

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

In the Matter of:)
)
 U W) OAH No. 14-1013-MDS
) Agency Case No.
_____)

DECISION

I. Introduction

The issue in this case is the frequency with which 15-year-old U W requires assistance with locomotion and toilet use.¹ On June 3, 2014 the Division of Senior and Disabilities Services (Division) informed Mr. W's parents that, based on an assessment performed on January 14, 2014, the Division was reducing the amount of U's Medicaid Personal Care Assistant (PCA) services from 35.25 hours per week to 28.5 hours per week.² U's parents promptly requested a hearing,³ asserting that the reduced level of PCA services, for which U had been found eligible, is insufficient for his needs.

The parties resolved, prior to the hearing, all issues associated with U's PCA services, except for the frequency of assistance which U requires with locomotion and toilet use. This decision concludes that U qualifies for a greater frequency of assistance with regard to locomotion and toilet use than was determined by the Division. Specifically, this decision concludes that U is eligible for 42 PCA assists per week with locomotion, and 70 PCA assists per week with toilet use. The Division's determination, which reduced the frequency of PCA assistance with these two activities, is therefore reversed.

II. Facts

A. U's Diagnoses and Physical Limitations

U was struck by a car while riding his bicycle in the summer of 2012.⁴ He suffered a spinal cord injury and lost the use of his legs. His accident also caused other problems, discussed below. U also has a history of developmental delay and reactive airway disease.

U lives with his family in a single-level home with ramp access.⁵ U weighed 225 pounds at the time of his most recent PCA assessment.⁶ His weight is important as it relates to his ability to

¹ Ex. D1; on-record stipulation of the parties regarding remaining issues to be resolved.

² Ex. D1.

³ Ex. C.

⁴ All factual findings in this paragraph are based on Ex. 1 p. 12 unless otherwise stated.

⁵ Ex. E1.

move himself using his arms. His T2 spinal cord injury, in addition to causing paraplegia, has left him incontinent⁷ and has led to diagnoses, as of January 13, 2014, of neurogenic bowel and neurogenic bladder.⁸

U's physical injuries have also affected him psychologically. He is sometimes oppositional and uncooperative with those attempting to assist him.⁹

B. U's Need for Assistance as Determined by the Division

Angela Hanley, R.N. of DSDS performed U's annual PCA reassessment on January 13, 2014.¹⁰ Ms. Hanley's assessment is recorded and scored on the Division's Consumer Assessment Tool or "CAT." Ms. Hanley found that U requires the following levels and frequencies of assistance with regard to the Activities of Daily Living (ADLs) at issue in this case:¹¹

Locomotion:¹² Ms. Hanley reported that U told her that he can self-propel his wheelchair for short distances, but then his arms become fatigued and he must be pushed, and that if he leaves his home and travels longer distances, he must be pushed due to arm fatigue. Ms. Hanley reported that she observed U being pushed in his wheelchair inside the home while furniture was moved to facilitate the assessment (scored 2/2, frequency 2/7).

Toileting:¹³ Ms. Hanley reported that she was told by U's father that he is incontinent as to bladder and bowel, wears adult diapers, is catheterized at least five times per day, can sometimes be catheterized in his wheelchair, has a bowel program involving daily suppositories and digital stimulation, and, when incontinent, must be transferred to his bed and then cleaned and changed. Ms. Hanley reported that she observed that U's bed sheets were being changed, due to incontinence, when she arrived to perform the assessment (scored 4/2, frequency 8/7).

C. Relevant Procedural History

On June 3, 2014 the Division notified U's parents that, as a result of the assessment, his PCA service level was being reduced from 35.25 hours per week to 28.5 hours per week effective June 13, 2014.¹⁴ Specifically, frequency of assistance with in-room locomotion was reduced from six

⁶ Ex. E9.

⁷ Exs. E3, E9.

⁸ Ex. E7.

⁹ Ex. 1. p. 12.

¹⁰ Exs. E7, E9.

¹¹ Exs. E4 - E19; *see also* 7 AAC 125.199(1).

¹² Ex. E7.

¹³ Ex. E9.

¹⁴ Exs. D1, D10.

times per day / 42 times per week,¹⁵ to two times per day / 14 times per week,¹⁶ and frequency of assistance with toileting was reduced from ten times per day / 70 times per week,¹⁷ to eight times per day / 56 times per week.¹⁸

On June 6, 2014 U's parents requested a hearing to contest the Division's determination.¹⁹ The hearing was held on November 17, 2014. U did not participate, but was represented by his father, K W, and by S D of Consumer Direct, both of whom attended the hearing in person. Mr. W testified on his son's behalf. The Division was represented by Tammy Smith, who attended the hearing in person. Angela Hanley, R.N. participated by phone and testified on behalf of the Division; Olga Ipatova attended the hearing in person 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 authorizes PCA services for the purpose of providing 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 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 Department uses the Consumer Assessment Tool or "CAT" 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).²² The CAT seeks to make the assessment process more objective by attempting to standardize the assessment of an applicant or recipient's functional impairment.²³

¹⁵ Ex. 1 p. 18.

¹⁶ Ex. D9.

¹⁷ Ex. 1 p. 20.

¹⁸ Ex. D9.

¹⁹ Ex. C.

²⁰ 7 AAC 125.010(a) [emphasis added].

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 See 7 AAC 125.010(a).

²³ Ex. E.

The ADLs scored by the CAT are body mobility, transfers (non-mechanical), transfers (mechanical), locomotion (in room), locomotion (between levels), locomotion (to access medical appointments), dressing, eating, toilet use, personal hygiene, and bathing.²⁴ In addition, the CAT scores five other ADL-like activities which are not technically ADLs. These are medication, vital signs/glucose levels, dressings/bandages/oxygen, sterile wound care, and documentation.

The CAT numerical scoring system has two components. The first component is the *self-performance score*. These scores rate how capable a person is of performing a particular activity of daily living (ADL). The possible scores are **0** (the person is independent and requires no help or oversight); **1** (the person requires supervision); **2** (the person requires limited assistance²⁵); **3** (the person requires extensive assistance²⁶); and **4** (the person is totally dependent²⁷). There are also codes that are not treated as numerical scores for purposes of calculating a service level: **5** (the person requires cueing); and **8** (the activity did not occur during the past seven days).

The second component of the CAT scoring system is the *support code*. These scores rate the degree of assistance that a person requires to complete a particular ADL. The possible scores are **0** (no setup or physical help required); **1** (only setup help required); **2** (one person physical assist required); and **3** (two or more person physical assist required). Again, there are additional codes that do not add to the service level: **5** (cueing required); and **8** (the activity did not occur during the past seven days).

The CAT also scores certain activities known as "instrumental activities of daily living" (IADLs).²⁸ However, IADLs are not at issue in this case.

C. *Applicable Burden of Proof*

In this case, the Division is seeking to reduce the amount of U's existing PCA services. Accordingly, the Division has the burden of proving, by a preponderance of the evidence, that U's need for PCA services has decreased.²⁹

²⁴ See Division of Senior and Disability Services' *Personal Care Assistance Service Level Computation* (Exs. B29 - B30).

²⁵ Pursuant to 7 AAC 125.020(a)(1), limited assistance with an ADL "means a recipient, who is highly involved in the activity, receives direct physical help from another individual in the form of guided maneuvering of limbs, including help with weight-bearing when needed."

²⁶ Pursuant to 7 AAC 125.020(a)(2), extensive assistance with an ADL "means that the recipient is able to perform part of the activity, but periodically requires direct physical help from another individual for weight-bearing support or full performance of the activity."

²⁷ Pursuant to 7 AAC 125.020(a)(3), dependent as to an ADL, or dependent as to an IADL, "means the recipient cannot perform any part of the activity, but must rely entirely upon another individual to perform the activity."

²⁸ Ex. E26.

²⁹ 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).

D. How Much PCA Time is U Eligible to Receive in This Case?

U's parents provided a written statement specifying the three specific ADLs which they believed were incorrectly scored.³⁰ Those areas were (1) body mobility, (2) locomotion, and (3) toileting. At hearing, however, the parties settled the case as to body mobility, leaving only frequency of locomotion and toileting in dispute. Those two ADLs are addressed below.

1. Locomotion

For the ADL of locomotion, PCA time is allowed when a person requires assistance with locomotion within the home, outside the home to keep a medical or dental appointment, or when doing prescribed exercises.³¹ Ms. Hanley assigned U locomotion self-performance and support scores of 2/2, with a frequency of two times per day, seven days per week, for a total of 14 weekly PCA assists with locomotion.³² U's parents request that the frequency for in-room locomotion remain at its previous level of six times per day, seven days per week, for a total of 42 PCA assists per week.³³

One problem with the Division's CAT form is that, while it provides a place for the nurse-assessor to note the reasons for the assigned self-performance and support scores for ADLs, the form provides no area for the assessor to note his or her reasons for assigning a specific frequency for an ADL. Accordingly, someone viewing a CAT assessment would have no idea how the Division arrived at a particular assigned frequency without talking to the assessor.

At hearing, Ms. Hanley testified that she had assigned a frequency of two times per day for locomotion because U can normally propel his wheelchair by himself, and only requires assistance when he gets into tight areas of the home. On the other hand, Mr. W testified at hearing that U has pain and limitations with his left shoulder, which date back to his accident in 2012, for which he is undergoing physical therapy; this is also reflected in the Division's assessment.³⁴ The pain and functional impairment makes his left arm weaker than it would otherwise be. Because of this, Mr. W testified that U still requires assistance with in-home locomotion about six times per day.

Mr. W's hearing testimony was credible. Further, the Division provided no evidence as to how U's condition had improved so as to reduce the frequency of his need for assistance with locomotion. The Division bears the burden of proof on this issue. Accordingly, I find that the

³⁰ Ex. 1 pages 1 - 3.

³¹ 7 AAC 125.030(b)(3).

³² Ex. E7.

³³ Ex. 1-2.

³⁴ Ex. E4.

preponderance of the evidence indicates that the frequency of U's need for assistance with in-room / single level locomotion has not decreased since that frequency was previously set, by fair hearing decision, in 2013. U's frequency for PCA assistance with in-room / single level locomotion should therefore remain at its previous level of six times per day, seven days per week, for a total of 42 PCA assists per week.

2. Toilet Use

For the ADL of toilet use, PCA time is limited by regulation to time spent moving to and from the toilet, transfers on and off the toilet, general hygiene care of a colostomy, ileostomy, or external catheter, and inserting and removal of a nonmedicated suppository, digital stimulation, or other routine incontinence care.³⁵ The CAT's definition of "toilet use" is somewhat broader, encompassing post-toileting hygiene and clothing adjustments.³⁶

Ms. Hanley assigned U toileting self performance and support scores of 4/2, with a frequency of eight times per day, seven days per week, for a total of 56 weekly PCA assists with toilet use.³⁷ U's parents request that the frequency for PCA assistance with toilet use remain at its prior level of ten times per day, seven days per week, for a total of 70 PCA assists per week.³⁸

At hearing, Ms. Hanley testified that she assigned a toileting frequency of eight times per day based on five catheterizations per day, one digital stimulation per day, and two incontinence episodes per day, and that these frequencies were based on statements made by U's parents during the assessment. Mr. W testified at hearing that U undergoes a *minimum* of five catheterizations per day, but can require as many as nine catheterizations per day; that he requires one to two toilet uses for bowel movements per day; and that he has four to five incontinence episodes during a 24 hour period. Based on this testimony, U would need anywhere from a low of ten toileting assists per day, to a high of 16 toilet assists per day; the average would be 13 assists per day.

Mr. W's testimony on this point was credible, and he is necessarily more familiar with the frequency with which his son requires toileting than any assessor could be expected to be. Further, the Division provided no evidence as to how U's condition had improved so as to reduce the frequency of his need for assistance with toilet use. The Division bears the burden of proof on this

³⁵ 7 AAC 125.030(b)(6). For reasons that do not appear in the record, the regulation does not cover assisting the recipient with necessary personal hygiene after using the toilet. The PCA regulation for personal hygiene, 7 AAC 125.030(b)(7), likewise fails to cover these necessary activities.

³⁶ The CAT form defines toilet use as "[h]ow person uses the toilet room (or commode, bedpan, urinal); transfers on/off toilet, *cleanses* . . . manages ostomy or catheter, *adjusts clothes*" (Ex. E9, emphasis added).

³⁷ Ex. E9.

³⁸ Ex. 1 p. 3.

issue. Accordingly, I find that the preponderance of the evidence indicates that the frequency of U's need for assistance with toilet use has not decreased since that frequency was previously set, by fair hearing decision, in 2013. U's frequency for PCA assistance with toilet use should therefore remain at its previous level of ten times per day, seven days per week, for a total of 70 PCA assists with toileting per week

IV. Conclusion

The Division's self-performance and support scores, concerning the extent of U's need for assistance with locomotion and toileting, appear to be correct and were not disputed. However, U requires a greater frequency of assistance with locomotion and toilet use than was found by the Division. Accordingly, the Division's reductions in the approved frequency of PCA assistance with locomotion and toileting is reversed. The Division must issue a new PCA Service Level Authorization Letter, consistent with this decision, within 30 days of the date that this decision becomes final. This decision does not calculate the total hours per week of PCA services which U is now eligible to receive. If the Ws disagree with the Division's recalculation of the specific number of hours of PCA services for which U is eligible, they may request a hearing on that limited issue.

DATED this 8th day of April, 2015.

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 20th day of April, 2015.

By: *Signed* _____
Name: Jay D. Durych
Title: Administrative Law Judge, DOA/OAH

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