

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

In the Matter of:)	
)	
D C)	OAH No. 14-0893-MDS
)	HCS Case No.
_____)	Medicaid ID No.

DECISION

I. Introduction

The issue in this case is whether the State of Alaska Division of Senior and Disabilities Services (Division) correctly assessed the amount of Medicaid Personal Care Assistant (PCA) services for which D C is currently eligible. The Division decreased Ms. C's PCA services from 31.5 hours per week to 17 hours per week effective May 30, 2014.¹

The parties engaged in negotiations prior to hearing and were able to resolve all issues except for three. The only items still in dispute are the amounts of PCA time for which Ms. C is eligible for range of motion exercises, walking for exercise, and foot care. This decision concludes that, as a matter of law, Ms. C is not currently entitled to PCA time for assistance with range of motion exercises, walking for exercise, or foot care because she did not have a prescription for assistance with those activities in effect at any time between the date of the Division's assessment and the date the Division issued its PCA service level authorization letter. Accordingly, the Division's decision denying PCA time for those services is affirmed.²

II. Facts

A. Ms. C's Medical Condition³

Ms. C is 87 years old.⁴ She lives alone in a single-story private home.⁵ Ms. C's diagnoses include acute myocardial infarction, asthma, back pain, chronic airway obstruction, diabetes with attendant peripheral circulatory disorders, emphysema / COPD, gastroesophageal reflux disease (GERD), history of malignant neoplasm of the breast, hypercholesterolemia, hypertensive heart

¹ Ex. D1.

² The testimony at hearing indicates that Ms. C renewed her prescription for the services at issue on June 3, 2014. Accordingly, Ms. C may now submit a PCA service plan amendment request (also known as a "change of information" or COI) to obtain PCA time for the services at issue on a prospective basis.

³ Because the parties settled most of the issues originally in dispute, only those facts relevant to the three remaining issues are stated here.

⁴ Ex. E1.

⁵ Ex. E1.

disease, hypothyroidism, sleep apnea, and status post coronary bypass surgery.⁶ She takes a number of prescription medications including Advair, albuterol, ASA, Carvedilol, Colestipol Hcl, Dexilant DR, hydrocodone, ibuprofen, Levothyroxine, Lisinopril, Meclazine, Metformin, Pramipexole, Pravastatin, and Tegretol.⁷

B. The Division's Findings From its Assessments

Ms. C has received PCA services since 2009 or before.⁸ The Division assessed Ms. C as to her eligibility for PCA services on September 21, 2009.⁹ Ms. C's 2009 assessment indicates that Ms. C did not have prescriptions for PCA assistance with range of motion exercises, walking for exercise, or foot care at that time.¹⁰ However, in 2011 a PCA service plan amendment request was submitted to add PCA time for these items, and the Division approved this amendment request on September 1, 2011.¹¹

At the time of Ms. C's most recent assessment on December 31, 2013, the nurse-assessor, B N, found that Ms. C had foot problems and pressure ulcers, and was unable to touch her feet or change the bandages on her left foot.¹² Ms. N found, however, that Ms. C had no current prescriptions for range of motion exercises, walking for exercise, or foot care.¹³

C. Relevant Procedural History

Ms. C has received PCA services since 2009 or before.¹⁴ She also receives services through the Medicaid Home and Community-Based Waiver Services program.¹⁵ The Division performed the assessment at issue on December 31, 2013.¹⁶ On May 20, 2014 the Division notified Ms. C that her PCA service level was being reduced from 31.5 hours per week to 17 hours per week effective May 30, 2014.¹⁷ The Division's notice indicated that PCA time for assistance with range of motion exercises, walking for exercise, and foot care had been omitted from Ms. C's current PCA service plan because those services require a doctor's prescription, and Ms. C had not provided the Division with a current prescription for those services.¹⁸

⁶ Ex. E3.
⁷ Ex. E20.
⁸ Ex. F.
⁹ Ex. F.
¹⁰ Ex. F5.
¹¹ Ex. D4.
¹² Exs. E10, E24.
¹³ Ex. E5.
¹⁴ Ex. F.
¹⁵ Exs. D5, E2, E28.
¹⁶ Ex. E.
¹⁷ Ex. D1.
¹⁸ Exs. D2, D4.

Ms. C requested a hearing to contest the Division's reduction of her PCA services on May 23, 2014.¹⁹ Ms. C's hearing was held on August 1, 2014. Ms. C participated by phone and represented herself. K T, Ms. C's granddaughter and PCA, participated by phone, helped represent Ms. C, and testified on Ms. C's behalf. B H, Ms. C's PCA agency representative, also participated by phone, assisted in representing Ms. C, and testified on her behalf. Victoria Cobo participated by phone and represented the Division. Olga Ipatova participated by phone and testified on behalf of the Division. The record closed at the end of the hearing.

III. Discussion

A. The PCA Program - Overview

The Medicaid program provides Personal Care Assistant (PCA) services to eligible persons; "[t]he purpose of personal care services is to provide to 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"²⁰ [emphasis added]. Accordingly, "[t]he department will not authorize personal care services for a recipient if the assessment shows that the recipient only needs assistance with supervision, cueing, and setup in order to independently perform an ADL or IADL."²¹

B. Alaska's PCA Program - Use of the Consumer Assessment Tool (CAT)

The Division conducts an assessment for PCA services using the Consumer Assessment Tool or "CAT."²² The goal of the assessment process is to determine the level of physical assistance that an applicant or recipient requires in order to perform their activities of daily living (ADLs) and instrumental activities of daily living (IADLs).²³ The CAT seeks to make the assessment process more objective by attempting to standardize the assessment of an applicant or recipient's functional impairment.²⁴

¹⁹ Ex. C.

²⁰ 7 AAC 125.010(a).

²¹ 7 AAC 125.020(e). This regulation defines "cueing" as "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;" "setup" as "arranging items for use or getting items ready for use so that the recipient can independently perform an ADL or IADL;" and "supervision" as "observing and giving direction, as needed, so that the recipient can independently perform an ADL or IADL." *Id.*

²² 7 AAC 125.020(b). The CAT has been adopted into DHSS regulations by reference. *See* 7 AAC 160.900(d)(6).

²³ *See* 7 AAC 125.010(a).

²⁴ Ex. E.

C. *Applicable Burden of Proof*

The Division is seeking to reduce Ms. C's existing PCA services (services which Ms. C is already receiving). Accordingly, the Division has the burden of proving, by a preponderance of the evidence, that Ms. C's need for PCA services has decreased as asserted.²⁵

D. *Is Ms. C Eligible to Receive PCA Time for the Services at Issue in This Case?*

As previously noted, the parties engaged in negotiations prior to hearing and were able to resolve all issues except for three. The only items still in dispute are the amounts of PCA time for which Ms. C is eligible for range of motion exercises, walking for exercise, and foot care. These three activities will be addressed below in the order stated.

1. PCA Assistance with Range of Motion Exercises

Pursuant to 7 AAC 125.030(e), the Division will pay for PCA assistance with range-of-motion and stretching exercises only if those services (1) are provided by a personal care agency enrolled in the agency-based program; and (2) are *prescribed* by a physician, a physician assistant, or an advanced nurse practitioner. In this case, it was not disputed that Ms. C receives her PCA services through an agency-based program; the only issue is whether she has a valid prescription.

In this case, the undisputed facts are that Ms. C previously had a prescription for range of motion exercises, but that the prescription expired prior to the date of the current assessment, and was not renewed until June 3, 2014, after the date of the Division's PCA service level reduction notice. Because the regulation requires a valid prescription in order to provide PCA time for this item, and because it is undisputed that Ms. C *did not* have a valid prescription for this item from the date of the current assessment through the date of the Division's notice of May 20, 2014, Ms. C is not currently eligible to receive Medicaid payment for PCA assistance with range of motion exercises.

2. PCA Assistance with Walking for Exercise

Pursuant to 7 AAC 125.030(b)(3)(B), the Division will pay for PCA assistance with walking for exercise only if the service is *prescribed* by a physician, a physician assistant, or an advanced nurse practitioner. The undisputed facts are that Ms. C did not have a prescription for PCA assistance with walking for exercise in effect at the time of her most recent assessment or at the time the Division issued its determination letter. Accordingly, Ms. C is not currently eligible to receive Medicaid payment for PCA assistance with walking for exercise.

²⁵ See 42 CFR 435.930, 2 AAC 64.290(e), 7 AAC 49.135, and *Alaska Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

3. PCA Assistance with Foot Care

Pursuant to 7 AAC 125.030(d)(5), the Division will pay for PCA assistance with foot care only if the service is "prescribed," presumably by a physician, physician assistant, or advanced nurse practitioner. The undisputed facts are that Ms. C did not have a prescription for PCA assistance with foot care in effect at the time of her most recent assessment or at the time the Division issued its determination letter. Accordingly, Ms. C is not currently eligible to receive Medicaid payment for PCA assistance with foot care.

IV. Conclusion

Ms. C is not currently entitled to PCA time for assistance with range of motion exercises, walking for exercise, or foot care because she did not have a prescription for assistance with those activities in effect at any time between the date of the Division's assessment and the date the Division issued its PCA service level authorization letter.²⁶ Accordingly, the Division's determination as to these three issues is affirmed.

DATED this 29th day of August, 2014.

Signed

Jay Durych

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 12th day of September, 2014.

By: *Signed*

Name: Jared C. Kosin, J.D., M.B.A.

Title: Executive Director

Agency: Office of Rate Review, DHSS

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

²⁶ Ms. C may pursue PCA time for the three activities at issue by obtaining a new prescription for them and by submitting a PCA service plan amendment request (Change of Information or COI) pursuant to 7 AAC 125.026.