

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

In the Matter of	)	
	)	
L M	)	OAH No. 14-1515-MDS
_____	)	Agency No.

**DECISION**

**I. Introduction**

This case is L M’s appeal of the reduction in number of hours authorized for Personal Care Assistance (PCA) services by the Division of Senior and Disabilities Services (division). Based on an assessment conducted on September 17, 2009, the division had previously set Mr. M’s PCA service authorization at 20 hours per week. The division had arranged for a reassessment of Mr. M’s functional abilities on April 3, 2014. Based on this reassessment, the division determined that Mr. M was eligible to receive only 11.25 hours per week of PCA services. Mr. M requested a hearing to contest that determination.

Mr. M and the program coordinator for his care provider, A C, dispute the determination that he only qualified for 11.25 hours per week of PCA services. Ms. C and Mr. M explained areas of the reassessment that they disagreed with. These disagreements focused on the scoring and frequency in the transfers, locomotion-medical access and escort categories.

A hearing was held on October 13, 2014. Mr. M participated. Ms. C testified on Mr. M’s behalf. The division was represented by Terri Gagne. 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.

Based on the evidence presented at the hearing, the division did not meet its burden of proof in the areas of dispute between Mr. M and the division. The evidence shows that in these areas, Mr. M’s needs for assistance have not changed significantly since the 2009 assessment. Transfers may even require more weight-bearing support than they have in the past in order to be performed safely.

## II. Facts

Mr. M and the program coordinator for Mr. M's care provider, A C, were concerned about how the reassessment evaluated Mr. M's needs for assistance in the areas of transfers, locomotion and escort for medical appointments.<sup>1</sup>

Mr. M lives by himself in an apartment; he is only really alone, however, for a few hours a day, because there is usually someone that he can call for help nearby. He was 41 years old at the time of the reassessment. He has spina bifida with hydrocephalus, paraplegia, chronic pain and depression.<sup>2</sup> Mr. M takes strong prescribed narcotics for his chronic pain. Mr. M takes hydrocodone for pain four times per day. Mr. M also takes Neurontin for pain, as well as medications for other medical problems.<sup>3</sup>

The reassessment was conducted by Marianne Sullivan, RN, on April 3, 2014. Nurse Sullivan was not available for the hearing.<sup>4</sup>

In a letter dated October 6, 2014, M Q, M.D. explained that Mr. M had been under her care for many years for monthly treatments for his spina bifida, and for complications of that condition. Doctor Q also explained that Mr. M's caregiver's participation was "vital" at his medical appointments, for transfers, communication, and organization. Doctor Q stressed that Mr. M's spina bifida affects him in all areas of his life, and makes it a safety risk for him to attempt to transfer himself. This is risk that could lead to serious complications and death. Doctor Q opined that it is "crucial" for Mr. M to maintain his PCA authorization in order to maintain his overall health.<sup>5</sup>

At the hearing, Mr. M admitted that he believes that he has long-term memory problems that may be related either to complications of hydrocephalus or side-effects of the medications that he takes.

### *Transfers*

On the 2009 assessment, Mr. M had indicated that he needed extensive assistance and a one-person physical assist (3/2) with transfers at a frequency of 42 times per week. On the reassessment, he was rated as needing only limited assistance (2/2) at transfers was a frequency of 28 times per week. Nurse Sullivan observed that Mr. M stated that he was

---

<sup>1</sup> Recording of Hearing & letter from A C dated October 8, 2014.

<sup>2</sup> Recording of Hearing & Exhibit E, page 3.

<sup>3</sup> Recording of Hearing & Exhibit E, page 20.

<sup>4</sup> Recording of Hearing.

<sup>5</sup> The letter from Dr. M Q is found at Exhibit 3, attached to the letter from A C.

having more difficulty with transfers, and that he held onto to the neck of the person transferring him as “she pulls me up and over onto the chair.”<sup>6</sup>

At the hearing, Mr. M admitted that he sometimes makes transfers on his own when he has to and there is no one available to help him, but as can be seen from his doctor’s letter, it is not safe for him to do this. It is unclear why Nurse Sullivan only rated transfers with a support score of 2 for limited assistance, despite the need for weight-bearing support. Nurse Sullivan was not available at the hearing and the reassessment reviewer, Olga Ipatova, could not provide a clear explanation as to why the need for weight-bearing assistance in transfers was rated as limited rather than extensive.<sup>7</sup> It is not clear from the record to what extent Nurse Sullivan’s assessment of Mr. M’s need for assistance in transfers was dependent on her observations or was simply a mistake in scoring.<sup>8</sup>

#### *Locomotion-Medical Access*

On the 2009 assessment Mr. M was scored as 3/2, needing assistance, for arranging and transportation to medical and dental appointments with a frequency of twice per week. The division failed to meet its burden that there was a material change in condition in regards to Mr. M’s need for assistance with transfers and locomotion. Mr. M has only the use of his arms. Transfers create a risk when he does not receive the proper weight-bearing assistance, and he needs help controlling his wheelchair when the conditions create slippery surfaces.<sup>9</sup>

#### *Escort Time*

On the 2009 assessment the nurse determined that Mr. M needed 30 minutes per medical appointment for escort time. Nurse Sullivan found that Mr. M did not need escort assistance.

At the hearing, Ms. C explained that he needs escort time for transfers, communication and locomotion. Ms. C testified that he needs transfers to get to and from his medical and dental appointments and needs transfers in the offices. Mr. M needs locomotion assistance at his medical appointments because it is not always safe for him to get into those offices by himself in his wheelchair when there is snow or ice on the ground.

---

<sup>6</sup> Exhibit E, page 6.

<sup>7</sup> Recording of Hearing.

<sup>8</sup> Exhibit E, page 6 & Recording of Hearing.

<sup>9</sup> A C’s letter dated October 8, 2014 at page 1 & Recording of Hearing.

Mr. M needs help communicating because he has difficulty remembering and telling the medical personnel everything they need to know about developments in his health and keeping track of their instructions.

The evidence in the record showed that Mr. M has memory deficits that may be due to the narcotics he is prescribed. Furthermore, he is unable to move by himself either traveling to or while he is at his medical appointments. The division failed to meet its burden that there was a material change in condition in regards to Mr. M's need for escort service for medical appointments.<sup>10</sup>

### **III. Discussion**

The purpose of the PCA program is to provide physical assistance to those who need them, like Mr. M, with activities of daily living, and physical assistance with instrumental activities of daily living and other services based on the physical condition of the person receiving these services.<sup>11</sup>

The division uses the Consumer Assessment Tool, which is referred to at the hearing as the "CAT", to determine how many hours of PCA services should be provided every week.<sup>12</sup>

The amount of time allotted for that assistance is calculated using the Personal Care Assistance Service Level Computation.<sup>13</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>14</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 Mr. M 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 Mr. M qualified for only 11.25 hours per week of PCA services on the date of the assessment was correct.

---

<sup>10</sup> Exhibit 1, page 2 & Recording of Hearing.

<sup>11</sup> Alaska Regulation 7 AAC 125.010(a).

<sup>12</sup> Alaska Regulation 7 AAC 125.020(b).

<sup>13</sup> Alaska Regulation 7 AAC 125.024(1).

<sup>14</sup> See Exhibits D & E.

At the hearing, the division did not meet its burden with evidence showing that there were material changes in Mr. M's condition that justified the scoring and frequency changes that he contested. The evidence of the reassessment was admitted, even though Nurse Sullivan was not available, because it was reasonably reliable hearsay evidence of her observations and findings at the time of the assessment. That evidence was persuasively rebutted on the parties' points of disagreement by the testimony of the witnesses who spoke on Mr. M's behalf and the letter from his doctor.<sup>15</sup>

The Division raised an important issue of disagreement regarding whether escort services can be authorized if there is no demonstrated need to have the PCA at the medical appointment to assist with communication. It is not necessary to make a ruling on that legal issue in this case, however, because factually the evidence shows that Mr. M does need to have his PCA present at his medical appointments to assist with communication between him and his medical providers. This evidence includes the testimony of Mr. M and Ms. C, as well as the letter from his doctor. This evidence is supported by Mr. M's medical records showing the prescription narcotics that he is required to take, his chronic pain, and his history of hydrocephalus.

#### **IV. Conclusion**

The division has not met its burden of proving a material change in condition as to Mr. M's points of disagreement in the changes in scoring a reduction of the PCA services Mr. M receives. Specifically, the division failed to meet its burden of proving a material change in condition in regards to his needs or abilities as they pertain to locomotion-medical access, transfers, and escort. Scoring and frequency for these remain the same as the 2009 assessment. The division should recalculate his service level authorization in accordance with the findings in this decision.

Dated this 29th day of October, 2014.

*Signed* \_\_\_\_\_  
Mark T. Handley  
Administrative Law Judge

---

<sup>15</sup> Mr. M's points of disagreement with the reassessment are set out in the letter from A C dated October 8, 2014.

## 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 17<sup>th</sup> day of November, 2014.

By: Signed \_\_\_\_\_  
Name: Mark T. Handley  
Title: Administrative Law Judge

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