

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

In the Matter of )  
 )  
 D B )  
\_\_\_\_\_ )

OAH No. 14-0876-MDS  
Agency No.

**DECISION**

**I. Introduction**

D B receives Personal Care Assistance (PCA) services that are paid for by Medicaid. The Division of Senior and Disabilities Services (division) reassessed her condition and reduced her PCA services from 21.5 hours per week to 9.25 hours per week. Ms. B contested that decision and requested a hearing.

A hearing was held on July 9, 2014. Ms. B was present, as was the division's representative, Tammy Smith. The evidence shows that the division's reduction is only partially supported by a preponderance of the evidence. The division's reduction of Ms. B's authorized PCA service for the ADLs of Transfer, locomotion, and documentation is reversed.

**II. Facts**

Ms. B was 69 years old at the time of her reassessment.<sup>1</sup> She has been diagnosed with end stage renal disease secondary to diabetes.<sup>2</sup> She lives alone and is able to remain in her home because she receives PCA services and Choice Waiver services.<sup>3</sup> Both are Medicaid programs that provide assistance to individuals who require a certain level of assistance. This proceeding, however, is limited to the division's determination that Ms. B's authorized PCA services should be reduced from 21.5 hours per week to 9.25 hours per week.<sup>4</sup>

The division offered the testimony of registered nurse Michelle Russell-Brown and Suzanne Mittlestadt. Ms. Russell-Brown conducted the assessment interview on December 10, 2013. The interview lasted approximately one hour and consisted of Ms. Russell-Brown

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<sup>1</sup> Exhibit E1.  
<sup>2</sup> Exhibit E3.  
<sup>3</sup> Exhibit E2.  
<sup>4</sup> Exhibit D.

interviewing Ms. B as well as asking her to perform certain tasks. Ms. Russell-Brown recorded her observations in the division's Consumer Assessment Tool or CAT. Once Ms. Russell-Brown completes her interview, Suzanne Mittlestadt, a health program manager 1 with the division, reviewed the CAT and applicable regulations. Ms. Mittlestadt reviews the information provided in the CAT (including scoring and frequency of task) to the regulations and prepares the division's determination letter informing the recipient of what the division has determined, and its reasons for the proposed reduction.<sup>5</sup> The determination letter is dated May 12, 2014.<sup>6</sup> Division witnesses testified that Ms. B's reduction in authorized services was due to regulatory changes, less frequent need for assistance with certain activities, and a change in the level of physical assistance required.

Ms. B disagreed with the regulatory changes. She questioned how her life and need for assistance, which is changing, could be quantified by regulation. Ms. B receives dialysis three days a week. On those days she is extremely weak. Ms. B described how, if no one is in the house to provide physical assistance, she is so weak that she has to crawl across the floor, because she does not have the strength to stand or walk, even with the use of assistive devices. Ms. B could not recall where, in her dialysis schedule, her assessment interview fell.<sup>7</sup>

### **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[.<sup>8</sup>]

The division uses the CAT to help it assess the level of assistance needed.<sup>9</sup> The amount of time allotted for needed assistance is determined by the Personal Care Assistance Service Level Computation chart.<sup>10</sup> 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 CAT and Service Level Computation Chart are incorporated by reference into Department of Health and

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<sup>5</sup> Mittlestadt Testimony.

<sup>6</sup> Exhibit D.

<sup>7</sup> B Testimony

<sup>8</sup> 7 AAC 125.010(a).

<sup>9</sup> 7 AAC 125.020(b).

<sup>10</sup> 7 AAC 125.024(1).

Social Services regulations.<sup>11</sup> As such, neither the division nor this tribunal has the discretion to disregard these changes.

The amount of time authorized is comprised of two components: a recipient's assistance score and the frequency of the assistance. The different levels of assistance with ADLs are defined by regulation and in the CAT.<sup>12</sup> Supervision is defined as oversight, encouragement, or cueing three or more times a week, with physical assistance no more than two times a week.<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup> Full assistance means the recipient has to rely entirely on the caretaker to perform the activity.<sup>16</sup> Frequency addresses how often an recipient requires assistance at the level scored.

The division may change the number of hours of allotted PCA services if there has been a *material change* in the recipient's condition.<sup>17</sup> A *material change* includes a regulatory change.<sup>18</sup> As, in this case, 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.<sup>19</sup>

## **B. Transfers**

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.<sup>20</sup> Ms. B receives, as she always has, dialysis three days a week. The division left Ms. B's score at 2/2 but reduced her frequency

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<sup>11</sup> 7 AAC 160.900(d)(6), (29).

<sup>12</sup> 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.

<sup>13</sup> Exhibit E6.

<sup>14</sup> 7 AAC 125.020(a)(1); Exhibit E6.

<sup>15</sup> 7 AAC 125.020(a)(2); Exhibit E6.

<sup>16</sup> 7 AAC 125.020(a)(3); Exhibit E6. Bathing and the IADLs have their own assistance level definitions.

<sup>17</sup> 7 AAC 125.026(a).

<sup>18</sup> 7 AAC 125.026(d). A material change also exists if the recipient's medical condition has changed, living conditions have changed, services were based on a prescription that has since expired, or there was a time-limited amendment to the plan of care. *Id.*

<sup>19</sup> 7 AAC 49.135.

<sup>20</sup> See Exhibit E6.

from 42 times per week to 14 times per week. The assessor testified that the reduction in frequency was because of Ms. B's "capacity to show me she could do it herself."<sup>21</sup>

It was the division's burden to prove a material change in Ms. B's condition before reducing the frequency with which she required PCA services for transfers. The reason given for this reduction is not directly related to frequency, and is inconsistent with the testimony at the hearing that Ms. B continues to receive dialysis three days a week and the level of support has not changed. The division did not meet its burden of proof, and time frequency previously allowed for transfers should be restored.

### *C. 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.<sup>22</sup> The division reduced Ms. B's score from extensive assistance (score of 3) 42 times a week to limited assistance (score of 2) 14 times a week. Ms. B does not dispute that when the division conducted its interview, it correctly observed that she was highly involved in locomotion. She does dispute whether the reduced scoring and frequency is an accurate reflection of her need for physical assistance after dialysis.

Ms. B has dialysis three days per week, which impairs her functioning on those days. Her functional capability on those days is critical for determining what degree of assistance she requires. The division did not challenge Ms. B's description that after dialysis; without hands on assistance she must crawl. If someone cannot support his/her own weight, it is reasonable to conclude that he/she requires weight bearing assistance at that time. Ms. B receives dialysis three days a week. Therefore, it is more probable than not that she requires weight bearing assistance three times a week.

The division reduced Ms. B to limited assistance. Limited assistance is characterized by nonweight bearing assistance more than twice a week or weight bearing assistance less than twice a week. Extensive assistance is weight bearing more than twice a week. The division has failed to present evidence sufficient to establish, that it is more likely than not that Ms. B no longer requires weight bearing assistance three or more times per week when she receives dialysis three times a week.

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<sup>21</sup> Hearing at 33:00 – 34:00.

<sup>22</sup> See Exhibit E7.

As to frequency, the division's reasoning was the same as for transfers, and similarly fails to support a reduction. The division has failed to establish by a preponderance of evidence that its reduction in scoring and frequency for locomotion should be approved. The division did not meet its burden of proof. The score and the frequency previously allowed for transfers should be restored.

***D. Dressing***

This division has not reduced Ms. B's score or frequency regarding her need for assistance with dressing. The reduction in authorized PCA time for the ADL of dressing is due to a regulatory change and should be affirmed.

***E. Toilet Use***

Toilet use includes transfers on and off the toilet, cleaning oneself, and adjusting clothing. The division left Ms. B's score at 2/2 but reduced her frequency from 28 times per week to 14 times per week. At hearing, the parties agreed that the frequency for toileting should be returned to 28 times per week.

***F. Bathing***

The division concluded that Ms. B no longer needed extensive assistance with bathing. Based on the testimony at the hearing, she needs assistance into and out of the bathtub, and help washing her hair and her back.<sup>23</sup> The ADL of bathing excludes washing of a recipient's back and hair. The division has met its burden of proving that extensive assistance is no longer required to complete the ADL of bathing. PCA time for the ADL of bathing should have been reduced.

***G. Documentation***

As with dressing, the level and frequency remain the same. The reduction in authorized PCA time is related to a regulatory change and should be affirmed.

**IV. Conclusion**

Ms. B's PCA service level should be recomputed in accordance with the discussion above. In doing so, the division must incorporate regulatory changes that have occurred since Ms. B's 2011 assessment. Regulatory changes are considered a material change in condition, allowing an increase or decrease in PCA services.<sup>24</sup> Where the division's determination is modified, the time allowed for each activity should be the frequency

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<sup>23</sup> B Testimony.

<sup>24</sup> 7 AAC 125.026(b)(3)(C).

previously approved multiplied by the number of minutes for that activity and CAT score listed in the Personal Care Assistance Service Level Computation Chart.

DATED this 9<sup>th</sup> day of October, 2014.

By: Signed  
Rebecca L. Pauli  
Administrative Law Judge

**Adoption**

The undersigned 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 3<sup>rd</sup> day of November, 2014.

By: Signed  
Signature  
William J. Streur  
Name  
DHSS Commissioner  
Title

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