

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

In the Matter of: )  
 )  
 K T ) OAH No. 14-1165-MDS  
 ) Agency No.  
\_\_\_\_\_)

**DECISION**

**I. Introduction**

K T receives personal care assistant (PCA) services through the Division of Senior and Disability Services under 7 AAC 125.010-199.<sup>1</sup> The Division reassessed Ms. T’s functional abilities and determined that she was eligible for 4.5 hours of PCA services weekly rather than the 10.25 hours she had previously received. Ms. T filed an appeal.

The assigned administrative law judge conducted a telephonic hearing on August 8, 2014. Ms. T testified and represented herself. Tammy Smith represented the Division. Angela Hanley, R.N., who conducted the assessment, and Olga Ipatova, who reviewed it, testified on behalf of the Division. L N, Ms. T’s care coordinator, testified on her behalf.

The Division did not prove that Ms. T’s functional capacities have improved since she was last assessed. Accordingly, reductions in her service level authorization are not approved, and her services shall be maintained at the level preciously provided.

**II. Facts**

**A. Background Information**

K T is 84 years old.<sup>2</sup> She is 5’ 1” and weighs 170 pounds.<sup>3</sup> She lives by herself in a single level home in No Name.<sup>4</sup> The home is accessed on a fourteen-step covered stairway.<sup>5</sup> It includes an elevated toilet and a bathtub with grab bars, a bath bench, and a hand held shower.<sup>6</sup> Ms. T has a lift recliner chair (a recliner that tilts up to assist in standing) for daytime seating.

Ms. T has osteoarthritis in multiple sites.<sup>7</sup> She is obese.<sup>8</sup> Her physical ailments include hypertension (high blood pressure), cardiac dysrhythmia, hyperlipidemia, hearing loss, poor vision, and incontinence.<sup>9</sup>

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<sup>1</sup> See AS 47.07.045.  
<sup>2</sup> Ex. E, p. 1. Ms. T turned 84 on 00/00/2014.  
<sup>3</sup> Ex. E, p. 9.  
<sup>4</sup> Ex. E, p. 1.  
<sup>5</sup> Ex. E, p. 1.  
<sup>6</sup> Ex. E, pp. 11, 27.  
<sup>7</sup> Ex. E, p. 3.  
<sup>8</sup> Ex. E, p. 3.  
<sup>9</sup> Ex. E, pp. 3, 21, 22.

On October 9, 2012 Ms. T's functional abilities were assessed by Angela Hanley, R.N.<sup>10</sup> R.N. Hanley assessed Ms. T as needing limited assistance for locomotion to access medical appointments and for bathing,<sup>11</sup> and as needing physical assistance for light meal preparation and for laundry.<sup>12</sup> Following the assessment, Ms. T was authorized 10.25 hours per week of PCA services.<sup>13</sup>

R.N. Hanley reassessed Ms. T on February 3, 2014.<sup>14</sup> R.N. Hanley reassessed Ms. T as independent in locomotion to access medical appointments, bathing, light meal preparation, and laundry.<sup>15</sup> She assessed Ms. T's need for transfer assistance as four times weekly as compared with her prior assessment of 14 times weekly.<sup>16</sup> Based on the reassessment, the Division calculated Ms. T's need for PCA services as 4.5 hours weekly.<sup>17</sup>

#### B. Daily Routine

Ms. T's arthritis and obesity make locomotion difficult for her. She can get around her house by bracing herself against a wall or on furniture or using a walker. Outside the home, she must use a walker for locomotion.<sup>18</sup> Because of the stairs to her house and her need to use a walker for locomotion outside the house, Ms. T is house-bound unless she has physical assistance to enter and exit the house.

During the day Ms. T sits in her lift recliner or, when dining, on a dining chair. She also uses her couch at times. Her physical conditions make her unstable when transferring from the couch to a standing position, and she has fallen when standing from the couch.<sup>19</sup> She requires physical assistance to climb into and out of her bathtub.<sup>20</sup> Ms. T's vision is poor, to the point that she cannot read the labels on her medication.<sup>21</sup>

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<sup>10</sup> Ex. F.

<sup>11</sup> See Ex. D, p. 8.

<sup>12</sup> Ex. F, p.26.

<sup>13</sup> Ex. D, p. 1. The record does not include any documentation showing how this total was calculated.

<sup>14</sup> Ex. E.

<sup>15</sup> See Ex. D, p. 8.

<sup>16</sup> See Ex. D, p. 8.

<sup>17</sup> Ex. D, pp. 1, 6, 9. See 7 AAC 125.024(a)(1); 7 AAC 160.900(d)(29).

<sup>18</sup> Ex. E, p. 7.

<sup>19</sup> See Ex. E, p. 7.

<sup>20</sup> Ex. F, p. 11; Testimony of L. N.

<sup>21</sup> See Ex. E & F, p. 22; Testimony of L. N.

C. Activities of Daily Living

1. *Frequency of Transfers*

Ms. T requires limited assistance with transfers. The frequency of Ms. T's need for assistance with transfers varies with her level of pain.<sup>22</sup> She transfers twice daily when getting up and going to bed. She spends much of her time during the day seated, transferring in and out of the recliner or another seat when she uses the bathroom (which occurs frequently, perhaps six times daily) and for dining (three meals, or six transfers, daily). Her activity level is equivalent to about 14 transfers daily, or 98 transfers per week. She needs assistance, due to pain levels or stiffness, at least 14 times weekly (about 15% of her total number of transfers).<sup>23</sup>

2. *Frequency of Dressing*

Ms. T requires limited assistance with dressing. Ms. T dons and doffs her clothing at least twice daily, once in the morning and once in the evening.

3. *Assistance for Bathing*

Ms. T needs weight bearing assistance with transfers into and out of her bathtub, safety reasons.<sup>24</sup> She is able to cleanse her body, but she is unable to shampoo independently, and her personal care assistant shampoos her hair when she showers.<sup>25</sup>

4. *Assistance for Personal Hygiene*

Ms. T can perform most personal hygiene activities independently, but she requires physical assistance to trim her fingernails and toenails.<sup>26</sup>

5. *Assistance for Locomotion*

Ms. T's home is one on level, but is accessed on a stairway (14 stairs). Ms. T is able, on most days, to ascend and descend (backwards) the stairs outside her home while holding on to the railing with both hands.<sup>27</sup> However, Ms. T requires physical assistance every day she leaves the home, because she needs to use a walker for locomotion outside the house and she is unable to go up or down stairs with her walker. Ms. T typically leaves her home daily, for lunches at the Senior Center and to use the warm whirlpool, which relieves her arthritis. She also leaves her home regularly for medical appointments.

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<sup>22</sup> See Ex. E, F, p. 6.

<sup>23</sup> See Testimony of K. T (needs assistance three or four times daily); Testimony of L. N; Statement of L. N (“While tracking count for one week she had received help [with transfers] 4 times a day on 5 out of 7 days.”).

<sup>24</sup> See Ex. F, p.11; Testimony of L. N.

<sup>25</sup> Testimony of K. T.

<sup>26</sup> Testimony of K. T, L. N; Statement of L. N (“[D]ue to her limited vision she does not do her own nails, hands or feet.”).

<sup>27</sup> Testimony of K. T.

D. Instrumental Activities of Daily Living

1. *Light Meal Preparation*

Ms. T is able to provide independently prepare cereal, soup, or a sandwich.<sup>28</sup> However, she cannot locomote with dishes, read a recipe, or identify labels on ingredients.<sup>29</sup>

2. *Laundry*

Ms. T cannot carry a laundry basket to and from the laundry room.<sup>30</sup> On some days, due to pain and stiffness, she cannot operate a washer and dryer.<sup>31</sup> She requires assistance to fold, sort, and put away her laundry.<sup>32</sup>

E. Other Covered Activities (Medication)

Due to her poor vision, Ms. T is unable to read the labels on her various medications. She requires assistance to set up her medications for use.<sup>33</sup>

**III. Discussion**

The Department of Health and Social Services is authorized to provide eligible persons with personal care services.<sup>34</sup> The Division provides compensation for personal care services in the form of physical assistance, based on an assessment of the recipient's ability to perform specified activities of daily living (ADL),<sup>35</sup> instrumental activities of daily living (IADL),<sup>36</sup> and certain other functions.<sup>37</sup> The assessment is conducted using the Consumer Assessment Tool (CAT),<sup>38</sup> a form created by the Department of Health and Social Services to evaluate an individual's ability to care for herself.<sup>39</sup>

One section of the CAT covers the individual's physical abilities with respect to the eight ADL's: body mobility, transfers, locomotion, dressing, eating and drinking, toileting, personal hygiene, and bathing.<sup>40</sup> Individuals are given two scores reflecting their ability to perform these activities, one for their ability to perform the activity (self-performance), and the other for the

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<sup>28</sup> Testimony of K. T.

<sup>29</sup> See Statement of L. N.

<sup>30</sup> See Statement of L. N.

<sup>31</sup> See Statement of L. N.

<sup>32</sup> Testimony of L. N.

<sup>33</sup> Testimony of K. T; Statement of L. N ("She is completely unable to see the bottles and differentiate between medications. Her caregiver sets up her meds for her weekly.")

<sup>34</sup> AS 40.07.030(b).

<sup>35</sup> 7 AAC 125.030(b)(1)-(8).

<sup>36</sup> 7 AAC 125.030(c)(1)-(5).

<sup>37</sup> 7 AAC 125.030(d)(1)-(9), (e).

<sup>38</sup> 7 AAC 125.020(b); 7 AAC 160.900(d)(6).

<sup>39</sup> See generally, <http://dhss.alaska.gov/dsds/Documents/docs/cat-pcatOnlineFlyer.pdf> (accessed August 29, 2014).

<sup>40</sup> Ex. E, pp. 6-11. The CAT terminology does not precisely track the regulatory language for each ADL.

degree of assistance they require (support). A score of two zeros indicates the individual performs the activity independently (self-performance) with no setup or physical help (support). Increasing inability to perform and need for assistance result in progressively higher scores, including scores of two for limited assistance, three for extensive assistance, and four for dependence.<sup>41</sup>

The Division provides a specified amount of time for PCA assistance with each ADL, depending on the scores provided and the frequency with which the activity occurs, in accordance with the Personal Care Assistance Service Level Computation form (service level chart) devised for that purpose.<sup>42</sup> For IADLs, the Division provides a specified amount of time for PCA assistance each week, depending on the scores provided and, for light meal preparation only, depending on the number of such meals (one or two per day).<sup>43</sup>

The Division bears the burden of proof with respect to reductions in the level of assistance or frequency. Ms. T bears the burden of proof for increases.

A. Activities of Daily Living

1. *Frequency of Transfers*

Ms. T disagreed with the frequency of transfers assessed by R.N. Hanley. On the prior assessment, R.N. Hanley had provided 14 transfers weekly, based on Ms. T's statement that she needed assistance when in pain. Prior to that, according to Ms. N, Ms. T had been provided 28 transfers weekly. R.N. Hanley offered no persuasive explanation for the reduction from the frequency she had previously provided.<sup>44</sup> Ms. N testified that Ms. T had kept a diary recording her actual need for assistance, which supports the prior frequency.<sup>45</sup> Ms. T's condition is progressive, and she testified that it has worsened with time. The Division did not prove that Ms. T needs assistance with transfers less frequently than in prior years.

2. *Frequency of Dressing*

The Division conceded at the hearing that Ms. T should be provided assistance with dressing twice daily, or 14 times per week.

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<sup>41</sup> Ex. E, pp. 6-11. A score of one indicates supervision, cueing or set up; five indicates verbal assistance is provided; a score of eight indicates the activity did not occur within the past seven days.

<sup>42</sup> 7 AAC 125.024(a)(1); 7 AAC 160.900(d)(29). See Ex. B, pp. 34-36.

<sup>43</sup> Ex. B, p. 34.

<sup>44</sup> R.N. Hanley testified that the basis for the frequency in 2014 was that Ms. T had reported she needed assistance when in pain, and that she used the pool frequently, which had helped her arthritis.

<sup>45</sup> See note 23, *supra*.

### 3. *Assistance for Bathing*

R.N. Hanley scored Ms. T as independent, as she reported that she could bathe herself. However, R.N. Hanley had previously scored Ms. T as needing limited assistance with this activity, and that is what Ms. T had been scored at on the assessment prior to that as well.<sup>46</sup> Ms. T testified that she needs assistance to transfer into and out of the bathtub, as well as assistance in shampooing her hair. Both forms of assistance constitute limited assistance for bathing. The Division did not prove that Ms. T needs less assistance with this activity, in level of assistance or frequency, than she did in previous years.

### 4. *Assistance for Personal Hygiene*

Ms. T was assessed as independent with this activity. However, the uncontradicted evidence is that Ms. T is unable to trim her fingernails or toenails. Because Ms. T is unable, even with assistance, to perform any part of one task involved in personal hygiene (nail care), she requires limited assistance as defined in 7 AAC 125.020(a)(1) (“highly involved in the activity, [but] receives direct physical help from another individual”).<sup>47</sup> A person requiring limited assistance for personal hygiene is provided ten minutes daily of personal care assistance for that activity.<sup>48</sup>

### 5. *Assistance for Locomotion*

In 2012, R.N. Hanley assessed Ms. T as independent for in-room locomotion and multi-level locomotion, and as needing limited assistance to access medical appointments.<sup>49</sup> In 2014, she assessed Ms. T as independent in all three categories of locomotion. There has been no improvement in Ms. T’s physical condition or in her living conditions. In 2014, as in 2012, Ms. T needs limited assistance to get up and down the stairs leading to her house. Because Ms. T’s home can only be accessed by stairs, she requires multi-level locomotion assistance on a daily basis, once entering and exiting, or 14 times weekly.

## B. Instrumental Activities of Daily Living

### 1. *Light Meal Preparation*

Ms. T conceded that she is independent with difficulty in this activity.

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<sup>46</sup> Ex. F, p. 12

<sup>47</sup> See In Re [Jane Doe], at 10, OAH No. 14-0354-MDS (Commissioner of Health and Social Services 2014); In Re [Jane Roe], at 19, OAH No. 13-1307-MDS (Commissioner of Health and Social Services 2014).

<sup>48</sup> Ex. B, p. 34.

<sup>49</sup> Ex. D, p. 8.

2. *Laundry*

In 2012, R.N. Hanley scored Ms. T as requiring physical assistance with this activity. In 2014, she scored her as independent. The uncontested evidence is that Ms. T is provided physical assistance with this activity.

E. Other Covered Activities (Medication)

R.N. Hanley scored Ms. T as self-administering her medications, but as needing assistance in preparing her medications.<sup>50</sup> This score (four, on the CAT) is sufficient for personal care assistance, as shown on the service level chart.<sup>51</sup> Accordingly, applying her personal hygiene score (2) to compute the time allowed for personal care assistance, Ms. T is entitled to two minutes per occurrence with this activity.<sup>52</sup>

**IV. Conclusion**

In this case, the Division did not prove that Ms. T's need for assistance is any less, in any category other than light meal preparation, than she was scored for in 2012. In light of Ms. T's undisputed need for physical assistance with at least one task in the activity of personal hygiene, she is properly scored as requiring limited assistance for that activity. In addition, based on the score awarded for medication, Ms. T is entitled to assistance with that activity. The Division shall revise and recalculate Ms. T's service level authorization in accordance with this decision.

DATED September 3, 2014.

Signed  
Andrew M. Hemenway  
Administrative Law Judge

**Adoption and  
Notice of Right to Appeal**

The undersigned by delegation from the Commissioner of Health and Social Services adopts the proposed decision dated September 3 as the final administrative decision 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 this decision is mailed or otherwise distributed.

DATED September 22, 2014.

Signed  
Andrew M. Hemenway  
Administrative Law Judge

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

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<sup>50</sup> Ex. E, p. 20.  
<sup>51</sup> Ex. B, p. 35.  
<sup>52</sup> *Id.*