

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

In the Matter of)	
)	
O M)	OAH No. 14-1046-MDS
_____)	Agency No.

DECISION

I. Introduction

O M receives Medicaid Personal Care Assistance (PCA) services through a program run by the Division of Senior and Disabilities Services (division). After his annual assessment interview, the division reduced his authorized PCA service time from 30 hours per week to 0 hours. Mr. M contested the termination and requested a hearing.

The hearing provided an opportunity to hear from Mr. M’s primary health care provider, D C-H, AMP. Ms. C-H’s testimony established that some PCA services should be restored, specifically the activities of transfers, bathing, main meal preparation, light housekeeping, shopping, and laundry.

II. Facts

Mr. M is a 63-year-old man who suffers from arthritis, hypertension, esophageal reflux, gastritis, and dermatitis.¹ He is ambulatory, has fine motor skills, and is able to touch his hands over his head, behind his back, and touch his feet.² He can also place his hands across his chest and stand up. He has no diagnosis or indicia of cognitive or behavioral problems.³

Ms. C-H has been Mr. M’s primary health care provider for over a year. She has observed Mr. M walk and transfer without physical assistance.⁴ However, because of his arthritis, she does believe Mr. M requires limited assistance in the morning to transfer. She is also concerned that, without physical assistance to transfer in and out of the bath or shower, Mr. M is at risk of falling. Ms. C-H supports Mr. M’s continued involvement in his main meal preparation, light housekeeping, shopping, and laundry. She does not believe he can reasonably complete these activities without physical assistance. When questioned why Mr. M should

¹ Exhibit E at 3; Testimony of C-H.
² Exhibit E at 4; Testimony of C-H.
³ Exhibit E at 29, 31.
⁴ Testimony of C-H.

receive PCA assistance with main meal preparation but not light meal preparation, Ms. C-H explained that the physical skill and strength to complete a main meal was different from going to the kitchen to retrieve a sandwich or other snack (light meal).

Mr. M questioned how he could be authorized 30 hours of PCA services per week as a result of a November 2012 assessment interview and then denied any PCA service as the result of a February 24, 2014 assessment interview.⁵ He testified regarding his military service for the United States and his need for PCA services. Mr. M believes he should receive services because he is old and in pain.⁶ There are two other PCA recipients in the home.

III. Discussion

A. Burden of Proof

The division has the burden of proof because it seeks to terminate Mr. M's PCA services.⁷

B. 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 the instrumental activities of daily living (IADL), and other services based on the physical condition of the recipient."⁸ The division uses the CAT (consumer Assessment Tool) to help it assess the level of assistance needed.⁹ The ADLs measured by the CAT are bed mobility, transfers (non-mechanical), transfers (mechanical), locomotion (in room), locomotion (between levels), locomotion (to access apartment or living quarters), dressing, eating, toilet use, personal hygiene, personal hygiene-shampooing, and bathing.¹⁰ Measured IADLs include meal preparation, shopping, light housework, and laundry.¹¹

The amount of time authorized for needed assistance is determined by the Personal Care Assistance Service Level Computation Chart (SLC).¹² The SLC provides a set amount of time allotted for each ADL depending on the level of physical assistance needed for each task. PCA

⁵ The division conducted an assessment interview on February 24, 2014 and made its assessment determination on June 10, 2014. Exhibit D; Exhibit E; Exhibit F.

⁶ Mr. M's testimony was closer to argument than the presentation of evidence.

⁷ 7 AAC 49.135.

⁸ 7 AAC 125.010(a).

⁹ 7 AAC 125.020(b).

¹⁰ Exhibit E at 6 – 11.

¹¹ Exhibit E at 26.

¹² 7 AAC 125.024(1).

recipients are assessed annually to determine what physical assistance is required to perform an ADL (performance) and how often physical assistance is required (frequency).

The different levels of performance assistance with ADLs and IADLs are defined by regulation, and described in the CAT.¹³ Supervision (scored as a 0 or 1) is defined as oversight, encouragement, or cueing three or more times a week, with physical assistance no more than two times a week.¹⁴ Limited assistance (scored as a 2) is defined as requiring direct physical help or hands on guidance from another individual three or more times a week, with weight-bearing support no more than two times a week.¹⁵ Extensive assistance (scored as a 3) 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 one time a week, but not all of the time.¹⁶ Total dependence (scored as a 4) means full caregiver performance of the activity during the entire seven days.¹⁷

The performance levels for IADLs are slightly differently than for ADLs. Independence (scored as a 0) is defined as independent either with or without assistive devices - no help provided.¹⁸ Independence with difficulty (scored as a 1) is characterized by the person performing the task with difficulty or taking a great amount of time to do it.¹⁹ Assistance/done with help (scored as a 2) is when the person is somewhat involved in the activity, but help in the form of supervision, reminders, or physical assistance is provided.²⁰ Dependent/done by others (scored as a 3) means the person is not involved at all with the activity and the activity is fully performed by another person.²¹ If the activity did not occur it is scored as an 8.²²

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¹³ 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.

¹⁴ See e.g., Exhibit E at 6.

¹⁵ 7 AAC 125.020(a)(1); Exhibit E at 6.

¹⁶ 7 AAC 125.020(a)(2); Exhibit E at 6.

¹⁷ 7 AAC 125.020(a)(3); Exhibit E at 6. Bathing and the IADLs have their own assistance level definitions.

¹⁸ Exhibit E at 26.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

C. *Activities of Daily Living*

1. Bed Mobility

The ADL of body mobility includes the activity of positioning, or turning, in a bed or chair.²³ The CAT refers to this as bed mobility, which is described as how a person moves to or from a lying position, or turns side to side, or positions his or her body while lying in bed.²⁴ The division scored Mr. M as independent with bed mobility (score 0). Mr. M, Ms. C-H, and the nurse assessor for the division, Scott Chow, testified that Mr. M could reposition independently. The preponderance of the evidence supports the division's scoring of bed mobility.

2. Transfers

Mr. M had previously been scored as requiring limited assistance for transfers (score 2/2) 42 times a week. The division scored Mr. M as independent with transfers (score 0) based upon the nurse assessor's observation of Mr. M during the assessment interview. The nurse assessor's observations were corroborated by Ms. C-H. However, Ms. C-H testified that Mr. M's arthritis, more likely than not, interfered with his ability to transfer out of bed in the morning. She supported returning Mr. M to a score of 2/2 several times a day. After hearing Ms. C-H's testimony, the division agreed that Mr. M required limited assistance twice a day. The CAT and the testimony establish by a preponderance of the evidence that Mr. M requires limited assistance twice a day with the ADL of transfers.

3. 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.²⁵ Mr. M has previously been scored as requiring limited assistance (score 2/2) 42 times a week. The division scored him as independent (score 0). Mr. M was observed walking with the assistance of a cane at his assessment interview and by Ms. C-H. The CAT and the testimony establish by a preponderance of the evidence that Mr. M is independent with the ADL of locomotion.

²³ 7 AAC 125.030(b)(1).

²⁴ Exhibit E at 6.

²⁵ See Exhibit E at 7.

4. Dressing

The ADL of dressing refers to how a person puts on, fastens, and takes off all items of street clothing, including donning/removing a prosthesis.²⁶ On his prior CAT, the division scored Mr. M as requiring limited assistance (score 2/2) 14 times a week. The division scored Mr. M as independent because of his functional assessment. Mr. M demonstrated adequate range of motion, strength, and dexterity to dress without assistance. Ms. C-H agreed with the division's observations. She did not feel Mr. M required assistance with dressing. The CAT and the testimony establish by a preponderance of the evidence that Mr. M is independent with the ADL of dressing.

5. Eating

The division removed time for assistance with eating because it concluded that Mr. M no longer needed supervision while eating. This finding is not disputed.²⁷ Accordingly, the decision to score Mr. M as independent for eating is upheld

6. Toilet Use

Toilet use includes transfers on and off the toilet, cleaning post-toileting, and adjusting clothing and routine incontinence care.²⁸ Mr. M was scored as requiring limited assistance (score 2/2) 42 times a week for this activity on his prior CAT. The division concluded that Mr. M was independent with this ADL. The testimony received from Mr. M and Ms. C-H support this finding. The record supports a finding that it is more likely than not that Mr. M is independent with the ADL of toileting.

7. Personal Hygiene

Personal hygiene is defined as washing/drying face and hands; nail care unless the recipient is diabetic; skin, mouth and teeth care; brushing and combing hair; shaving; applying makeup; and cleaning perineum.²⁹ Mr. M had previously been allowed limited assistance for personal hygiene (score 2/2) seven times a week. As with the ADL of

²⁶ Exhibit E at 8.

²⁷ See Exhibit 1.

²⁸ 7 AAC 125.030(b)(6).

²⁹ 7 AAC 125.030(b)(7); Exhibit E at 10.

dressings, Mr. M's functional abilities and the testimony of Ms. C-H establish that it is more likely than not that Mr. M is independent with the ADL of personal hygiene.

8. Bathing

Mr. M had previously been authorized for physical help in the bathing activity (score 3/2). The division found him to be independent with the ADL of bathing (score 0/0). Ms. C-H expressed concern regarding Mr. M's ability to safely transfer in and out of a bathtub or shower. The nurse assessor did not observe Mr. M transfer into or out of the bath. The testimony of Ms. C-H supports a slight reduction in Mr. M's score to 2/2. PCA time for the ADL of bathing should be increased to reflect that he requires some physical assistance with transferring seven times a week.

D. *IADLs*

As a result of his 2012 assessment, Mr. M was scored as dependent upon others for the completion of his IADLs (score 3/2). The division scored him as independent (score 0/0). Relying upon the comments of Mr. M's caregivers, family members, and her personal observations of Mr. M over an extended period of time, Ms. C-H testified that except for light meal preparation, Mr. M should be involved in his IADLs but receive physical assistance to complete the task at hand (score 2/3). After considering all the testimony, the division agreed. The record establishes that it is more likely than not that Mr. M should be scored at 2/3 for all IADLs except light meal preparation.

IV. Conclusion

The evidence received at the hearing presents a slightly different picture of Mr. M's needs than those observed at the assessment interview. The new evidence establishes by a preponderance of the evidence that Mr. M suffers from arthritis that interferes with his ability to complete the ADLs of transfers and bathing. It establishes by a preponderance of the evidence that Mr. M requires physical assistance to complete the IADLs of main meal preparation, shopping, light housework, and laundry. The division erred when it terminated

his PCA services for these six activities. Mr. M's PCA service plan should be revised to be consistent with this decision.

DATED this 24th day of September, 2014.

By: Signed
Rebecca L. Pauli
Administrative Law Judge

Adoption

The undersigned, by delegation from 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 8th day of October, 2014.

By: Signed
Signature
Rebecca L. Pauli
Name
Administrative Law Judge
Title

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