

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

In the Matter of)
)
 B A)
_____)

OAH No. 13-1782-MDS
Agency No.

DECISION

I. Introduction

B A receives personal care assistant services through the State of Alaska’s Medicaid Personal Care Assistant (PCA) program. In 2010 he received 15 hours per week. On November 8, 2012, the Division of Senior and Disabilities Services (division) reduced his PCA time to 12.5 hours per week. The division met its burden on all of the reductions with the exception of escort services. Mr. A is eligible to receive an additional 12 minutes per week for an escort to his medical and dental appointments.

II. Facts

Mr. A is a 22-year-old autistic male. He lives at home with his parents and sister. In June 2010 the division conducted an assessment to determine whether or not Mr. A was eligible to participate in the State of Alaska’s Medicaid PCA program. Mr. A was eligible and the division authorized 15 hours per week of PCA services.

As required by regulation, the division conducted a reassessment of Mr. A on July 22, 2013. On November 8, 2013, the division made its decision that his PCA time should be reduced by 2.5 hours to a total of 12.5 hours per week. The reasons given for the reduction were regulatory changes and Mr. A’s current functional abilities.

Mr. A, through his mother and sister, challenged the division’s reduction. A hearing was held on January 9, 2014. Mr. A’s mother, N A, testified regarding his physical abilities and how he functions at home. Ms. A described how Mr. A seems happier at school. He takes medicine to control his aggressive behavior. When he is home, Mr. A is easily agitated and Ms. A is afraid of him. Ms. A described how Mr. A will scratch his face until it bleeds.

When questioned regarding Mr. A’s ability to get snacks, prepare light meals, and eat independently, Ms. A agreed that her son can select food and feed himself. He does not have problems with chewing or swallowing. She emphasized that Mr. A requires supervision and

prompting at times. He can put food in the microwave but does not like to get the food out because it is hot. He has strong preferences for food and its preparation. For example, Mr. A will not eat an apple with its skin on and prefers it cut into little pieces.

Regarding toileting, Mr. A needs assistance cleaning himself, but he does not require weight-bearing support.

The division presented the testimony of two witnesses: Teresa Burnett and David Chadwick. Neither of the division's witnesses was personally involved in the division's decision to reduce services. Their testimony was focused on explaining regulatory changes that affected Mr. A and identifying where support for the division's actions could be found in the record.

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.^[1]

The Consumer Assessment Tool (CAT) is a form used by the Division aimed at assessing a person's ability to complete certain defined activities of daily living (ADLs) and certain independent activities of daily living (IADLs), the type and amount of physical assistance the person requires to complete these, and the number of times assistance is needed with these per week.² The amount of time for each occurrence of a covered activity is determined by the score for each ADL or IADL as shown on the service level computation sheet. That amount of time is then multiplied by the frequency to determine how much PCA time is allowed each week.³ Because the division's assessment results in a reduction in PCA services, the division has the burden of supporting its action.⁴

The division "scores" each PCA recipient according to the CAT. The CAT numerical assessment system has two components. The first component is *self-performance*. Self-performance captures how capable a person is of performing a particular ADL or IADL. The self-performance scores for IADLs are **0** (independent either with or without assistive devices - no help provided); **1** (independent with difficulty; the person performed the task, but did so with difficulty or took a great amount of time to do it); **2** (assistance/done with help - the person was

¹ 7 AAC 125.010(a).

² 7 AAC 125.020(b).

³ 7 AAC 125.024(1).

⁴ 7 AAC 49.135.

somewhat involved in the activity, but help in the form of supervision, reminders, or physical assistance was provided); and **3** (dependent/done by others - the person is not involved at all with the activity and the activity is fully performed by another person). There is also a score that is not used to arrive at a service level: **8** (the activity did not occur).⁵

The second component of the CAT scoring system is *support*. Support captures the degree of assistance that a person requires for a particular ADL or IADL. The support scores for IADLs are **0** (no support provided); **1** (supervision/cueing provided); **2** (set-up help); **3** (physical assistance provided); and **4** (total dependence - the person was not involved at all when the activity was performed). Again, there is an additional score that is not used to arrive at a service level: **8** (the activity did not occur).⁶

The scores assigned to a particular ADL or IADL determine how much PCA service time a person receives for each occurrence of a particular activity.⁷ Even if the division agrees that the amount of time provided by the formula is insufficient for a particular PCA recipient's needs, the regulations do not provide the division with the discretion to change the amount of time specified by the formula.

The division gave two reasons for reducing Mr. A's total PCA time: a January 2012 regulatory change affecting how time for each IADL was calculated and Mr. A's abilities as described in his Individual Education Plan (IEP). Ms. A withdrew her challenge to any reduction as attributable to regulatory change but challenged the division's scoring for the IADLs of Light Meal Preparation, Documentation, Laundry, and Escort.

A. *Light Meal Preparation*

Mr. A had previously been scored as 3/4 in this area. The division reduced Mr. A's score to 2/3. A score of 2/3 describes a person who is somewhat involved in the activity but requires supervision, reminders, and physical assistance. His prior score of 3/4 is appropriate for a person who is not involved in the activity and dependent upon others. Because Mr. A makes his own food choices, prepares his own lunch, and does his own cooking, a score of 2/3 best describes Mr. A's need for physical assistance with this IADL.⁸

⁵ Ex. E. p. 26.

⁶ Ex. E. p. 26.

⁷ See 7 AAC 125.024(a)(1) and the Division's *Personal Care Assistance Service Level Computation* chart contained at Ex. B, pp. 34 - 36.

⁸ Testimony of Ms. A; Ex. C, p. 9.

B. *Documentation*

Unless a recipient is diabetic, a recipient may not be authorized to receive PCA time for taking and documenting vital signs without a prescription. Mr. A is not a diabetic and has not produced a prescription for this task. Because he has no prescription, the division may not include documentation of vital signs as an authorized service.

C. *Laundry*

Laundry involves changing a recipient's bed and laundering linens and clothing.⁹ Mr. A had previously been scored as 3/4 in this area. The division reduced Mr. A's score to 2/3. A score of 2/3 describes a person who is somewhat involved in the activity but requires supervision, reminders, and physical assistance. His prior score of 3/4 is appropriate for a person who is not involved in the activity and dependent upon others.

The division believes Mr. A's vocational training is demonstrative of his ability to be more involved in the IADL of laundry. Mr. A receives vocational training twice a week. He works in a cafeteria wiping down tables, cleaning surfaces, and setting tables, including napkins.¹⁰ His vocational training demonstrates that he has the physical dexterity and mental ability to be somewhat involved, with physical assistance, in the IADL of laundry. The division has established by a preponderance of the evidence that a score of 2/3 best describes Mr. A's current need for physical assistance with this IADL.¹¹

D. *Escort*

Escort service is one of the other services provided to meet the identified needs of the applicant/recipient.¹² It involves "traveling with the recipient to and from a routine medical or dental appointment outside the recipient's home and conferring with medical or dental staff during that appointment."¹³ Mr. A was receiving 12 minutes per week for escort services. After the most recent assessment, the division concluded that Mr. A was not eligible for escort services because he has guardians who are legally obligated to escort him to his appointments. A prior case supports that position.

⁹ 7 AAC 125.030(c)(4).

¹⁰ Ex. C, p. 8.

¹¹ Testimony of Ms. A; Ex. C, p. 8.

¹² Ex. B, p. 36.

¹³ 7 AAC 125.030(d)(9)

That case, *In re N.D.*, concluded without analysis or discussion that escort services are not available if the recipient has granted a power of attorney to someone else.¹⁴ After further analysis, the statement of law in that case was inaccurate. Some people who have granted a power of attorney to another will need an escort to attend medical appointments. On the other hand, a recipient may grant a power of attorney to another even though he or she remains fully competent to handle his or her own affairs and has no need for escort services. In addition, multiple people can simultaneously be granted a power of attorney. Sometimes the person who holds a power of attorney will live in another state. A person who accepts that power is not legally required to attend medical appointments with the grantor.

A legal guardian is different. The appointment of a legal guardian implies that the recipient is in some way not competent to handle his or her own affairs. However, as with the grant of a power of attorney, the appointment of a guardian does not always preclude providing escort services as part of a recipient's PCA time. There will be times when this service is appropriately provided by the legal guardian. In those situations, the division cannot pay for the service.¹⁵

In other situations, the legal guardian will not be the appropriate person to escort the recipient or may not be the best person to consult with the medical provider, provide information about the recipient's condition and response to treatment, or put into effect the instructions received from the medical provider.¹⁶ In all cases, the decision of whether to allow escort services should be based on the physical condition of the recipient and what is necessary to meet the identified needs of the recipient.¹⁷ The division's reason for denial of escort services is not supported by the record. Therefore, Mr. A should receive escort services at his prior authorization level, 12 minutes per week.

IV. Conclusion

The division has established by a preponderance of the evidence that its assessment correctly reflected B A's need for PCA services as of the date of its decision, with one exception.

¹⁴ OAH No. 13-0565-MDS (Commissioner of Health & Soc. Serv. 2013), at 8.

¹⁵ 7 AAC 125.010(b)(4)(B).

¹⁶ *E.g.* Where the Office of Public Advocacy is appointed guardian.

¹⁷ 7 AAC 125.010(a); Ex. B. p. 36 (Service Level Computation Chart).

Mr. A is authorized to receive 12 minutes per week for an escort to medical and dental appointments. The division's PCA reduction is affirmed in all other respects.

DATED this 3rd day of February, 2014.

Signed

Rebecca L. Pauli
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 19th day of February, 2014.

By: Signed

Signature
Rebecca L. Pauli

Name
Administrative Law Judge

Title

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