

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

In the Matter of)
)
 F D)
_____)

OAH No. 14-0600-MDS
Agency No.

DECISION

I. Introduction

F D participates in the Medicaid Personal Care Assistance (PCA) program run by the Division of Senior and Disabilities Services (division). After her annual assessment interview, the division reduced her authorized PCA service time from 56.5 hours to 35.5 hours. The parties were able to resolve many of the areas of disagreement, but were unable to resolve self-performance scores for body mobility (including frequency), transfer (nonmechanical), locomotion, toileting, dressing, personal hygiene, and bathing. The parties agreed that for those activities, such as medication, that relied upon the personal hygiene score to determine the authorized time per frequency, that frequency was not at issue and the parties would accept the personal hygiene self-performance score.

This decision finds by a preponderance of the evidence that Ms. D’s physical and cognitive abilities make her totally dependent upon her caregiver for the ADL’s of bed mobility, transfers, locomotion, dressing, toilet use, personal hygiene and bathing (score of 4/2). The preponderance of the evidence establishes that, as a matter of law, the frequency for the ADL of bed mobility is zero.

II. Facts

F D is an 82-year-old woman who suffers from Alzheimer’s, dementia, diabetes, and other conditions typically encountered by a woman of her age, such as osteoarthritis hypertension, etc.¹ Ms. D suffered a stroke that affects her upper left side. She is unable to stand or otherwise move without assistance.²

The assessor, Geetha Samuel, observed that Ms. D does not respond to prompting or to questions. Ms. D is unresponsive and uncooperative.³ The unchallenged evidence establishes

¹ Exhibit E at 3.

² Exhibit E.

³ Exhibit E at 3 – 4, 7 – 10, 16 - 18; Testimony of S S.

that Ms. D screams, spreads her feces on the wall next to her bed, and, when it is meal time, she will kick at the caregiver, often knocking dishes to the floor.⁴

Ms. D's needs were advocated by her grandson and power of attorney, S S. In addition to Mr. S, Ms. D's daughter and PCA, B N, testified for Ms. D. Ms. N was present throughout the assessment interview. Mr. S arrived after it had started. Ms. Samuel testified for the division.

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) . . . based on the physical condition of the recipient."⁵ The ADLs measured by the CAT are bed mobility, transfers (non-mechanical), transfers (mechanical), locomotion (in room), locomotion (between levels), locomotion (to access apartment or living quarters), dressing, eating, toilet use, personal hygiene, personal hygiene-shampooing, and bathing.⁶

The division uses the CAT (Consumer Assessment Tool) to help it assess the level of assistance needed.⁷ The amount of time allotted for needed assistance is determined by the Personal Care Assistance Service Level Computation Chart (SLC).⁸ The SLC provides the amount of time allotted for each ADL, depending on the level of physical assistance needed for each task.

The different levels of assistance with ADLs are defined by regulation, and the descriptions of each ADL are in the CAT.⁹ Supervision is defined as oversight, encouragement, or cueing three or more times a week, with physical assistance no more than two times a week.¹⁰ Limited assistance (scored as a two) 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.¹¹ Extensive assistance (scored as a three) is defined as requiring direct physical help with weight-bearing support at least three times a week, or full assistance without any

⁴ *Id.*

⁵ 7 AAC 125.010(a).

⁶ Exhibit E at 6 – 11.

⁷ 7 AAC 125.020(b).

⁸ 7 AAC 125.024(1).

⁹ 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.

¹⁰ Exhibit E at 6.

¹¹ 7 AAC 125.020(a)(1); Exhibit E at 6.

involvement from the recipient at least three times a week, but not all of the time.¹² Total dependence (scored as a four) means the recipient cannot perform any part of the activity and has to rely entirely on the caretaker to perform the activity.¹³

The distinction between extensive assistance and total dependence is not a bright line. It would be administratively efficient if there was a bright line that separated when a recipient requires extensive assistance (score 3) or total dependence (score 4). The line between extensive assistance and total dependence is, at times, blurred.

Whether the recipient requires extensive assistance or total dependence is a fact specific determination to be made on a case by case basis. There are those services performed where the recipient is not taking an active role in the physical performance of the ADL, but is merely physically present or cooperating with the caregiver. At this point the recipient is not involved in the act of the ADL but is cooperating with the caregiver, or the recipient is physically present but unaware of the activity or the recipient's role in the completion of that activity. Each time the ADL occurs, the recipient is cooperative while still being totally physically dependent upon the caretaker for the physical performance of the ADL. Then the level of assistance is closer to total dependence and scored as such.

In those instances where the division seeks to reduce Ms. D's scores or frequencies, the division has the burden of proof.¹⁴ Conversely, where Ms. D's seeks to increase a score or frequency, she has the burden of proof.¹⁵

B. *Activities of Daily Living*

1. Bed Mobility

The ADL of body mobility includes the activity of positioning or turning in a bed or chair.¹⁶ The CAT refers to this as bed mobility, which is described as how a person moves to or from a lying position, or turns side to side, or positions his or her body while lying in bed.¹⁷ The division scored Ms. D as requiring extensive assistance by one person (score 3/2) 14 times a week. Ms. D believes she is totally dependent upon her care giver (score

¹² 7 AAC 125.020(a)(2); Exhibit E at 6.

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

¹⁴ 7 AAC 49.135.

¹⁵ 7 AAC 49.135.

¹⁶ 7 AAC 125.030(b)(1).

¹⁷ Exhibit E at 6.

4/2) and would like the frequency returned to 56 times a week. This is a mixed burden inquiry. The division has the burden of establishing it was correct when it reduced the frequency from 56 to 14, and Ms. D has the burden of establishing that she is totally dependent upon her caregiver.

a. Frequency

There has been a regulatory change since Ms. D was last assessed in 2009. The current regulations direct the division that as to frequency for this ADL, “[b]ody mobility is less than or equal to every two hours as a standard (12 x 7 = maximum frequency of 84) reduced by any frequencies for other ADL tasks (transfer, toileting, bathing, locomotion, etc.) where body mobility is a functional part of the overall task.”¹⁸

The division reduced Ms. D from a frequency of 56 to 14 per week. The reduced frequencies were calculated based on the CAT scoring prior to the parties’ resolution. However, the frequencies agreed upon as part of the resolution for Toileting (frequency of 56) and Transfers (frequency of 44) alone exceed the maximum 84 for Body Mobility. Therefore, the authorized frequencies for the ADL of Body Mobility are, by regulation, zero

b. Self-Performance Score

Ms. D has the burden of establishing by a preponderance of the evidence that she is totally dependent upon her caregivers for the performance of this ADL. The assessor wrote that Ms. D’s caregiver reported that Ms. D is unable to reposition or sit up in bed without help due to weakness.¹⁹ Mr. S testified that his grandmother does not move at all unless someone moves her. The assessor observed that in bed, Ms. D remained in one position until she was repositioned.²⁰

The division believes Ms. D still requires extensive assistance (score 3/2). It reasons that the caregiver wrote in the CAT that the caregiver reported at times Ms. D would assist with turning by holding the side rails with her arm. The assessor testified that she observed Ms. D raise her hand to her head and reach down to grab the sheet.

It is unclear how a person of Ms. D’s functional abilities could assist with the ADL of bed mobility simply because she can raise a hand or reach down to grab a sheet. If the division

¹⁸ Exhibit B at 34.

¹⁹ Exhibit E at 6.

²⁰ Exhibit E at 6.

offers these physical movements as persuasive evidence of Ms. D's self-performance, it failed to explain how grabbing a sheet would assist in the ADL of bed mobility. To the extent there is persuasive value in the assessor's observations, it is outweighed by the assessor's observations repeated throughout the CAT and Ms. Samuel's testimony that Ms. D is unresponsive, uncommunicative, and uncooperative. The preponderance of the evidence establishes that Ms. D is Totally Dependent upon her caregiver to perform this ADL (score of 4/2).

2. Transfers

Ms. D had previously been allowed extensive assistance for transfers (score 3/2). Ms. D believes she should be scored as totally dependent upon her caregiver (score 4/2). Transferring is the act of moving between surfaces, such as getting out of or into a bed, or getting up from a chair to a standing position.²¹ The assessor observed that Ms. D did not move her legs, and that when she was transferred her grandson, Mr. S, "bear hugged her & lifted her . . . [Ms. D] did not assist, her legs dragging with transfers."²² The assessor wrote that Ms. N reported managing all transfers by lifting Ms. D in and out of bed or chair and at times would use a gait belt for transfers.²³ The division did not explain how the gait belt was used. The evidence provided describes Ms. D as requiring assistance that bears a closer resemblance to total assistance than it does to extensive assistance. Ms. D should be scored as totally dependent (score 4/2) for this ADL.

3. Locomotion

The ADL of locomotion refers to the manner in which a person moves within his or her own room or other areas on the same floor.²⁴ As with the ADL of transfers, the division continues to authorize extensive assistance (score 3/2) for this ADL and Ms. D believes the division should increase the score to total dependence (score 4/2). The CAT and testimony supports Ms. D's position.

The assessor observed a general weakness in both legs and weak foot pushes. Neither the CAT nor the division's testimony establish whether the foot push could move the wheelchair. However, the evidence regarding Ms. D's cognitive impairment and weakness, corroborated by Mr. S's testimony regarding his grandmother's inability to

²¹ See Exhibit E at 6.

²² *Id.*

²³ *Id.*

²⁴ See Exhibit E at 7.

initiate or meaningfully participate in locomoting at home, is as corroborated throughout the CAT. This evidence supports a finding by a preponderance of the evidence that Ms. D is totally dependent upon her caregivers to move between locations in the house or on the same floor (score 4/2).

4. Dressing

The ADL of dressing refers to how a person puts on, fastens, and takes off all items of street clothing, including donning/removing a prosthesis.²⁵ Ms. D was previously scored as being totally dependent upon her care giver (score 4/2). The division reduced her score to extensive assistance (score 3/2) for the ADL of Dressing. Ms. Samuel explained that the reduction was in response to her observation during the assessment interview that Ms. D could raise her right arm. Apparently the conclusion the division would like to draw is that because Ms. D can raise her right arm, she can perform a small part of the ADL and therefore only requires extensive assistance. If Ms. D could comprehend instructions or respond to prompting, then the assessor may be correct. However, the overwhelming weight of the evidence establishes Ms. D's self-performance has not improved. Ms. D should be returned to a score that reflects her physical ability of total dependence (score 4/2).

5. Toilet Use

Toilet use includes transfers on and off the toilet, cleaning post toileting, and adjusting clothing and routine incontinence care.²⁶ Ms. D was scored as total dependence (score 4/2) for this activity on her prior CAT. The division concluded that Ms. D had improved and only required extensive assistance (score 3/2) with this ADL. Ms. Samuel explained her scoring was based on what the assessor wrote Ms. S reported at the time of the assessment interview: Ms. D "can hold side rails while being changed as complete cleansing done by [daughter]."²⁷ This contradicts Ms. Samuel's observations during the assessment interview that she found Ms. D unresponsive and unable to communicate. The record supports a finding that it is more likely than not that Ms. D has not improved and

²⁵ Exhibit E at 8.

²⁶ 7 AAC 125.030(b)(6).

²⁷ Exhibit E at 9.

continues to be totally dependent upon her caregivers to complete the ADL of toileting (score 4/2).

6. Personal Hygiene

Personal hygiene is defined as washing/drying face and hands; nail care unless the recipient is diabetic; skin, mouth and teeth care; brushing and combing hair; shaving; applying makeup; and cleaning perineum.²⁸ Ms. D had previously been allowed extensive assistance for personal hygiene (score 3/2). Ms. D believes she should be scored as totally dependent upon her caregiver (score 4/2). Ms. D's inability to participate in simple her daily routines, and her lack of ability to follow directions or communicate, support a finding that it is more likely than not that Ms. D is totally dependent upon her caregiver for her personal hygiene needs (Score 4/2).

7. Bathing

Ms. D had previously been allowed extensive assistance for bathing (score 3/2). Ms. D believes she should be scored as totally dependent upon her caregiver (score 4/2). The testimony at hearing and the narrative throughout the CAT establish that Ms. D is totally dependent upon her caregiver to get in and out of the tub. Her Alzheimer's precludes her participation in washing her body.²⁹ PCA time for the ADL of bathing should be increased to reflect that she is totally dependent upon her caregivers (score 4/2).

IV. Conclusion

Ms. D has severe cognitive impairments that limit her ability to perform or even participate in Activities of Daily Living and Instrumental Activities of Daily Living without physical assistance. The division erred when it reduced her PCA services for toileting and dressing. The division did not err when it originally reduced her frequency for the ADL of body mobility, but the parties' resolution increased frequencies on other ADLs, resulting in a reduction in the frequency of body mobility to zero. Ms. D has established by a preponderance of the evidence that her condition makes her totally dependent upon her caregivers for the ADL's of body mobility, transfer (nonmechanical), locomotion, personal hygiene, and bathing. Where the division's determination is modified, the time allowed for each activity should be the frequency previously approved multiplied by the number of

²⁸ 7 AAC 125.030(b)(7); Exhibit E at 10.

²⁹ Exhibit E at 10; testimony of Ms. Samuels; testimony of Mr. S.

minutes for that activity and CAT score listed in the Personal Care Assistance Service Level Computation Chart.

DATED this 31st day of July, 2014.

By: Signed
Rebecca L. Pauli
Administrative Law Judge

Adoption

The undersigned, by delegation from 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 11th day of August, 2014.

By: Signed
Name: Rebecca L. Pauli
Title: Administrative Law Judge

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