

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

In the Matter of)
)
 P D)
_____)

OAH No. 14-1981-MDS
Agency No.

DECISION

I. Introduction

P D has been receiving Personal Care Assistance (PCA) services. She was re-assessed by Senior and Disabilities Services (SDS) and found to no longer need PCA services. Ms. D appealed that decision.

A hearing was held on January 8, 2015.¹ Ms. D represented herself. SDS was represented by a lay advocate, Terri Gagne. All parties and witnesses participated by telephone. Based on the evidence presented, Ms. D is still eligible to receive limited assistance with bathing, but is not eligible for any other PCA services.

II. Facts

Ms. D was 85 years old on the date of her assessment. She had previously been authorized to receive PCA services.² On May 2, 2014, she was assessed by SDS's nurse assessor, Naomi Schlup.³ Based on her observations and discussion with Ms. D, Ms. Schlup determined that Ms. D was no longer eligible for PCA services. A letter notifying Ms. D of SDS's decision was issued on September 24, 2014.⁴

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^[5]

¹ The hearing was held before Administrative Law Judge Kay L. Howard. Upon her retirement, this matter was reassigned. ALJ Friedman has reviewed the entire record, including listening to the audio recording of the hearing.

² Exhibit D9.

³ Exhibit E.

⁴ Exhibit D.

⁵ 7 AAC 125.010(a).

SDS uses the Consumer Assessment Tool (CAT) to help assess the level of assistance needed.⁶ The amount of time allotted for needed assistance is determined by the Personal Care Assistance Service Level Computation chart.⁷ 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 required assistance are defined by regulation and in the CAT.⁸ 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 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.⁹ 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.¹⁰ 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.¹¹ Full Assistance means the recipient has to rely entirely on the caretaker to perform the activity.¹² To receive PCA time for ADLs, the applicant must have a performance code of at least 2 (limited assistance).¹³

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.¹⁴ 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.¹⁵ 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).¹⁶

⁶ 7 AAC 125.020(b).

⁷ 7 AAC 125.024(1).

⁸ 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.

⁹ Exhibit E6.

¹⁰ 7 AAC 125.020(a)(1); Exhibit E6.

¹¹ 7 AAC 125.020(a)(2); Exhibit E6.

¹² 7 AAC 125.020(a)(3); Exhibit E6.

¹³ Exhibit B34 (Service Level Computation chart).

¹⁴ Exhibit E26.

¹⁵ *Id.*

¹⁶ Exhibit B34.

This case involves a reduction in benefits. Accordingly, the division has the burden of proving a material change in condition that justifies the reduction.¹⁷ Because SDS notified Ms. D of its decision on September 24, 2014, her condition on that date is used when determining the amount of services she is eligible to receive.¹⁸

B. Ms. D's Need for PCA Services

Ms. D had been receiving services for most ADLs and IADLs. After the assessment, SDS determined that she no longer needed physical assistance with any ADL or IADL. Each of the reductions is discussed below.

1. Body Mobility

Body mobility is how a person gets in or out of bed, and positions herself or turns in a bed or chair.¹⁹ According to Ms. Schlup, she was told during the assessment that Ms. D could reposition herself without physical assistance from another person. Ms. Schlup also observed Ms. D reposition herself without assistance during the assessment.²⁰ Ms. D testified that she was able to get out of bed by herself at night, and could turn over in bed without assistance.²¹ Because Ms. D does not need physical assistance to turn in bed, or to get into or out of bed, she is not eligible for PCA services for this activity.

2. Transfers

Transfers are the act of moving between surfaces, such as standing up from a seated position.²² Ms. Schlup reported that she was told Ms. D could stand up and sit down without any physical assistance from another person.²³ She observed Ms. D stand from a straight-back chair several times.²⁴ Although Ms. D stated several times that much of the information in the CAT was simply not true, Ms. D never testified that she needed someone to help her stand up or sit

¹⁷ 7 AAC 49.135.

¹⁸ 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, medical records after that date are relevant to the extent they tend to show Ms. D's condition as of the date of SDS's denial.

¹⁹ Exhibit E6. No time for this activity is allowed under this regulation if the individual is ambulatory. 7 AAC 125.030(1)(A).

²⁰ Exhibit E6; Schlup testimony.

²¹ D testimony.

²² Exhibit E6.

²³ *Id.*

²⁴ *Id.*

down.²⁵ SDS has met its burden of showing that Ms. D is able to transfer without physical assistance from another person.²⁶

3. *Locomotion*

Locomotion is how a person moves between locations in her room or other areas on the same floor.²⁷ Ms. D testified that she could walk in her own house without assistance, and that she could walk outside using a cane. Because she does not need physical assistance from another person to walk, Ms. D is not eligible for PCA services to assist with locomotion.

4. *Dressing*

Ms. Schlup stated that she was told by Ms. D that Ms. D could dress herself.²⁸ Ms. Schlup did not observe any limitations in Ms. D's range of motion that would limit her ability to get dressed by herself.²⁹ Ms. D did not say during the hearing that she needed help to get dressed. SDS has met its burden of showing that Ms. D no longer needs PCA services to help her get dressed or undressed.

5. *Eating*

Ms. D did not previously receive PCA services to help her eat meals, and Ms. D has not shown a need for those services at this time.

6. *Toileting*

Ms. D testified that she could use the bathroom on her own at night, and she did not claim to need assistance with toileting during the day. Ms. Schlup observed her to transfer independently, and says she was told by Ms. D that she did not need physical assistance with this ADL. SDS has met its burden of showing that Ms. D no longer needs PCA services for toileting.

7. *Personal Hygiene*

Ms. Schlup observed Ms. D to be well-groomed at the assessment, and noted that Ms. D had upper body range of motion and hand grips sufficient to perform personal hygiene tasks.³⁰ During the hearing, Ms. D did not claim she needed someone else to help her with personal

²⁵ Ms. D offered to be assessed by a doctor, but the PCA program is designed to have assessments by an SDS employee. 7 AAC 125.020(b). When the assessment is done by someone who is not an SDS employee, it must be conducted by a registered nurse. 7 AAC 125.020(c).

²⁶ She would qualify for help with transfers and other ADLs only if she needed physical assistance from another person with that ADL at least three times a week.

²⁷ Exhibit E7.

²⁸ Exhibit E8; Schlup testimony.

²⁹ *Id.*

³⁰ Exhibit E10.

hygiene. SDS has met its burden of showing that Ms. D no longer needs PCA services for this ADL.

8. *Bathing*

Bathing is the act of taking a bath or shower, as well as transferring into or out of the tub or shower.³¹ Ms. Schlup said that she was told Ms. D did not need help getting into and out of the shower. She also noted that she had observed Ms. D transfer without any physical assistance.³²

Ms. D testified that she uses a combination shower and tub, and she only takes baths. She further testified that she holds onto her daughter's hand each time she gets into or out of the bath tub. She does this for balance as the bath tub does not have any grab bars.³³

Because stepping into a bath tub is more difficult than most other transfers, Ms. D's testimony that she needs a hand to hold onto is credible. SDS has the burden of proving that Ms. D no longer needs assistance with bathing. Because SDS's evidence does not outweigh Ms. D's testimony, SDS has not shown by a preponderance of the evidence that Ms. D no longer needs assistance.

A self-performance score of 2 is given when the recipient needs physical help transferring to or from the bath.³⁴ Based on Ms. D's testimony, this is the only type of help she needs. She should have been scored with a self-performance score of 2 and a support score of 2 (one person physical assist), and allowed time for this activity seven times each week.

9. *Independent Activities of Daily Living*

Ms. D had previously received PCA services to assist with meal preparation, shopping, housework, and laundry.³⁵ SDS found that she was able to complete all of these tasks without physical assistance from another.

Ms. D testified that she can do some cooking, and shopping. She also acknowledged doing her own laundry. She did not directly answer questions about her ability to perform housework. She testified that she has kids who help out, and that housekeeping is not an every day thing, and she gets by. Based on her ability to perform most ADLs without assistance, and her ability to shop and do laundry, Ms. D could also perform all of her IADLs without assistance

³¹ Exhibit E11.

³² *Id.*

³³ D testimony.

³⁴ Exhibit E11.

³⁵ Exhibit D9.

on September 24, 2014, when SDS's decision was made. SDS met its burden of showing that Ms. D's need for these services no longer existed.

IV. Conclusion

SDS did not meet its burden of proof regarding assistance with bathing, and SDS should authorize the appropriate amount of time for limited assistance with this ADL. In all other areas, SDS did meet its burden of proof, and with the exception for bathing, its decision is AFFIRMED.³⁶

Dated this 23rd day of July, 2015.

Signed _____
Jeffrey A. Friedman
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 10th day of August, 2015.

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

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

³⁶ If Ms. D's condition has changed, she or her care coordinator may submit a Change of Information form.