

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

In the Matter of	)	
	)	
T P	)	OAH No. 14-1275-MDS
_____	)	Agency No.

**DECISION**

**I. Introduction**

This case is T P's appeal of the reduction in number of hours authorized for her Personal Care Assistance (PCA) services by the Division of Senior and Disabilities Services (division). Based on an assessment conducted on January 3, 2012, the division had previously set Ms. P's PCA service authorization at 7.5 hours per week. The division had arranged for a reassessment of Ms. P's functional abilities on February 3, 2014. Based on this reassessment, the division determined that Ms. P was eligible to receive only 2.75 hours per week of PCA services. Ms. P requested a hearing to contest that determination.

Ms. P disputes the determination that she only qualified for 2.75 hours per week of PCA services. Ms. P believes that she needs 7.5 hours, the amount of PCA hours that she had, or more. She argued that she needs to be driven to go shopping and to the pharmacy. Ms. P also explained that she needs more help with meal preparation and laundry.

A hearing was held on August 15, 2014. Ms. P appeared by phone and testified on her own behalf. Ms. P's Care Coordinator, T E. Z was a witness for Ms. P. The division was represented by Tammy Smith.

After the hearing, an order was issued giving Ms. P time to provide more documentation of her back pain. The parties were given until September 5, 2014 to file additional documentation or request to go back on the record. Ms. P filed a letter and additional documentation. There was no request to go back on the record.

Because this appeal was in response to a reduction in benefits that had been previously approved, the division had the burden of proof at the hearing. The evidence presented at in the record shows that the division met its burden of proof. The division's decision that Ms. P is not eligible for more than 2.75 hours of PCA services is upheld.

## II. Facts

Ms. P was concerned about her need for assistance. At the hearing, the division explained how those needs had been taken into account in the reassessment, and how those needs were provided for in the PCA service hours that were authorized.<sup>1</sup>

The reassessment took place in Ms. P's home by Angela Hanley, RN, on February 3, 2014.<sup>2</sup> Nurse Hanley was not available for the hearing.

Ms. P lives by herself in No Name, Alaska. She was 55 years old at the time of the reassessment. At the time of the reassessment, she has been diagnosed depression and Schizoactive disorder, chronic airway instruction and chronic pulmonary heart disease, and less serious medical problems. After the hearing, Ms. P provided some documentation of her degenerative lower spine disease. After the hearing Ms. P also filed a letter in which she explained that she believes that rather than needing less than 7.5 hours per week, she needs more help than ever before. She explained that she is always in a lot of pain and cannot do many things for herself. She gets dizzy spells, which she thinks are caused by her diabetes. She writes that she needs help with shopping laundry and cleaning her house.<sup>3</sup>

Ms. P's medical records, filed after the hearing, show that she had an MRI of her lumbar spine on July 10 2014. These records diagnose Ms. P with multilevel degenerative disease without acute abnormality, and recommend injection therapy. These records also indicate that Ms. P is hesitant to consider ESP, or epidural steroid, injections.<sup>4</sup>

Based on the evidence in the record, I find that the division showed that it is more likely than not that the determination that Ms. P qualified for only 2.75 hours per week of PCA services on the date of the assessment was correct. Ms. P was generally concerned about the reduction in the hours of PCA services provided to her. However, the division showed the Ms. P's needs and abilities had been properly scored in the reassessment.<sup>5</sup> Ms. P did not directly dispute any of the findings in the reassessment or provide persuasive evidence that there were errors in the reassessment or the division's calculation of her PCA authorization based on the reassessment. The main two areas where there were changes in scoring that led to a reduction in PCA authorization were meal preparation and bathing.

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<sup>1</sup> Recording of Hearing.

<sup>2</sup> The reassessment is found at Exhibit E.

<sup>3</sup> Ms. P's letter dated September 4, 2014.

<sup>4</sup> These medical records were attached to Ms. P's letter dated September 4, 2014.

<sup>5</sup> Recording of Hearing.

Even at the hearing, Ms. P admitted that she could perform these tasks independently. Her point is that it is difficult for her to manage without more help.

### **III. Discussion**

The purpose of the PCA program is to provide physical assistance to those who need them, like Ms. P, with activities of daily living physical assistance with instrumental activities of daily living, and other services based on the physical condition of the person receiving these services.<sup>6</sup>

The division uses the Consumer Assessment Tool which is referred at the hearing as the “CAT,” to determine how many hours of PCA services should be provided every week.<sup>7</sup>

The amount of time allotted for that assistance is calculated using the Personal Care Assistance Service Level Computation.<sup>8</sup> This computation shows the amount of PCA time allotted for each activity or instrumental activity depending on the level of assistance needed for each task.<sup>9</sup>

The division has the burden of proof in this appeal because the division is reducing the number of PCA hours that it had previously authorized Ms. P to receive. The Division’s burden of proof is to show by a preponderance of the evidence that the findings that support its decision to reduce the PCA authorization are correct. This means the division has to present evidence showing that it is more likely than not that the determination that Ms. P qualified for only 2.75 hours per week of PCA services on the date of the reassessment was correct, and that the findings in that reassessment were still valid on June 25, 2014, when Ms. P was notified of the results.

At the hearing, the division met its burden with evidence that was not persuasively rebutted by Ms. P’s testimony or the letter and medical records that she submitted after the hearing. At the hearing, Ms. P did not directly contradict Nurse Hanley’s findings and scorings in the CAT; rather, she expressed concerns about the reduction of her PCA hours, her pain from her lower back problems, and the increased pain she felt when she had to do her own meal preparation, and laundry without more help. Ms. P also discussed medical problems that the Division had not received documentation for.

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<sup>6</sup> Alaska Regulation 7 AAC 125.010(a).

<sup>7</sup> Alaska Regulation 7 AAC 125.020(b).

<sup>8</sup> Alaska Regulation 7 AAC 125.024(1).

<sup>9</sup> See Exhibits D & E.

Nurse Hanley's findings are consistent with Ms. P's testimony about the level of her independence led to a reduction in authorization. These areas were bathing, meal preparation. Ms. P agreed that she could prepare her own meals and bath herself without assistance.

Ms. P also would like more assistance with transportation, but the Division correctly pointed out that transportation is not part of PCA services.

The concerns Ms. P raised about her back pain should be addressed through the change of information process because they relate to changes in medical issues that developed after she was given notice of the results of the reassessment. It is not clear at this time what her treatment will be or how this might impact her need for PCA services.

Although Ms. P would like more hours of PCA authorization, the Division met its burden of proof in showing that the reassessment correctly scored her needs and abilities and that the Division made the correct adjustments to her PCA authorization.

#### **IV. Conclusion**

The Division's determination that Ms. P is eligible for 2.75 hours per week of PCA services is affirmed.

Dated this 18<sup>th</sup> day of November, 2014

Signed  
Mark T. Handley  
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 29<sup>th</sup> day of December, 2014.

By: Signed  
Name: Bride Seifert  
Title/Division: ALJ/OAH

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