

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

In the Matter of)
)
 N B) OAH No. 14-0197-MDS
) Agency No.
_____)

DECISION

I. Introduction

N B 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. B contested that reduction and requested a hearing.

A hearing was held on April 1, 2014. Based on the testimony presented, and the other documents in the record, the division's determination is partially affirmed.

II. Facts

Ms. B is 64 years old, and she lives by herself.¹ Ms. B has multiple medical diagnoses including nonconvulsive epilepsy, hypertension, hypothyroidism, undifferentiated somatoform disorder, muscle weakness, lumbago, post-traumatic headache, and brain injury.²

Registered Nurse Denise Kichura evaluated her need for PCA services on September 5, 2013, using the Consumer Assessment Tool (CAT).³ On January 28, 2014, the division notified Ms. B that it was reducing Ms. B's PCA services from 25 hours per week to 5.25 hours per week.⁴

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[.]⁵

¹ Exhibit E1.
² Exhibit E3.
³ Exhibit E.
⁴ Exhibit D.
⁵ 7 AAC 125.010(a).

The division uses the CAT to help it assess the level of assistance needed.⁶ The amount of time allotted for needed assistance is determined by the Personal Care Assistance Service Level Computation chart.⁷ 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.⁸ Supervision is defined as oversight, encouragement, or cueing three or more times a week, with physical assistance no more than two times a week.⁹ 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.¹⁰ 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.¹¹ Full assistance means the recipient has to rely entirely on the caretaker to perform the activity.¹²

The division may change the number of hours of allotted PCA services if there has been a *material change* in the recipient's condition.¹³ A *material change* means that the recipient's medical condition has changed, or her living conditions have changed.¹⁴ 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.¹⁵ When the recipient is seeking additional time for specific services, the recipient has the burden of showing the material change that would justify the need for the increase.¹⁶ Because the division notified Ms. B of its decision on January 28, 2014, her

⁶ 7 AAC 125.020(b).

⁷ 7 AAC 125.024(1).

⁸ 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.

⁹ Exhibit E6.

¹⁰ 7 AAC 125.020(a)(1); Exhibit E6.

¹¹ 7 AAC 125.020(a)(2); Exhibit E6.

¹² 7 AAC 125.020(a)(3); Exhibit E6. Bathing and the IADLs have their own assistance level definitions.

¹³ 7 AAC 125.026(a).

¹⁴ 7 AAC 125.026(d). A material change also exists if the services were based on a prescription that has since expired, there was a time-limited amendment to the plan of care, or the services are no longer authorized by regulation. 7 AAC 125.026(d)((3).

¹⁵ 7 AAC 49.135.

¹⁶ *Id.*

condition on that date is used when determining the amount of services she is eligible to receive.¹⁷

Prior to the hearing, Ms. B's PCA agency representative, L T, informed the division that Ms. B disagreed with the CAT scoring in nine areas: transfers, locomotion, accessing medical appointments, personal hygiene, bathing, meals, shopping, light housework, and laundry.

B. Somatoform Disorder

As noted above, Ms. B has been diagnosed with undifferentiated somatoform disorder. The Diagnostic and Statistical Manual of Mental Disorders states:

The common feature of Somatoform Disorders is the presence of physical symptoms that suggest a general medical condition (hence, the term somatoform) and are not fully explained by a general medical condition, by the direct effects of a substance, or by another mental disorder (e.g., Panic Disorder). . . . In contrast to Factitious Disorders and Malingering, the physical symptoms are not intentional (i.e., under voluntary control).^[18]

Undifferentiated somatoform disorder “is characterized by unexplained physical complaints, lasting at least 6 months, that are below the threshold for a diagnosis of Somatization Disorder.”¹⁹

At times, Ms. Kichura's testimony appeared to suggest that Ms. B's limitations might be due to Ms. B's somatoform disorder. Based on the limited evidence in the record, it is not possible to determine which of Ms. B's symptoms are related to her somatoform disorder, and which are related to other diagnosed conditions. Moreover, it is important to remember that somatoform disorder is a real disease, and that the symptoms are not under voluntary control. Ms. B is entitled to PCA services to assist the performance of ADLs and IADLs that she is unable to perform without physical assistance, regardless of whether she is unable to perform them because of her lumbago, somatoform disorder, or any other physical or cognitive impairment.²⁰

¹⁷ 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>

¹⁸ Diagnostic and Statistical Manual of Mental Disorders, (American Psychiatric Association 4th Ed. Text Revision) page 485.

¹⁹ *Id.*

²⁰ See 7 AAC 125.030(b) (“Personal care services include the following types of physical assistance provided to a recipient so that the recipient may complete an ADL.”)

C. Transfers

Transferring is the act of moving between surfaces, such as getting out of or into a bed, or standing up from a chair to standing position.²¹ Ms. Kichura testified that she observed Ms. B stand up and walk to and get into her bed without any assistance from anyone.²² She testified that this was a hospital bed.

Ms. B testified that she did not get her hospital bed until several months after the assessment. Instead, she had her Amish bed, which was a very high bed that she had to crawl up into. Ms. B testified that she had to demonstrate this to Ms. Kichura. The fact that Ms. Kichura and Ms. Samuel may be mistaken about the type of bed Ms. B had does raise questions about the general accuracy of their testimony,²³ but Ms. B did testify that she demonstrated how she transferred into bed. She did not dispute that she was able get into the bed, even if it was her Amish bed instead of a hospital bed.

Ms. B testified that when sitting down, she holds onto her caretaker's hand or her son's hand so that she does not miss the chair and fall on the floor. In her prior assessment, Ms. B had been scored as needing limited assistance with transfers when she is not feeling well. Ms. B needs limited assistance as long as she needs the type of assistance she described – holding on to someone's hand – at least three times each week. The division has not met its burden of proving a material change in condition such that Ms. B no longer needs at least limited assistance with transfers. She should continue to receive these services with her prior frequency of six times a day, seven days a week.

D. Locomotion

The ADL of locomotion only refers to the manner in which a person moves within his or her own room or other areas on the same floor.²⁴ Ms. Kichura observed Ms. B walking to the kitchen and to the bedroom.²⁵ She indicated that Ms. B sometimes uses a walker or a cane.²⁶ Ms. B did not provide testimony to dispute her ability to locomote in

²¹ See Exhibit E6.

²² Testimony of Ms. Kichura. Registered Nurse Geetha Samuel was also present during the evaluation, and confirmed that she observed the same things that Ms. Kichura testified to seeing.

²³ On the other hand, Ms. B may be mistaken as to when she got her new bed.

²⁴ See Exhibit E7.

²⁵ Exhibit E7.

²⁶ *Id.* Walking with a cane or walker, or self-sufficiency in a wheelchair, is still considered independent locomotion.

her own home. The division has met its burden of showing an improvement in Ms. B's condition such that she no longer needs limited assistance with the ADL of locomotion.

E. Locomotion to Medical Appointments

Accessing medical appointments generally involves longer distances. Neither the notes in the CAT nor Ms. Kichura's testimony directly address Ms. B's ability to locomote to medical appointments.²⁷ She had previously been scored as needing limited assistance with this task twice a day, one day each week.²⁸ Ms. Kichura testified that Ms. B uses an assistive device to lift her foot up when getting into the bathtub, which suggests she might have some difficulty navigating stairs or ramps. Based on the limited information in the record, the division has not met its burden of proving a material change in condition regarding Ms. B's ability to locomote to medical appointments.

F. Personal Hygiene

This ADL refers to such tasks as applying makeup, combing or brushing hair, washing one's hands and face, and brushing teeth.²⁹ Ms. Kichura testified that she observed Ms. B reach over her head with both hands, and determined that she had good range of motion and fine motor skills. She scored Ms. B as independent with this ADL. Ms. B testified that she has difficulty holding items in her right hand. However, she was able to use one hand to lift a small frying pan and a jug of water from the refrigerator.³⁰ She should be able to perform personal hygiene tasks without assistance. Based on the information in the record, the division has met its burden proving that Ms. B's medical condition has changed so that she no longer needs limited assistance with these tasks.

G. Bathing

The ADL of bathing is the taking of a full-body bath or shower, or a sponge bath, and includes transfers in and out of the bath. It is not considered a bath if only the hair and back are washed.³¹ Ms. B told Ms. Kichura that she needed help washing her hair during

²⁷ When asked about locomotion to medical appointments, Ms. Kichura responded that Ms. B was independent with toileting at public restaurants.

²⁸ Exhibit F7

²⁹ See Exhibit E10.

³⁰ Testimony of Ms. Kichura; testimony of Ms. B.

³¹ 7 AAC 125.030(b)(8). The CAT also describes the ADL of bathing and states "Exclude washing of back and hair." Exhibit E11. Interpreting the regulation and CAT together, if only the back or hair are washed, it is not a considered a bath. However, if the back or hair are washed as part of the bath, then that time is included within that ADL. This interpretation is further supported by 7 AAC 125.030(b)(7)(G) which states that washing hair is part of the personal hygiene ADL when not done as part of the bathing ADL.

her baths.³² She also testified during the hearing that she needed this assistance. She previously needed physical assistance for part of the bathing activity.³³ The division has not met its burden of proving a material change of condition as to this ADL. In addition, given Ms. B's incontinence, she should continue to receive authorization for this ADL once a day, seven days each week.³⁴

H. Meals

Ms. B testified that she cannot cook with her stove because she had previously started a fire. She is also no longer able to use the microwave because she burns things. She testified that she has no control of her right hand for cooking, and cannot wash vegetables. For light meal preparation, Ms. B's score was reduced from her prior level of needing some physical assistance to independent with difficulty. Neither the CAT nor the notice from the division provide an explanation of what changed in Ms. B's condition to justify this reduction. Based on the testimony at the hearing, the division has not met its burden of proving a material change as to light meal preparation.

For main meals, Ms. B's score was changed from dependent to needing physical assistance.³⁵ Her notice from the division, however, states that only the frequency was changed.³⁶ While page D9 of the notice shows the change in the assistance level, the discrepancy between the earlier description and the summary chart is potentially misleading. In addition, there was no explanation for this change. The division has not met its burden of proving a material change in condition such that Ms. B is now able to assist in her main meal preparation.

The division also reduced the frequency of main meals to twice a week because Ms. B was receiving meals delivered to her. Since they are delivered, no meal preparation is required. Ms. B testified that the meal delivery had recently ended. As of the date of the notice from the division, however, the meal delivery was still in effect.³⁷ The frequency of main meal preparation set by the division is affirmed.

³² Exhibit E11.

³³ Exhibit F11.

³⁴ Ms. Kichura scored Ms. B with a bathing frequency of four times a week because she says she was told that Ms. B only baths every other day. The PCA cannot charge for bathing that is not provided, but Ms. B should be authorized for bathing every day.

³⁵ See Exhibits E27 and F26.

³⁶ Exhibit D4.

³⁷ Ms. B was told at the hearing that she could submit a change of information if meal delivery has ended.

I. Shopping

Ms. B had previously been scored as dependent for shopping.³⁸ In her most recent evaluation, she was scored as needing assistance.³⁹ Ms. B is able to walk short distances using her cane or a walker. She is able to use her left hand. Ms. B testified that she can ride in the electric scooter provided by the store. While she would likely not be able to shop on her own, the division has met its burden of proving a material change in condition such that she is no longer fully dependent on others for this IADL.

J. Housework

As with shopping, Ms. B's housework score changed from dependent to needing assistance.⁴⁰ She testified that she is unable to vacuum or otherwise assist with housework. Routine housework consists of vacuuming, cleaning floors, trash removal, and cleaning the bathroom. These tasks are more demanding than shopping. Nothing in the CAT or the division's notice explains why the division believes she is now able to perform this task with assistance. The division did not meet its burden of proof for this change.

K. Laundry

Ms. B's score for laundry also changed from dependent to needing assistance.⁴¹ Ms. B testified that she can fold clothes, but she does not do a very good job so her care giver will refold them afterwards. If they are not refolded, they will not fit in the drawer.⁴² She also testified that she is unable to carry the laundry basket. It is not clear from the evidence what part of the laundry IADL Ms. B could perform. The division did not meet its burden of proof for this change.

IV. Conclusion

The division has met its burden of proving a material change in condition as to some of the PCA services Ms. B receives, but not all of them. The division should recalculate her service level authorization in accordance with the findings in this decision.

Dated this 10th day of April, 2014.

Signed

Jeffrey A. Friedman
Administrative Law Judge

³⁸ Exhibit F26.
³⁹ Exhibit E27.
⁴⁰ Exhibits F26 and E27.
⁴¹ *Id.*
⁴² Testimony of Ms. 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 24th 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.]