

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

In the Matter of )  
 )  
 O C ) OAH No. 14-1823-MDS  
 ) Agency No.  
\_\_\_\_\_)

**DECISION**

**I. Introduction**

O C receives Personal Care Assistance (“PCA”) services that are paid for by Medicaid. The Division of Senior and Disabilities Services (“Division”) reassessed her condition and reduced her PCA services. Ms. C contested that decision and requested a hearing.

A telephonic hearing was held on December 2, 2014. Ms. C did not appear, but she was represented by her daughter D M, who is also her legal guardian. Care coordinator N U and PCA Q S also appeared and testified on Ms. C’s behalf. The Division was represented at the hearing by fair hearing representative Terri Gagne and health program manager Katie Heaslet.

Based upon the evidence in the record, and as further discussed below, the Division’s decision is reversed as to PCA services for personal hygiene and medication.

**II. Facts**

Ms. C is 71 years old and is diagnosed as suffering from diabetes, hypertension, “mixed incontinence,” intellectual disabilities (mental retardation) stemming from childhood scarlet fever, and dementia.<sup>1</sup> Prior to her reassessment Ms. C received 30.25 hours of PCA services per week.<sup>2</sup> On May 12, 2014 Registered Nurse Sheila Griffin reassessed Ms. C, using the Division’s Consumer Assessment Tool (CAT).<sup>3</sup> After the reassessment the Division stated that Ms. C’s PCA services would be reduced to 6.0 hours per week.<sup>4</sup> It is this decision that is the subject of Ms. C’s request for a hearing.

---

<sup>1</sup> Testimony of D. M.  
<sup>2</sup> Exhibit D1.  
<sup>3</sup> Exhibit E1.  
<sup>4</sup> Exhibit D1.

The Division notified Ms. C of the reduction in PCA benefits via a letter dated September 15, 2014.<sup>5</sup> Ms. M then requested a hearing via an email dated September 23, 2014.<sup>6</sup> When she received no response, she submitted another email on September 29, 2014, reiterating the request for a hearing and asking that PCA services continue at their previous level until the final decision after the hearing.<sup>7</sup> At the hearing the Division indicated that it could not locate the September 23 email; the apparent loss of that email resulted in a delay in the Division’s processing of Ms. C’s appeal. The net result of that delay was that Ms. C’s PCA was allowed to provide only six hours of services per week for approximately a month, until the Division recognized the request for continuation of services at the previous level.<sup>8</sup> In order to maintain PCA services at their previous level, Ms. M paid out-of-pocket for the services needed to make up the difference between the six authorized hours per week and the approximately 30 hours previously authorized.<sup>9</sup>

### 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[. <sup>10</sup>]

The Division uses the CAT to help it assess the level of assistance needed.<sup>11</sup> The amount of time allotted for needed assistance is determined by the Personal Care Assistance Service Level Computation chart.<sup>12</sup> 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.

The different levels of assistance with ADLs are defined by regulation and in the CAT.<sup>13</sup> “Supervision” is defined as oversight, encouragement, or cueing three or more times a week, with physical assistance no more than two times a week.<sup>14</sup> “Limited assistance” is defined as

---

<sup>5</sup>

*Id.*

<sup>6</sup>

D. M email to [fairhearings@xerox.com](mailto:fairhearings@xerox.com), 9/23/14, submitted post-hearing by Ms. M.

<sup>7</sup>

Exhibit C1.

<sup>8</sup>

Testimony of D. M.

<sup>9</sup>

*Id.*

<sup>10</sup>

7 AAC 125.010(a).

<sup>11</sup>

7 AAC 125.020(b).

<sup>12</sup>

7 AAC 125.024(1).

<sup>13</sup>

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.

<sup>14</sup>

Exhibit E6.

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.<sup>15</sup> “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.<sup>16</sup> “Full assistance” means the recipient has to rely entirely on the caretaker to perform the activity.<sup>17</sup>

The Division may change the number of hours of allotted PCA services if there has been a *material change* in the recipient’s condition.<sup>18</sup> A *material change* means that the recipient’s medical condition has changed, or his living conditions have changed.<sup>19</sup> When the Division wishes to reduce the amount of allotted time, the Division has the burden of proving a change of condition justifying that reduction by a preponderance of the evidence.<sup>20</sup> When the recipient is seeking additional time for specific services, the recipient has the burden of showing the material change that would justify the need for the increase.<sup>21</sup> All of the service categories at issue in this case involve reductions by the Division – thus the burden was on the Division to justify those changes.

Because the Division notified Ms. C of its decision on September 15, 2014, her condition as of that date is used when determining the amount of services she is eligible to receive.<sup>22</sup>

Prior to the beginning of the hearing Ms. M, Ms. U and the Division’s representatives held off-record discussions and were able to resolve many of their areas of disagreement. The terms of their agreement regarding those issues were read into the record. As a result, the only contested issues to be decided at the hearing were the service levels for the ADLs of personal hygiene and medication.

---

<sup>15</sup> 7 AAC 125.020(a)(1); Exhibit E6.

<sup>16</sup> 7 AAC 125.020(a)(2); Exhibit E6.

<sup>17</sup> 7 AAC 125.020(a)(3); Exhibit E6. Bathing and the IADLs have their own assistance level definitions.

<sup>18</sup> 7 AAC 125.026(a).

<sup>19</sup> 7 AAC 125.026(d). A material change also exists if the services were based on a prescription that has since expired, there was a time-limited amendment to the plan of care, or the services are no longer authorized by regulation. 7 AAC 125.026(d)(3).

<sup>20</sup> 7 AAC 49.135.

<sup>21</sup> *Id.*

<sup>22</sup> *See In re T C*, OAH Case No. 13-0204-MDS (Commissioner of Health and Social Services 2013), page 7 (finding that the notice sent to recipient is the decision under review). OAH cases are available online at <http://aws.state.ak.us/officeofadminhearings/categoryList.aspx>.

**B. Personal Hygiene**

On her previous assessment Ms. C was given a score of 2/2 (limited assistance with one person physical assist) for personal hygiene, allowing her 70 minutes per week for this activity.<sup>23</sup> On the current assessment she was scored a 1/1 (supervision – set up only), which does not qualify her for any PCA time for personal hygiene.<sup>24</sup> The nurse assessor who performed the assessment, Sheila Griffin, was not available on the date of the hearing and did not testify. Her narrative notes on the CAT state that “client’s daughter reports mom needs help brushing her hair and putting it up,” and that Ms. C’s “plan of care” under the waiver program “states [she] combs her hair, brushes her dentures, and puts on her own makeup but requires prompting.”<sup>25</sup> The plan of care, however, was not made part of the record of this proceeding. Ms. Griffin also noted “client’s upper extremity range of motion adequate” to complete the personal hygiene tasks.<sup>26</sup>

In contrast, Ms. M and Ms. S both testified in detail about Ms. C’s inability to wash her own hands, wash her face, or perform other personal hygiene tasks without physical assistance.<sup>27</sup> Their observations were also described in a detailed letter outlining their areas of disagreement, submitted prior to the hearing by Ms. U.<sup>28</sup> The testimony of Ms. M and Ms. S, based on their first-hand observations and personal knowledge, is accorded more weight than the brief written comments of nurse Griffin, who was not available to defend or elaborate upon those comments. The Division, therefore, did not carry its burden of proof regarding the ADL of personal hygiene. Ms. C should be given a score of 2/2 for this ADL.

**C. Medication**

Ms. C had previously been allowed 28 minutes per week for this activity.<sup>29</sup> Eligibility for medication assistance, however, is based upon the claimant’s score for the ADL of personal hygiene.<sup>30</sup> Accordingly, when the current assessment gave Ms. C a 1/1 score for personal hygiene, her PCA time for medication was removed.<sup>31</sup> Because this decision has determined that she should have been given a 2/2 score for personal hygiene, it

---

<sup>23</sup> Exhibit D3.

<sup>24</sup> *Id.*

<sup>25</sup> Exhibit E10.

<sup>26</sup> *Id.*

<sup>27</sup> Testimony of D. M, Q. S.

<sup>28</sup> 11/10/14 Letter re Areas of Disagreement, p. 2.

<sup>29</sup> Exhibit D4-5

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

follows that her eligibility for medication should be revised as well. This result is consistent with Ms. S' testimony, as well as the observations detailed in Ms. U's letter describing the areas of disagreement.<sup>32</sup> Ms. C should be provided medication PCA services commensurate with a personal hygiene score of 2/2.

#### **IV. Conclusion**

Ms. C suffers from a variety of ailments, including "mixed incontinence," intellectual disabilities stemming from childhood scarlet fever, and dementia, that limit her ability to attend to her personal hygiene needs or administer her own medications. The Division erred by reducing her personal hygiene score and removing her PCA time for medication assistance. Her PCA service levels should be recomputed in accordance with the discussion above. The Division's reassessment decision is reversed as to the two ADLs discussed herein, and affirmed in all other respects,

Dated this 29<sup>th</sup> day of December, 2014.

*Signed* \_\_\_\_\_

Andrew M. Lebo  
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 13<sup>th</sup> day of January, 2015.

By: *Signed* \_\_\_\_\_

Name: Kay L. Howard  
Title: Administrative Law Judge

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

---

<sup>32</sup> 11/10/14 Letter re: Areas of Disagreement, p. 2 (Ms. C "is unable to safely and accurately handle any medications due to her mental and cognitive issues").