

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

In the Matter of)
)
 B W) OAH No. 14-1537-MDS
) Agency No.
_____)

DECISION

I. Introduction

B W receives Personal Care Assistance (PCA) services. Senior and Disabilities Services (SDS) notified him that his services would be reduced, and Mr. W appealed that decision.

A hearing was held on February 11, 2015 and February 20, 2015.¹ Mr. W represented himself. SDS was represented by a lay advocate, Tammy Smith.

Based on the evidence presented, SDS's determination is upheld except for the reductions in the area of dressing and personal hygiene.

II. Facts

Registered Nurse Geetha Samuel assessed Mr. W's functional abilities on March 21, 2014.² Mr. W was 61 years old on that date.³ He suffers from diabetes, gout, kidney disease, and coronary atherosclerosis.⁴ He experiences pain and neuropathy associated with his illnesses.⁵ He had chest pains while visiting Los Angeles, and was admitted to the hospital on August 5, 2014.⁶ He underwent heart catheterization during that hospital stay.⁷

On August 11, 2014, SDS issued its decision reducing Mr. W's PCA services from 21.75 hours to 1.75 hours per week.⁸ He was only allowed limited assistance with bathing.⁹

During the hearing, Mr. W testified that he needed help for all of Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs) he was asked about. He has gout, and it is reasonable that his functional ability would be worse on days when his gout is bad.

¹ The hearing was held before Administrative Law Judge Andrew M. Lebo. This matter was reassigned to ALJ Jeffrey A. Friedman, who has reviewed the entire record, and listened to the hearing recordings.

² Exhibit E.

³ Exhibit E1.

⁴ Exhibit E3.

⁵ W testimony.

⁶ No Name Hospital records.

⁷ *Id.*

⁸ Exhibit D.

⁹ Exhibit D10.

However, his reported inability to perform ADLs without assistance is inconsistent with the medical records. He was examined at the No Name on August 22, 2014. The medical notes indicate that he has joint pains, stiffness, back pain, and poor balance.¹⁰ He was examined again on February 5, 2015. At that time, he was “hitting the gym hard” and denied any change in his exercise tolerance.¹¹ On that date, he had pain in his foot from gout, but no joint pain, stiffness, or muscle weakness.¹²

When questioned about his ability to do things on his own, his answers were short and unconvincing. His testimony about his pain and neuropathy, on the other hand, sounded natural and was believable. Mr. W does have serious medical problems, and he does suffer from pain and neuropathy. However, pain and stiffness, unless severe, would not prevent Mr. W from performing ADLs and IADLs.¹³ I find that Mr. W was exaggerating when he said that he was unable to do most activities without physical assistance.

III. Discussion

A. 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 instrumental activities of daily living (IADL), and other services based on the physical condition of the recipient.^[14]

SDS uses the Consumer Assessment Tool (CAT) to help assess the level of assistance needed.¹⁵ The amount of time allotted for needed assistance is determined by the Personal Care Assistance Service Level Computation chart.¹⁶ The Service Level Computation chart shows the amount of time allotted for each ADL or IADL depending on the level of assistance needed for each task. These times are then combined into a weekly total of authorized PCA hours.

The different levels of required assistance are defined by regulation and in the CAT.¹⁷ For each ADL or IADL, there is a self-performance code and an assistance code. For ADLs, the self-performance code describes the type of assistance needed, and the assistance code describes

¹⁰ No Name medical records (fax header page 9 of 15).

¹¹ No Name medical records (fax header page 2 of 15).

¹² No Name medical records (fax header page 4 of 15).

¹³ His only prescribed pain medication is Aleve, twice a day. Exhibit E20.

¹⁴ 7 AAC 125.010(a).

¹⁵ 7 AAC 125.020(b).

¹⁶ 7 AAC 125.024(1).

¹⁷ The July 29, 2009 version of the CAT has been adopted by reference, 7 AAC 160.900(d)(6), and therefore the definitions in the CAT have the same effect as a regulation.

whether the assistance is set up help only, cueing only, or physical assistance from one or two people. With ADLs, Supervision is defined as oversight, encouragement, or cueing three or more times a week, with physical assistance no more than two times a week.¹⁸ Limited Assistance is defined as requiring direct physical help or guidance from another individual three or more times a week, with weight bearing support no more than two times a week.¹⁹ Extensive Assistance 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 three times a week, but not all of the time.²⁰ Full Assistance means the recipient has to rely entirely on the caretaker to perform the activity.²¹ To receive PCA time for ADLs, the applicant must have a performance code of at least 2 (limited assistance).²²

For IADLs, the performance code describes whether the individual can perform the activity independently, independently with difficulty, needs assistance, or is dependent on others to perform the activity.²³ The support code describes whether the support is in the form of supervision or cueing, set up help, physical assistance, or total performance by others.²⁴ To receive PCA time for IADLs, the applicant must have a performance code of at least 1 (independent with difficulty), and a support code of at least 3 (physical assistance).²⁵

This case involves a reduction in benefits. Accordingly, the division has the burden of proving a material change in condition that justifies the reduction.²⁶ Because SDS notified Mr. W of its decision on August 11, 2014, his condition on that date is used when determining the amount of services he is eligible to receive.²⁷

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¹⁸ Exhibit E6.

¹⁹ 7 AAC 125.020(a)(1); Exhibit E6.

²⁰ 7 AAC 125.020(a)(2); Exhibit E6

²¹ 7 AAC 125.020(a)(3); Exhibit E6.

²² Exhibit B34 (Service Level Computation chart).

²³ Exhibit E26.

²⁴ *Id.*

²⁵ Exhibit B34.

²⁶ 7 AAC 49.135. For specific increases in services, Mr. W has the burden of proving facts to support the increase. *Id.*

²⁷ See *In re T.C.*, OAH Case No. 13-0204-MDS (Commissioner of Health and Social Services 2013), page 7 (notice sent to recipient is the decision under review), available at <http://aws.state.ak.us/officeofadminhearings/Documents/MDS/HCW/MDS130204.pdf>. However, Mr. W's condition after that date may be relevant to the extent it tends to show his condition as of the date of SDS's denial.

B. Prior Approval of Hours

Mr. W had been receiving PCA services based on an assessment conducted in 2009.²⁸ He was concerned that the services would be significantly reduced after he had been eligible to receive more services for such a long time.²⁹ He asked that he be evaluated by a doctor who would know more about his medical conditions and symptoms, including his pain, stiffness, and neuropathy.³⁰

For several years, SDS was prevented from reducing PCA services because of a legal challenge to its procedures and regulations. Once the lawsuit was resolved and new regulations adopted, SDS began the process of updating each recipient's PCA authorization. The 2014 assessment of Mr. W was part of that process.

SDS is required to follow its adopted regulations. While a doctor might know more about Mr. W's medical condition, SDS's assessment is narrowly focused; the assessment looks at Mr. W's functional ability to perform certain tasks. SDS uses nurses trained to look at functional ability, which can be different for two people with the exact same medical diagnosis. If, as in this case, a recipient disagrees with SDS's assessment, they may request a hearing, submit additional medical records, and have witnesses, including doctors, testify on their behalf.

C. Mr. W's PCA Services

1. Body Mobility

Mr. W had previously been authorized to receive assistance with body mobility.³¹ Body mobility is defined as the way in which a person moves to and from a lying position, and turns side to side while in bed.³² Under the current regulations, services for body mobility are not allowed if the recipient is able to walk.³³ As discussed below, Mr. W is able to walk. Accordingly, SDS was correct to remove time for this ADL from his service level authorization.

2. Transfers

Transferring is the act of moving between surfaces, such as standing up from a bed or a chair.³⁴ He did not previously receive PCA services for transfers.³⁵ Ms. Samuel observed Mr. W

²⁸ Exhibit F.

²⁹ W testimony.

³⁰ *Id.*

³¹ Exhibit D10.

³² Exhibit E6.

³³ 7 AAC 125.030(b)(1); *In re P L*, OAH No. 13-1684-MDS (Commissioner of Health and Social Services 2014), page 3. Available at <http://aws.state.ak.us/officeofadminhearings/Documents/MDS/PCA/MDS131684.pdf>.

³⁴ Exhibit E6.

stand on his own without assistance.³⁶ This is consistent with the assessor's observations during the 2009 assessment.³⁷ Even with gout in his feet, Mr. W should be able to use a crutch or furniture to help push himself up. To receive PCA services for this ADL, Mr. W must require physical assistance at least three times a week. SDS has met its burden of proving that he does not need that level of assistance.

3. *Locomotion*

Locomotion is the act of moving within a room or between rooms on the same floor.³⁸ Mr. W was scored as needing set up help only. Ms. Samuel observed him walking up and down stairs independently.³⁹ Mr. W told her that he uses his crutches when he has pain, and his PCA supervises him.⁴⁰ This is consistent with the notes from the prior assessment.⁴¹ During the hearing, Mr. W stated that his wife holds on to his back when he walks. While she may do this occasionally, SDS has met its burden of proving that Mr. W does not need physical assistance with walking at least three times a week.

4. *Dressing*

In 2009, Mr. W needed extensive assistance to get dressed.⁴² Ms. Samuel found that Mr. W needed set up help only to get dressed.⁴³ He was able to reach his arms above his head, and reach his hands to his back without difficulty. He also had good hand grips and range of motion.⁴⁴ Although he told her he could not get dressed by himself, she concluded that he could.⁴⁵ During the hearing, Mr. W stated that he needed help with his socks and shoes. He also stated that his wife helps him with clothing.⁴⁶

Ms. Samuel noted that Mr. W could only reach to his ankles when bending down.⁴⁷ Given this limitation, and the large change from the 2009 assessment, SDS has not met its

³⁵ Exhibit D10.

³⁶ Exhibit E6; Samuel testimony.

³⁷ Exhibit F6.

³⁸ Exhibit E7.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Exhibit F7. In 2009, he was scored as needing limited assistance to walk ten times a week, but the assessor notes only support a score of standby assistance.

⁴² Exhibit F8.

⁴³ Exhibit E8.

⁴⁴ Exhibit E4.

⁴⁵ Exhibit E8; Samuel testimony.

⁴⁶ That Mr. W exaggerated his difficulties does not mean that all of his testimony was unreliable.

⁴⁷ Exhibit E4.

burden of proving sufficient material improvement in this area. Instead, he likely does need limited assistance twice a day.

5. *Toileting*

Ms. Samuel observed Mr. W transfer on and off of the toilet. Other than the discussion of transfers, Mr. W did not testify to any specific need for assistance with this ADL. SDS has met its burden of proving that Mr. W does not need physical assistance with toileting at least three times a week.

6. *Personal Hygiene*

Mr. W was observed by Ms. Samuel as having no limitations to his range of motion.⁴⁸ During the assessment he told her that he only needed help combing his hair because of neck pain.⁴⁹ During the hearing, he testified that he could sometimes comb his own hair.

There is a difference between reaching up to touch one's head once during a functional assessment, and manipulating a comb several times in a row while combing hair. SDS had not met its burden of proving a material improvement for this ADL. He likely still needs limited assistance with personal hygiene seven times a week.

7. *Bathing*

Mr. W was scored as needing limited assistance with bathing, and this score was not challenged at the hearing.

8. *Instrumental Activities of Daily Living*

Mr. W previously received PCA services for all IADLs. His scores were reduced and services eliminated with his 2014 assessment. It is not necessary to examine Mr. W's functional ability to perform IADLs because SDS is not allowed to award him any time for these activities. Mr. W lives with his wife. By regulation, the PCA program does not pay for any IADL if that activity is provided by the recipient's spouse.⁵⁰ This regulation has previously been interpreted to exclude services for any IADL if the recipient lives with a spouse who is capable of performing that service.⁵¹ Because the current regulations do not allow time for these IADLs, SDS properly removed that time.⁵²

⁴⁸ Exhibit E4.

⁴⁹ Exhibit E10.

⁵⁰ 7 AAC 125.040(a)(13)(B).

⁵¹ *In re G H*, OAH No. 13-1327-MDS (Commissioner of Health and Social Services 2013), page 3. Available at <http://aws.state.ak.us/officeofadminhearings/Documents/MDS/PCA/MDS131327.pdf>.

⁵² 7 AAC 125.026(d)(3)(C) (services may be reduced if the server is no longer authorized).

IV. Conclusion

SDS properly reduced the amount of time authorized for PCA services. However, Mr. W should have been authorized to receive limited assistance with dressing and personal hygiene. SDS should recalculate his service level authorization to include time for those activities.

Dated this 17th day of August, 2015.

Signed _____
Jeffrey A. Friedman
Administrative Law Judge

Adoption

The undersigned adopts this decision as final 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 AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 1st day of September, 2015.

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

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