

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

In the Matter of)	
)	
B T)	OAH No. 14-0620-MDS
_____)	Agency No.

DECISION

I. Introduction

This case is B T's appeal of the reduction in number of hours authorized for Personal Care Assistance (PCA) services. The Division of Senior and Disabilities Services (division) reduced Ms. T PCA services. Based on an assessment conducted on August 10, 2010, the division had previously set Ms. T's PCA service authorization at 29.75 hours per week. The division had arranged for a reassessment of Ms. T's functional abilities on October 4, 2013. Based on this reassessment, the division determined that Ms. T was eligible to receive only 18.75 hour per week of personal care services. Ms. T requested a hearing to contest that determination.

Ms. T, through Z R, who has her power of attorney, disputes the determination that she only qualified for 18.75 hour per week of personal care services. Ms. R explained that she believes Ms. T needs more PCA services than the 29.75 hours per week she is currently receiving.

A hearing was held on May 14, 2014. Ms. T did not participate. Ms. R represented and testified on Ms. T's behalf. Several attempts were made to contact other individuals who could testify for Ms. T about her PCA needs. Near the end of the hearing, Ms. T's personal care provider, G N, contacted this office and was able to testify. The division was represented by Angela Ybarra. Because this appeal was in response to a reduction in benefits that had been previously approved, the division had the burden of proof at the hearing.

Based on the evidence presented at the hearing, the division met its burden of proof, except in regards to Ms. T's needs for assistance in preparing her meals and toileting. The evidence in the record showed that Ms. T's participation in the preparation of meals would be both a hindrance rather than reducing the time needed for preparation, and an unreasonable safety risk, because her lack of sensitivity in her hands and her limited

coordination, strength and balance makes her participation dangerous. The division also did not show that there had been change of Ms. T's toileting needs that justified a reduction in services. The division's decision that Ms. T is not eligible for more than 18.75 hours of PCA services must be adjusted to add additional minutes per week to reflect these changes in her assessment.

II. Facts

Ms. T's personal care provider was concerned about Ms. T's needs for assistance for additional time to deal with her loss of bowel control. Ms. T explained that she was concerned about the reduction of her PCA hours because she cannot cook for herself.¹

Ms. T lives by herself. She was 73 years old at the time of the reassessment.² She has been diagnosed with epilepsy, and mental disorders including Alzheimer's disease and incontinence, as well as less serious medical problems.³ At the reassessment, she showed that she was unable to appropriately number and tell time on a clock.⁴ She was able to stand with difficulty and the assistance of a two-handed push from the couch. She used a walker for assistance. She could get up and walk on her own, but her gait and balance were unstable.⁵

The re-assessment took place in Ms. T's home by Michelle Russel-Brown, RN, on October 4, 2013.⁶ Ms. T demonstrated her ability to move from one place to another during the reassessment. The division included time for trips for medical appointments in the authorization for PCA services, but she did not get time for a care provider to escort her because her daughter goes with her.⁷

Based on the evidence in the record, I find that the division showed that it is more likely than not that the determination that Ms. T qualified for only 18.75 hours per week of PCA services on the date of the assessment was correct, except in scoring her as only needing limited assistance in preparing her main meal.⁸ The division may have understandably assumed that Ms. T could safely provide some marginally effective

¹ Recording of Hearing.

² Exhibit E-2.

³ Exhibit E-3.

⁴ Exhibit E-4.

⁵ Recording of Hearing & Exhibit E-4.

⁶ Exhibit E.

⁷ Recording of Hearing.

⁸ Exhibits D & E & Recording of Hearing.

assistance with her meal preparation based its assessment of her motor-skills and mental faculties, but the testimony of her care provider and her power of attorney, showed that the care provider was probably correct in her determination that it would take more time and put Ms. T at unreasonable risk to involve her in the main meal preparation due to her balance issues and the limits of the strength and sensitivity of her hands. The division also did not show that there had been change of Ms. T's toileting needs that justified a reduction in services. Although the division did provide the maximum for the laundry, the division reduced the frequency of toileting from 42 to 28 times per week. Given the clean-up needed to deal with Ms. T's bowel incontinence, this reduction was not supported by the evidence in the record. Except for these issues, the division showed that all of the concerns Ms. T's power of attorney and her provider raised about the reduction in her hours were properly addressed in the reassessment and the hours that were authorized even with the reduction to 18.75 hours per week.⁹

III. Discussion

The purpose of the PCA program is to provide physical assistance to those who need them, like Ms. T, with activities of daily living physical assistance with instrumental activities of daily living and other services based on the physical condition of the person receiving these services.¹⁰

The division uses the Consumer Assessment Tool, which is referred to at the hearing as the "CAT", to determine how many hours of PCA services that should be provided every week.¹¹

The amount of time allotted for that assistance is calculated using the Personal Care Assistance Service Level Computation.¹² This computation shows the amount of PCA time allotted for each activity or instrumental activity depending on the level of assistance needed for each task.¹³

The division has the burden of proof in this appeal because the division is reducing the number of PCA hours that it has previously authorized M. T to receive. The division's

⁹ Recording of Hearing.

¹⁰ Alaska Regulation 7 AAC 125.010(a).

¹¹ Alaska Regulation 7 AAC 125.020(b).

¹² Alaska Regulation 7 AAC 125.024(1).

¹³ See Exhibits D & E.

burden of proof is to show by a preponderance of the evidence that the findings that support its decision to reduce the PCA authorization are correct. This means the division had to present evidence of showing that it is more likely than not that the determination that Ms. T qualified for only 18.75 hours per week of PCA services on the date of the notification of the PCA authorization change was correct.

At the hearing the division met its burden with evidence that was not persuasively rebutted by the testimony of the witnesses who spoke on Ms. T's behalf except on the issues of meal preparation and toilet use. Z R, who has Ms. T's power of attorney did not directly contradict the Nurse Russel-Brown's findings and scorings in the CAT; rather, she expressed general concerns about the reduction of her PCA hours and her general impression that Ms. T's mental and physical abilities had decreased while her needs had increased, rather than decreased, since her assessment in 2010.

Ms. R is also Ms. T's landlady and has been since 1994. Ms. R took over the power of attorney duties for Ms. T recently from Ms. T's daughter, A B, who was not available at the time of the hearing. Ms. R explained that Ms. T lives by herself in an apartment in No Name. Ms. R explained that Ms. T is moving slower and her movements are not as good as before. Ms. R did not recall Ms. T having had a seizure or falling down and needing help getting up. Ms. R explained that Ms. T sometimes gets confused about when things happened in the past. Ms. R testified that Ms. T had lost weight before her current care provider, G N, had started to work to ensure that her meals were prepared and that she was eating.¹⁴

G N had three specific concerns about the reduction in PCA hours. These concerns were a recent increase in clean-up needs due to frequent bowel incontinence, problems walking, and main meal preparation.

G N has been providing about four hours of PCA services per day. Recently, Ms. T has had frequent bowel movements that she is not aware she has had. Ms. N recalled one morning recently when this had happened four times.¹⁵

Ms. N explained that Ms. T's legs are not working as well as they did, in that she gets around with her walker but, her balance seems worse, and that she sometimes falls when her

¹⁴ Recording of Hearing-Testimony of Ms. R.

¹⁵ Recording of Hearing-Testimony of G N.

dog jumps on her or gets in her way. Ms. N recalled an incident when Ms. T fell in a laundry basket and could not get out by herself. Ms. N admitted that Ms. T does walk outside to go to the store with her except in the winter, when Ms. T gets her exercise by walking in the halls of the apartment building.¹⁶

Ms. N explained Ms. T does not provide assistance with her meal preparation. Ms. N has Ms. T sit at the table and stay out of the way when she prepares her meal because Ms. T's participation in the preparation of meals would increase rather than reduce the time needed for preparation. Ms. N also believes that Ms. T's lack of sensitivity in her hands and her limited coordination, strength and balance make her participation dangerous and an unreasonable safety risk. Ms. N explained that she burns and cuts herself when has tried to cook for herself. Ms. N's understanding is that her doctor has determined that the nerves in her fingers are losing sensitivity.¹⁷

Nurse Russel-Brown explained that the reassessment had already given Ms. T the maximum time authorization for extra laundry due to incontinence. Nurse Russell-Brown also explained was also not clear that the problem with the recent increase in incontinence might be the result of a temporary illness. The division did not show that the frequency in weekly toilet use should be reduced from 42 to 28. Bowel incontinence requires toilet use for clean-up. The reassessment documented that Ms. T had medical issues related to the need for assistance with clean-up.

Nurse Russell-Brown explained that reassessment had given Ms. T's time to receive assistance with two transfers per day. Given the witnesses description of Ms. T's mobility, the evidence showed that the division had met its burden to show that its scoring and the resulting authorization of time in the reassessment was correct. While Ms. T has some difficulty with her strength and balance, apparently, she usually gets around without assistance with her walker.

The division did not meet its burden in showing that it had scored Ms. T correctly in regards to light and main meal preparation. The division reduced her score from 3-4 to 2-3 in both of these categories, which led to a reduction in the minutes authorized.¹⁸ Nurse

¹⁶ Recording of Hearing-Testimony of G N.

¹⁷ Recording of Hearing-Testimony of G N.

¹⁸ Exhibit D-9 and Recording of Hearing.

Russel-Brown explained that her assessment that Ms. T only needed limited assistance in meal preparation was based on her interview and her assessment of Ms. T' mental and physical abilities. As noted above, the evidence shows that Ms. T's participation in the preparation of meals would not reduce the time needed for preparation and would create an unreasonable safety risk. Ms. T reports to her care provider that she gets up at around 3:00 A.M. to take her thyroid medicine and eat some oatmeal at that time, because her doctor instructed her to have some food in her stomach when she takes that medication, but her care provider was unsure of exactly what Ms. T is actually eating or how she is preparing it, as she still needs to have all her meals prepared for her.

IV. Conclusion

The division has met its burden of proving a material change in condition as to some of the PCA services Ms. T receives, but not some of them. Specifically, the division failed to meet its burden of proving a material change in condition in regards to Ms. T's needs or abilities as they pertain to being able to provide any assistance preparing her meals and the frequency of her need for assistance in toileting. The division should recalculate her service level authorization in accordance with the findings in this decision.

Dated this 3rd day of June, 2014

Signed _____
Mark T. Handley
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 22nd day of July, 2014.

By: *Signed* _____
Name: Mark T. Handley
Title: Administrative Law Judge

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