

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

In the Matter of)
)
 P M)
_____)

OAH No. 14-0856-MDS
Agency No.

DECISION

I. Introduction

P M has many serious medical problems. She lives independently, however, and can generally care for herself. She was assessed for personal care assistance, and the Division of Senior and Disabilities Services determined that she qualified for 1.75 hours for assistance in shopping and housekeeping. She appealed, arguing that this simply was not enough time to accomplish these tasks, and that she should also receive assistance for laundry, meal preparation, escort, and bathing. The facts showed that she qualifies for assistance in laundry, but that she is sufficiently independent in accomplishing the other tasks. With regard to the time given, additional time cannot be added above what is allowed under regulation. Therefore, other than adding additional PCA time for laundry, the Division's decision is affirmed.

II. Facts

P F M is a 53-year-old woman who lives in No Name. At the hearing in this case, Ms. M provided a very comprehensive review of her multiple disorders and impairments. She also provided a letter from her doctor, which confirmed Ms. M's testimony.¹ In a brief summary, Ms. M's medical problems include:

- multiple orthopedic problems, including degenerative joint disease in her shoulders, knees, hips, and back
- several orthopedic surgeries over the years, two on her back (one to remove a tumor and one to remove a disc); three on left wrist; two on left elbow; one on right elbow
- chronic pain brought on by the orthopedic disorders
- vestibular problems that sometimes results in a loss of balance
- two cysts on her left wrist, one of which was surgically removed, but grew back almost immediately, so that use of her left wrist is limited

¹ M Exhibit F.

- carpal tunnel syndrome on her right wrist, so although she can still use her right wrist, it fatigues quickly and overuse of her right hand could cause further injury
- gastro-intestinal disorders, which limit her diet to easily digestible food
- two hospitalizations in recent months because of bowel obstructions
- psychiatric issues including depression and anxiety.²

Yet, in spite of all these issues, Ms. M has a resilient and independent spirit. She has many coping strategies that allow her to live alone. Although it is very difficult because of the pain, she takes care of *herself*, in that she can get herself into and out of bed, use the toilet without assistance, fix herself simple meals, feed herself, and wash herself.³ She uses a cane to help her walk. Remarkably, her home is stair access only, which means she must negotiate 27 stairs each time she leaves and returns to her home. Because of this difficulty, she limits her trips, but when she does leave, she manages to climb up and down the staircase without assistance.⁴

Where Ms. M runs into difficulty is in taking care of her *house* and chores outside of the house. Her pain and discomfort limit her ability to clean—standing for any length of time is too painful. When in her home, she usually gets around by scooting on a wheeled office chair. When she goes shopping, she is unable to put heavy groceries into the cart. Her PCA does not accompany her into the stores, but store personnel assist Ms. M with heavy items, and the PCA or a neighbor assist her outside of the store.⁵ Transportation is difficult because the bus is infrequent and standing and waiting at the bus stop is too painful. She explained, however, that she is eligible for the No Name Borough’s paratransit program, which may meet some of her transportation needs in the future.

Registered Nurse Angela Hanley visited Ms. M on February 4, 2014, to assess Ms. M’s need for personal care assistance. Ms. Hanley filled out the Consumer Assessment Tool (CAT), which provides a way to score the applicant’s condition and needs. Ms. Hanley found that Ms. M did not need any assistance on her activities of daily living—tasks that involve taking care of

² M testimony; M Exhibit G. A thorough and comprehensive description of Ms. M’s disorders is contained in her recorded testimony, which is part of the record in this case.

³ Division Exhibit E; M testimony.

⁴ M testimony.

⁵ The testimony revealed that the PCA is not allowed in certain stores and was not able to assist with heavy items. Ms. M was informed at the hearing that she should request a PCA who is able to provide the assistance for which the PCA is being hired.

herself, such as bathing, using the toilet, and getting up out of a chair or bed.⁶ She did find that Ms. M needed assistance on some of what are called “instrumental activities of daily living.” These activities include tasks such as shopping, cleaning, cooking, and laundry.

Using the CAT, Ms. Hanley entered a numerical score for Ms. M’s ability to perform these task. On shopping, Ms. Hanley found that Ms. M scored a “1/3” on shopping. The “1” score means that in shopping Ms. M was “independent with difficulty.” She could do the task, but it was difficult or took a great amount of time. The “3” score indicated that physical assistance actually was provided.⁷

For the task of housework, Ms. Hanley scored Ms. M at “2/3.” The “2” score means that the task was done with help—Ms. M was involved somewhat in housework, but physical hand-on help was provided. For laundry, Ms. M was scored as “1/0”. The “0” score meant that Ms. Hanley understood that no one was helping Ms. M with laundry.⁸ For the other instrumental activities, main meal preparation and light meal preparation, Ms. M scored “0/0”, meaning she was independent and did not need assistance.

After Ms. Hanley completed the CAT, the Division determined the number of minutes of assistance for which Ms. M was eligible under regulation. On March 18, 2014, the Division sent a determination letter to Ms. M awarding her 1.75 hours of personal care assistance.⁹ A corrected notice, with the same hourly award, was sent on April 18, 2014.¹⁰ Ms. M appealed this award to a fair hearing, arguing that she needed more time for assistance and for escort to doctor’s appointments.¹¹ A hearing was held on July 28, 2014. Ms. M represented herself and Victoria Cobo represented the Division.

III. Discussion

The Medicaid program authorizes PCA services for the purpose of providing “physical assistance with activities of daily living (ADLs), physical assistance with instrumental activities of daily living (IADLs), and other services based on the physical condition of the recipient.”¹² Under the regulations governing the Medicaid program, “[t]he department will not authorize personal care services for a recipient if the assessment shows that the recipient only needs

⁶ Division Exhibit E.

⁷ Division Exhibit E at 26.

⁸ *Id.*

⁹ Division Exhibit D.

¹⁰ *Id.* at 7.

¹¹ Division Exhibit C.

¹² 7 AAC 125.010(a).

assistance with supervision, cueing, and setup in order to independently perform an ADL or IADL.”¹³

The discussion of Ms. M’s eligibility for PCA time will be limited to the issues in dispute.¹⁴ Those issues are:

- The time allotted is not sufficient to complete the IADLs
- No time was given for laundry
- No time was given for meal preparation
- No time was given for escort
- No time was given for bathing

A. Should additional time be awarded for IADLs?

At the hearing, Ms. M presented evidence that the time allotted for shopping and cleaning is insufficient. She described the situation in No Name, including traffic, the need to go to at least three stores to complete her shopping (Walmart, Safeway, and the pharmacy), and her slow gait. She stated that by the time her PCA had finished helping her complete her shopping, no time was left for cleaning.

Time allowed for instrumental activities of daily living, however, is set under law.¹⁵ For shopping, Ms. M was scored “1/3,” which results in 7.5 minutes weekly.¹⁶ This score is appropriate because although she needs some assistance, Ms. M is an active participant in shopping. When she is assigned a PCA who is actually able to assist her, the task should go quicker. Even if the time allotted by regulation is not sufficient, it cannot be increased without a change in the law.¹⁷ Therefore, “1/3” is the correct score.

¹³ 7 AAC 125.020(e). “Cueing” means “daily verbal or physical guidance provided to a recipient that serves as a signal to the recipient that the recipient needs to perform an activity.” *Id.* “Setup” means “arranging items for use or getting items ready for use so that the recipient can independently perform an ADL or IADL.” *Id.* “Supervision” means “observing and giving direction, as needed, so that the recipient can independently perform an ADL or IADL.” *Id.*

¹⁴ Ms. M has presented an exhibit called “Corrections to the CAT.” The CAT, however, includes pages and categories that are not relevant to this particular dispute. Therefore, the errors alleged in this exhibit will not be addressed in this decision unless the issue is flagged as a matter in dispute that would affect the PCA time award. Ms. M’s exhibit is admitted, however, and will be part of this record.

¹⁵ 7 AAC 125.024(a)(1).

¹⁶ Division Exhibit D at 6.

¹⁷ Given Ms. M’s current ability to function independently, she may be able to find a way to shop on her own for light weight items and then shop with the PCA less frequently for heavy items. This will be easier to do once she is approved by the Borough for transit assistance. If her condition worsens, and she becomes more dependent, she can file a change of information.

For housework, Ms. M received a score of “2/3,” which results in 67.5 minutes per week.¹⁸ She cannot be scored higher because the next step is “complete dependence.” The facts showed that although housework is very difficult, she can participate in some tasks, such as wiping counters.

For laundry, Ms. M received a score of “1/0,” which results in zero minutes of PCA assistance. The second number in the score is the “support score,” which reflects the type of support that is provided. The testimony at the hearing revealed that Ms. M did many tasks included in laundry, including loading and unloading, and folding clothes. She does not, however, carry laundry baskets. That is done by her neighbor or PCA. At the hearing, the Division agreed that her score for laundry should be “1/3,” which will make her eligible for an additional 15 minutes per week.

For meal preparation, Ms. M received a score “0/0” which results in zero minutes of PCA assistance. At the hearing, she explained that she can cook, and is a good cook. Given her dietary and physical limitations, and attention-deficient disorder, however, she is having a difficult time in planning and preparing adequate and nutritious meals. If someone could help her with the planning and set-up, she could do the cooking. Although Ms. M makes a good case for a certain type of assistance, under the law, PCA time is not available for set-up or planning assistance.¹⁹ PCA time is generally limited to a situation in which the client cannot function without hands-on, actual physical assistance. Therefore, the score of “0/0” for meal preparation is the correct score for Ms. M.

All other concerns raised by Ms. M regarding the inadequate time allotted are beyond the scope of this fair hearing. The time she is allotted is based on her score and determined by the regulations. PCA assistance for the purpose of providing transportation is not permitted under the regulations. The Division has no discretion to increase her time due to traffic or other delays that slow down the time it takes to accomplish the task at hand.

B. Should Ms. M be awarded PCA time for escort?

Ms. M has frequent doctor visits, and she requested that escort services be provided. She explained that otherwise transportation would be impractical because of the difficulty in taking the bus. PCA time for escort, however, may only be awarded to the client who needs hands-on physical assistance to go to appointments or to those who have difficulty in communicating with

¹⁸ *Id.*

¹⁹ 7 AAC 125.040(a)(10).

or understanding their medical providers.²⁰ Ms. M can get in and out of a vehicle without assistance, and can walk from the vehicle to appointments without assistance. She does not need PCA assistance to communicate with and understand her doctor. Therefore, she is not eligible for escort services.

C. Should Ms. M be awarded PCA time for bathing?

Ms. M testified that she has balance problems and she is afraid to shower when no one is around to ensure that she does not slip or fall. Mostly, she takes sponge baths at the sink. Upon close questioning, however, Ms. M explained that she does not need a PCA to provide hands-on assistance—she needs standby assistance. Under the regulations, the Division cannot award PCA time for standby assistance.²¹ Therefore, at this time, Ms. M is not eligible for additional assistance for the ADL of bathing.

IV. Conclusion

The CAT is amended to reflect a score of “1/3” for laundry, and Ms. M should be awarded personal care assistance time accordingly. In all other respects, the Division’s determination of PCA time is affirmed.

DATED this 1st of August, 2014.

By: Signed
Stephen C. Slotnick
Administrative Law Judge

Adoption

Under a delegation from the Commissioner of Health and Social Services, I adopt this Decision as the final administrative determination in this matter, under the authority of AS 44.64.060(e)(1).

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 29th day of August, 2014.

By: Signed
Name: Stephen C. Slotnick
Title: Administrative Law Judge/DOA

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

²⁰ 7 AC 125.030(c)(5)(9).

²¹ 7 AAC 125.020(e).