

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

In the Matter of )  
 )  
 O N )  
\_\_\_\_\_ )

OAH No. 14-0719-MDS  
Agency No.

**REVISED DECISION**

B. The undersigned, by delegation from the Commissioner of Health and Social Services and in accordance with AS 44.64.060(e)(3), revises the enforcement action, determination of best interest, order, award, remedy, sanction, penalty, or other disposition of the case as follows and adopts the proposed decision as revised:

All aspects of the proposed decision are hereby adopted. However, based on Ms. N's proposal for action, additional clarification concerning PCA time for medication is necessary.

The reason given in the division's decision to deny PCA time for medication was because time for medication is based on a person's personal hygiene score. Therefore, because Ms. N did not receive a personal hygiene score, the division was compelled to decline PCA services for medication. See Exhibit D, pp 3, 4. Under the reason given for the division's denial, if Ms. N was eligible for PCA time for personal hygiene, she would receive PCA time for medication. As to frequency, it is the division's burden to establish by a preponderance of the evidence that Ms. N no longer requires assistance with medication 21 times a week. This it did not do.

Therefore, in addition to personal hygiene at 2/2, seven days a week, Ms. N's PCA service plan is to include medication 21 times a week, using her personal hygiene score of 2/2.

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 16<sup>th</sup> day of July 2014.

By: Signed  
Jared C. Kosin  
Executive Director, Office of Rate Review  
Department of Health and Social Services

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OAH No. 14-0719-MDS  
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**DECISION ON PERSONAL HYGIENE**

This decision resolves the only item the parties could not agree upon – whether O N,<sup>1</sup> will continue to receive Personal Care Assistance (PCA) services to assist her with her personal hygiene, an activity of daily living (ADL). The Division of Senior and Disabilities Services (division) oversees the PCA program, and it contends that Ms. N no longer requires physical assistance to complete her personal hygiene needs (combing hair, brushing teeth, applying makeup, washing and drying her face and hands).<sup>2</sup> Ms. N disagrees.

To resolve the issue, a hearing was held on June 9, 2014. Ms. N was not present but participated through T L N, who holds a power of attorney for her. Two witnesses testified for Ms. N: her daughter and PCA, R D, and her agency representative, S F. The division was represented by Angela Ybarra and presented the testimony of Kathryn Heaslet. The division employee who conducted the reassessment visit, Olga Levy, did not testify.

PCA services provide a recipient with physical assistance to complete ADLs. ADLs include transfers, dressing, eating, toilet use, and personal hygiene.<sup>3</sup> The amount of time authorized for payment by Medicaid is determined by regulation and the level of physical assistance needed to complete each ADL.

The division assesses level of physical assistance using the CAT (Consumer Assessment Tool). The division sends a registered nurse to a recipient’s home to assess the recipient’s needs. The nurse then scores the CAT and notes the frequency of assistance needed to complete a particular ADL.<sup>4</sup>

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<sup>1</sup> Through her power of attorney.

<sup>2</sup> Exhibit D; Exhibit E, p. 10.

<sup>3</sup> A complete list of ADLs can be found at 7 AAC 125.030(b).

<sup>4</sup> 7 AAC 125.020(b).

In this case, Ms. N was already receiving PCA services. The division reassessed her in October 2013,<sup>5</sup> and as a result, the division sought to reduce her authorized PCA services from 28 hours per week to 11 hours per week. Ms. N contested. The parties were able to resolve all areas of disagreement except for Personal Hygiene.

The division scored Ms. N's need for personal hygiene as a 1/1 score, meaning it determined Ms. N requires supervision and set up help, but not physical assistance. Ms. N believes she should be returned to her prior score of 2/2 with a frequency of 1 per day. This would indicate a requirement for 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 and would result in some additional PCA time..<sup>6</sup> It is the division's burden to justify the reduction.<sup>7</sup>

None of the division's witnesses were present during the assessment. Its witnesses testified that the information contained in the CAT supported the 1/1 score. This is correct. The CAT indicates that Ms. N reported she can wash her face and hands and comb her hair with set up assistance.<sup>8</sup> However, the dispute is not over whether the CAT supports the score, but whether the CAT accurately captured Ms. N's need for physical assistance as of April 18, 2014, the date the division issued its assessment determination.<sup>9</sup>

Ms. N's witnesses testified that sometimes she does need help, but not always. Her PCA testified that even though Ms. N is left handed, her right hand will shake so badly that she cannot hold her dentures to apply the adhesive in the morning or clean the adhesive off at night. This, she testified, happens 3 to 4 times a week.<sup>10</sup>

The division attempted to discredit this testimony by focusing on the fact that if Ms. N's hand shook, there was no diagnosis that supported a right hand tremor, and regardless, Ms. N is left handed. According to the division, the implication of the left handedness observation is that, if she is left handed, a right hand tremor should not interfere with her ability to take care of her personal hygiene needs. This is true for items that can be accomplished with one hand, such as washing one's face. But there are some Personal

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<sup>5</sup> Exhibit E. The assessment visit lasted 52 minutes.

<sup>6</sup> 7 AAC 125.020(a)(1); Exhibit E6.

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

<sup>8</sup> Exhibit E, p. 10.

<sup>9</sup> Exhibit D.

<sup>10</sup> It was not established whether the 3 to 4 times a week was intended to represent a day that encompassed both morning and evening routine, meaning a frequency of 6 – 8 times a week, or the actual incidences of assistance.

Hygiene tasks that require two hands, such as preparing dentures to be inserted. The CAT does not mention Ms. N's ability or lack of ability to care for her own dentures.

The ability to care for one's teeth is part of the ADL of Personal Hygiene. Testimony describing the need for both hands to apply adhesive and clean dentures is credible. The assessor's own observations of "noted weakness, limited mobility in her fingers on R. hand" bolster the already credible testimony regarding an issue with the right hand.<sup>11</sup> The division's evidence does not support a material change in Ms. N's condition that would support a reduction to her personal hygiene needs. She should be returned to a 2/2, 7 times a week.

Ms. N's PCA service plan should be revised to be consistent with this decision. Any removed PCA services should be restored in accordance with the above scoring and the parties' resolution on the record.

DATED this 10<sup>th</sup> day of June, 2014.

By: Signed \_\_\_\_\_  
Rebecca L. Pauli  
Administrative Law Judge

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

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<sup>11</sup> Exhibit E, p. 8.