

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.^{17]}

SDS uses the Consumer Assessment Tool (CAT) to help assess the level of assistance needed.⁸ The amount of time allotted for needed assistance is determined by the Personal Care Assistance Service Level Computation chart.⁹ 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.¹⁰ For each ADL or IADL, there is a self-performance code and a support code. For ADLs, the self-performance code describes the type of assistance needed, and the support code describes 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.¹¹ 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.¹² 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.¹³ Total dependence means the recipient has to rely entirely on the caretaker to perform the activity.¹⁴ To receive PCA time for ADLs, the applicant must have a performance code of at least 2 (limited assistance).¹⁵

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.¹⁶ The support code describes whether the support is in the form of

⁷ 7 AAC 125.010(a).

⁸ 7 AAC 125.020(b).

⁹ 7 AAC 125.024(1).

¹⁰ 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.

¹¹ Exhibit E6.

¹² 7 AAC 125.020(a)(1); Exhibit E6.

¹³ 7 AAC 125.020(a)(2); Exhibit E6.

¹⁴ 7 AAC 125.020(a)(3); Exhibit E6.

¹⁵ Exhibit B34 (Service Level Computation chart).

¹⁶ Exhibit E26.

supervision or cueing, set up help, physical assistance, or total performance by others.¹⁷ To receive PCA time for IADLs, the applicant must have a self-performance code of at least 1 (independent with difficulty), and a support code of at least 3 (physical assistance).¹⁸

This case involves a reduction in benefits. Accordingly, the division has the burden of proving a material change in condition that justifies the reduction.¹⁹ Because SDS notified Mr. C of its decision on July 17, 2014, his condition on that date is used when determining the amount of services he is eligible to receive.²⁰

B. Mr. C's PCA Services

At the beginning of the hearing, Mr. C identified one ADL and four IADLs as the issues in dispute. These are each addressed individually below after a discussion of one evidentiary issue.

1. Reliance on Discharge Plan of Care

On March 24, 2014, Mr. C was discharged from a skilled nursing services facility, No Name.²¹ SDS relied on portions of the plan of care to support the reduction in PCA services. Specifically, this plan of care has several activities listed, with hand written notes about those activities. These include:

Activity	Hand written note
Dressing/Grooming	Mostly independent – will need setup & cueing
Mobility	Contact guard with front wheel walker
Toileting	Independent with walker
Eating	Independent with setup
Night Needs	gets up to toilet
Other	Needs daily supervision & assistance with care & medications

¹⁷ *Id.*

¹⁸ Exhibit B34.

¹⁹ 7 AAC 49.135.

²⁰ *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. C'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.

²¹ The documents related to the discharge and plan of care were submitted as additional exhibits by SDS on December 9, 2014. SDS did not mark these with exhibit letters or page numbers. SDS also did not include a certificate of service indicating that the documents had been sent to Mr. C. These documents were referred to during the hearing, without objection, and Mr. C was familiar with the documents and their contents. While the lack of proof of service would in many instances be grounds for excluding the documents entirely, the failure to do so here has not negatively impacted Mr. C's due process rights, and the documents will be considered.

This form also includes a note that says Mr. C will receive four hours of PCA services daily. The four hours of daily PCA services is consistent with the 28 hours per week that was authorized as of the date of the plan of care.²²

The discharge plan of care is not given very much weight in evaluating whether SDS has met its burden of proof for several reasons. First, it is not clear who wrote this document, or whether the person writing it had personal knowledge of Mr. C's functional abilities. Second, there was no evidence presented to show that the terms used on the plan of care had the same definitions as is used in the PCA program regulations. Next, this was a plan put in place at the end of March. While this is some evidence of Mr. C's condition four months later, it is not conclusive proof of his condition at the later date. Finally, the document has some apparent inconsistencies. While there are notes saying Mr. C is independent, there is also a note saying he needs daily assistance, and a second note saying he needs four hours of PCA services each day. Without some explanation from the author of this plan of care, the document provides only weak support for the reduction of services.

2. Toileting

In 2012, Mr. C was scored as needing extensive assistance with transfers.²³ His difficulty with transferring was also reflected in his toileting score, where he was found to need extensive assistance, in part because he needed help with transfers.²⁴ Mr. Chow found that, in 2014, Mr. C could transfer without assistance and could use the toilet without assistance.²⁵ Mr. Chow had observed Mr. C stand up independently one time, and he noted that Mr. C said he could transfer without assistance.²⁶

Mr. C testified that he uses the toilet about seven times a day, and that he needs help walking to the toilet, sitting down, and adjusting his clothing. He also testified that standing up afterwards was the hardest part because his legs are weak. Mr. C's condition has been deteriorating since the date of his assessment, and sometimes his testimony was about his functional abilities in December of 2014, rather than his abilities on July 17, 2014, and before. He was reminded several times that the issue for this hearing was his condition in June and July, and he testified that he did need help during the relevant time period.

²² See Exhibit D1.

²³ Exhibit F6.

²⁴ Exhibit F9.

²⁵ Exhibit E6; Exhibit E9.

²⁶ *Id.*

SDS is only required to prove facts by a preponderance of the evidence. Where something is even slightly more likely, then that burden has been met. Here, it is more likely that on July 17, 2014, Mr. C was independent with toileting. Although he likely did have some difficulties transferring off the toilet, in July of 2014 he was still able to do so without assistance. The reduction in services for toileting is upheld.

3. *Shopping*

Mr. C received a self-performance score of 1, indicating he could shop independently with difficulty, and a support score of 2, indicating he needed set up help only. During the hearing, SDS conceded that he should have been scored with a support score of 3, indicating a need for physical assistance. A score of 1/3 would allow Mr. C some PCA services to assist him with shopping.

Mr. C has not used an electric scooter of the type that some grocery stores provide.²⁷ There is, however, nothing in the record to suggest he could not learn to use one. With the use of a scooter, Mr. C would be able to assist with grocery shopping by taking items off the shelves.²⁸ He would still need help taking items off the higher shelves.²⁹

As conceded by SDS, Mr. C does need some physical assistance, so his support score should be a 3. A self-performance score of 1 indicates that he can actually perform all shopping tasks, although with difficulty. A self-performance score of 2 is described as “Assistance/done with help: Person involved in activity but help (including supervision, reminders, and /or physical “hands-on” help) was provided.”³⁰

Mr. C was previously unable to assist with shopping at all.³¹ He can now participate by taking some items off a shelf, but he needs help completing task since he can’t reach all of the shelves. Since he uses a walker, Mr. C would likely need help carrying the groceries from the store. SDS has met its burden of proving a reduction in the self-performance score, but not to the independent with difficulty level. He should have received a score of 2/3 for shopping.

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²⁷ C testimony.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Exhibit E26.

³¹ Exhibit F26.

4. *Meal Preparation*

PCA services may be provided for the IADLs of main meal and light meal preparation. Meal preparation includes cooking, serving, and cleaning up after the meal.³² In 2012, Mr. C was fully dependent on others for the preparation of his main meals and light meals.³³ In 2014, SDS scored him as independent with light meals and independent with difficulty for main meals.³⁴ During the hearing, SDS conceded that he should have been scored with a 1/3 for his main meal preparation, indicating a need for some physical assistance with the meal preparation.

Mr. C testified at the hearing that he could sit at a table and assist with meal preparation, although it would be difficult. This supports a reduction in his meal preparation scores from the prior level of 3/4 for both types of meal. The evidence presented by SDS does not prove that he is able to completely prepare these meals independently or independently with difficulty. With Mr. C's testimony, SDS has met its burden of proving a reduction is appropriate, but only to a score of 2/3 for main meals and light meals.

5. *Laundry*

During the hearing, SDS conceded that Mr. C should have been scored with a 2/3 for shopping. This score indicates that Mr. C can participate in the IADL, but needs physical assistance in completing the task. Mr. C acknowledged that he could fold clothes. However, because he uses a walker, it would be difficult for him to carry clothes to and from the laundry machines. Thus, the score of 2/3 is appropriate.

6. *Housework*

The IADL of housework includes some simple tasks such as washing dishes, but also includes more difficult tasks such as floor cleaning and cleaning of bathrooms.³⁵ SDS gave Mr. C a score of 2/3 for housework.³⁶ Based on Mr. C's testimony, he likely can perform some housecleaning tasks with physical assistance. SDS has met its burden of proof for reducing the score for this IADL to 2/3.

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³² 7 AAC 125.030(c)(1) & (2). Washing the dishes from the meal is included in the IADL of light housekeeping. & 7 AAC 125.030(c)(3)(B).

³³ Exhibit F26.

³⁴ Exhibit E26.

³⁵ 7 AAC 125.030(c)(3).

³⁶ Exhibit E26.

7. *Mr. C's Position*

Mr. C's primary argument at the hearing was that he was only allowed 47 minutes of PCA services each day. He noted that it takes more than 47 minutes to go shopping and that it would take about 30 minutes just to cook one meal. Based on this ruling, he will get more than 47 minutes a day, but the point he raised is still pertinent.

The PCA program allows a specific amount of time for each task, but the time is authorized in one-week blocks. For example, on one day it might take 40 minutes for the caretaker to assist Mr. C in preparing a main meal, while on another day the meal might be prepared in only 15 minutes. The average for a week's worth of meals should be 18.75 minutes per main meal.³⁷ This time is based on Mr. C's ability to assist in the meal preparation, which saves some of the caretaker's time. Mr. C is free to have his caretaker spend more time making each meal, but the extra time will be subtracted from other approved activities.

Similarly, Mr. C pointed out that it takes more than two hours to do laundry. This is true if you count how long the washer and dryer are running. However, while the washer and dryer are running, the caretaker can perform other tasks such as housecleaning or cooking.

Finally, the caretaker need not come to the home for the same number of minutes each day. On days when the caretaker helps with laundry or shopping, he or she may stay longer than on the days when those activities are not done.

IV. Conclusion

SDS had the burden of proving sufficient facts to justify the reduction of PCA services. Based on the evidence presented, SDS has shown that Mr. C's services should be reduced, but not to the extent proposed by SDS. The service level authorization should be recalculated based on the rulings described above.

Dated this 7th day of August, 2015.

Signed

Jeffrey A. Friedman
Administrative Law Judge

³⁷ Exhibit B34.

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 21st day of August, 2015.

By: *Signed* _____
Name: Lawrence A. Pederson
Title/Agency: Admin. Law Judge, OAH

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