself.<sup>26</sup> Her testimony on this issue was not sufficiently persuasive to meet her burden of proving the need for this additional time.

**7. IADLs**

Ms. G presented no evidence to challenge Mr. Chow's assessment of her needs with respect to instrumental activities of daily living.

**IV. Conclusion**

Ms. G has met her burden of proving that, as of the date of decision, she should have been allowed 238 minutes per week of additional PCA time for transfers and toileting. In all other respects, the division's decision is affirmed. If Ms. G's condition has changed since the assessment, she can ask her PCA agency to submit a change of information form.

DATED this 29<sup>th</sup> day of April, 2014.

Signed  
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Christopher Kennedy  
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 13<sup>th</sup> day of May, 2014.

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

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

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<sup>26</sup> Exhibit E11.