

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

In the Matter of)	
)	
F Q)	OAH No. 14-2024-MDS
<hr style="width: 100%;"/>)	Agency No.

DECISION

I. Introduction

This case is F Q’s appeal of the number of hours authorized in response to her application for Personal Care Assistance (PCA) services. The Division of Senior and Disabilities Services (division) granted Ms. Q’s application for PCA services. The division had arranged for an assessment of Ms. Q’s functional abilities. Based on this assessment, the division determined that Ms. Q was eligible to receive only 9.75 hours per week of personal care services. Ms. Q requested a hearing to contest that determination.

Ms. Q argued that she qualified for more than 9.75 hours per week of personal care services at the time of the evaluation.

A hearing was held on March 13, 2015. Ms. Q appeared and testified on her own behalf. K W, Ms. Q’s care coordinator represented her at the hearing. T X, who provides Ms. Q’s personal care assistance, also testified on Ms. Q’s behalf as did Ms. Q’s friend, D Z. The division was represented by Victoria Cobo. Because this was a new application for benefits that had not been previously approved, Ms. Q had the burden of proof at the hearing.

Based on the evidence presented at the hearing, Ms. Q has not met her burden of proof. The division’s decision that Ms. Q is not eligible for more than 9.75 hours of PCA services is upheld.

II. Facts

At the hearing, Ms. Q’s friend, D Z, testified that she observed the assistance Ms. Q received in transfers, and helping her with her feet and hair, and with bathing and her medications. Ms. Z explained that Ms. Q was dependent on Ms. X for assistance with being

taken to the doctor and shopping. Ms. Z explained that one of Ms. Q's hands does not really work better than an artificial hand, but the other still has some flexibility.¹

At the hearing, Ms. X testified that she has known Ms. Q for about two and one half years. During the time period when the reassessment took place, Ms. X saw Ms. Q every day. Ms. X provided Ms. Q with the help she needed without compensation during this period. Ms. X explained that she helped Ms. Q with transfers by helping her stand up. Depending on the day and her how bad Ms. Q's condition was, Ms. X would grab Ms. Q's hand and she lifted Ms. Q up for transfers. On stairs Ms. X routinely kept her hand on her to stabilize Ms. Q. Ms. X also helped Ms. Q get on and off the toilet, so that she did not fall. Ms. X helped Ms. Q with her hair-care because Ms. Q has difficulty moving her hands over her head.

Ms. X testified that she helped Ms. Q with bathing every day by helping her get in and out of the tub. Ms. X made Ms. Q's meals. Sometimes Ms. X would leave food that Ms. Q could microwave herself, but some days Ms. Q could not move around enough to warm food up by herself, so Ms. X would come over and warm it up for her. Ms. X would go downstairs to get Ms. Q's medication bottles because her hands stiffen up.

Ms. X testified that arthritis makes it difficult for Ms. Q to use her hands. Ms. Q's hands sometimes stiffen up and have muscle spasms and cause her so much pain that she is in tears. Ms. X sometimes would try to stretch Ms. Q's hands out. One time, Ms. X observed Ms. Q open a bottle by herself on a good day, but all other times Ms. X opened everything for her. When Ms. Q is in her bed, she wears pull-ups or uses a portable toilet she just can roll out of bed onto. Ms. X emptied and cleaned the portable toilet when it was used.²

At the hearing, Ms. Q testified that when she returned to Alaska in June of 2014 she was in a great deal of pain due to acute pancreatitis. Ms. Q explained that she need help getting anywhere and sometimes Ms. X or Ms. Z would stay the night. On good days, Ms. Q would not need to take pain medication. Ms. Q said on bad days she could sometimes be able roll over use the potty, but otherwise stayed in bed. Ms. Q explained that she had fallen once going up the stairs and was scared to try to do this by herself. Ms. Q testified that when she was in a lot of pain, she needed help going to the bathroom and sitting on the toilet.

¹ Recording of Hearing-Testimony of Ms. Z.

² Recording of Hearing-Testimony of Ms. X.

Ms. Q was in motor vehicle accident that required extraction and hospitalization four days prior to the reassessment. Ms. Q explained that she could not get into or out of the bathtub by herself or reach the lower parts of her body. Ms. Q testified that she could not prepare meals for herself. On bad days she does not get out of bed, or out of where she is sleeping. On good days she can make a sandwich if someone gets everything out and sets it out for her. Ms. Q explained that she has difficulty opening her medication bottles and has trouble remembering to take her medication, and has trouble going upstairs or downstairs to get her medication. Ms. Q has been receiving personal care services for several years. Ms. Q admitted that she has had a tendency to overstate her independence and abilities during assessments and understate her needs.³

At the hearing, Sam Cornell, RN testified that he has 40 years of experience as a Nurse and five years of experience as an assessor. Nurse Cornell testified that he reviewed medical records for Ms. Q. Nurse Cornell explained that he was aware of the car crash that Ms. Q had been in at the time of the assessment and reviewed medical records relating to her treatment for the injuries that she suffered in that accident.

Nurse Cornell testified that during the assessment Ms. Q's grips were equal and that she used her hands without any fine motor control problems that he noticed. Nurse Cornell testified that Ms. Q transferred once during the assessment and was pulled by the arm.

Nurse Cornell testified that during the assessment when Ms. Q was asked to move around her home she took six small steps and refused to walk more without someone acting as a contact guard. Nurse Cornell testified that Ms. Q was using a walker and admitted to going to the bathroom by herself during the night. Nurse Cornell testified that Ms. Q did not need assistance eating although she mentioned a swallowing problem. Nurse Cornell testified that Ms. Q reported being able to use the toilet by herself.

Nurse Cornell explained that Ms. Q is not insulin dependent and therefore her foot care is covered in bathing. Nurse Cornell stated that his belief is that Ms. Q is capable of washing her own feet if she is sitting in a tub.⁴

Nurse Cornell explained that light meal preparation is making a sandwich or preparing a cup of soup. Nurse Cornell testified that during the assessment when Ms. Q said it was hard for

³ Recording of Hearing-Testimony of Ms. Q.

⁴ Recording of Hearing-Testimony of Nurse Cornell.

her and she needed some set-up assistance for light meal preparation. Nurse Cornell testified that in his opinion, Ms. Q is capable of light meal preparation, and would need more help in main meal preparation, but could participate in main meal preparation.

Nurse Cornell testified that he did not remember talking to Ms. Q about shopping, but explained that in his opinion Ms. Q could participate in shopping.

For housework, Nurse Cornell gave Ms. Q the highest score for her needs. Nurse Cornell explained would he not have expected Ms. Q to be able to drag trash or vacuum because she needs a cane to move around. Nurse Cornell explained that light-weight transferring activities like helping with laundry or helping with light meal prep are distinguishable from the heavier lifting or dragging needed for housekeeping. Nurse Cornell spoke about the medication that Ms. Q is taking for her cancer. Nurse Cornell's opinion was that it was not necessary to be in Florida to be prescribed this medication.⁵

At the hearing, Mr. W argued on Ms. Q's behalf that Nurse Cornell had underscored Ms. Q's needs and over-scored her abilities on the assessment. Mr. W gave several examples of areas in the assessment where he believed this had occurred. Prior to the hearing, Mr. W had filed a list of arrears of disagreement with the assessment and supporting medical records. These areas include the scoring in the assessment for transfers, locomotion, toilet use, personal hygiene, bathing, light meal preparation, and medication.⁶

At the hearing, Mr. W argued Ms. Q should be awarded more PCA time because she needs to have her prescription drugs set out near her, and that Nurse Cornell did not appear to have given credit for this. Mr. W pointed out that at Exhibit 8 page 3, Ms. Q's discharge paperwork after the accident mentions her need for assistance with transfers, which he argued, contrasts with Nurse Cornell's assessment.⁷

Mr. W referred to Ms. Q's exhibit 9, which are medical records from Ms. Q's physical therapy. Mr. W pointed out that these records discuss Ms. Q's falls and the need to avoid more falls, and set a goal of being able to transfer independently. These records pre-date the car accident that occurred prior to the assessment.⁸

⁵ Recording of Hearing-Testimony of Nurse Cornell.

⁶ See Ms. Q's Exhibit 8.

⁷ Recording of Hearing-Testimony of Mr. W.

⁸ Recording of Hearing-Testimony of Mr. W.

Mr. W also referred to the medical records relating to the motor vehicle accident that Ms. Q was in a few days before the assessment which are found at Ms. Q's Exhibit 10, page 2. Mr. W correctly asserted that these records reflect that Ms. Q was unable to stand and bare her own weight or ambulate on her own. These records provide Ms. Q's medical history following accident, but these records also contain medical information about her condition before the accident. These records indicate that Ms. Q "walks usually with a cane.

These records at Ms. Q's Exhibit 10 are from the hospital visit on April 22, 2014, immediately after the accident, which was a head-on collision that resulted in Ms. Q needing to be extracted from the vehicle. Her injuries were multiple contusions, and the hospital was concerned that she should stay in the hospital overnight, the night after this accident, because this trauma put her at risk due to her persistent hypertension, history of stroke and coronary artery disease.

III. Discussion

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. The division uses the CAT (Consumer Assessment Tool) to help it assess the level of assistance needed to complete certain activities.⁹ The different levels of assistance with ADLs are defined by regulation and in the CAT. Supervision is defined as oversight, encouragement, or cueing three or more times a week, with physical assistance no more than two times a week. Limited Assistance (scored as a two) 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 (scored as a three) 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 Total dependence (scored as a four) means the recipient has to rely entirely on the caretaker to perform the activity.¹²

The amount of time allotted for needed assistance is determined by the Personal Care Assistance Service Level Computation chart. The Service Level Computation chart shows the

⁹ 7 AAC 125.020(b).

¹⁰ 7 AAC 125.020(a)(1); Exhibit E.

¹¹ 7 AAC 125.020(a)(2).

¹² 7 AAC 125.020(a)(3) .

amount of time allotted for each ADL or IADL, depending on the level of assistance needed for each task (score). The amount of time is multiplied by the frequency or number of times per week the ADL or IADL is performed. The Service Level Computation chart places a presumptive cap on the frequency or amount of time that can be authorized for an activity. The ADLs measured by the CAT are bed mobility, transfers (non-mechanical), transfers (mechanical), locomotion (in room), locomotion (between levels), locomotion (to access apartment or living quarters), dressing, eating, toilet use, personal hygiene, personal hygiene-shampooing, and bathing. The IADLs measured by the CAT are light meal preparation, main meal preparation, housework, grocery shopping, and laundry.¹³

This is an initial assessment. Ms. Q has the burden of showing that the Division incorrectly assessed the level of assistance she required and/or the frequency of assistance required. This means Ms. Q had to present evidence showing that it is more likely than not that the determination that Ms. Q only qualified for only 9.75 hours per week of PCA services on the date she received the notice was not correct.

At the hearing, the Division argued that the evidence shows that Ms. Q can use the toilet herself when there is no one there to help her. The Division maintained that this shows that Ms. Q is able to transfer by herself. The Division maintained that, if they are set up, Ms. Q can take her medications by herself. The Division argued while may be difficult for Ms. Q to perform the tasks at the level she was scored at in the assessment, she is able to perform them as scored and she is not entitled to receive more PCA services to provide these services.

At the hearing, Ms. Q did not meet her burden with evidence that persuasively rebutted by Nurse Cornell's testimony or the assessment. The medical records that she submitted for the hearing actually support the assessment. Given that she had just been in a serious car accident a few days before the assessment and that the injuries that she received would only be expected to temporarily reduce her physical independence, it does not appear that Nurse Cornell under-scored her needs or over-scored her abilities during the assessment.

At the hearing, Ms. Q's testimony and the other evidence that contradict Nurse Cornell's findings and scorings in the CAT were less credible than Nurse Cornell's testimony or the medical records regarding Ms. Q's ability to use her hands, bath, walk with a cane or

¹³ Exhibit E.

a walker, and make transfers. This scoring in the assessment for transfers, locomotion, toilet use, personal hygiene, bathing light meal preparation and medication appear to be correct.

Mr. W argued that the scoring on transfers should be 2/2 with a frequency of 35 assists per week rather than the 1/1 with a frequency of 0 on the assessment. However, the finding that Ms. Q could do transfers without assistance was supported by the evidence in the record.¹⁴

Mr. W testified that she needed balance and weight bearing assistance with transfers and locomotion. Mr. W argued also argued that locomotion should be 2/2, but the evidence showed that Ms. Q could walk with a cane or a walker without support, except immediately after the accident. Mr. W also asked that toilet use score of 2/2 have the frequency increased from 14 to 28 assists per week, but the evidence did not support this change as Ms. Q often uses the toilet by herself.

On the CAT, Personal Hygiene was scored 1/1 without any assists authorized and Mr. W asked that this score be changed to 2/2 with a frequency of 7, but Nurse Cornell's findings were supported by his assessment of Ms. Q's ability to perform these functions and reach her lower legs and hair were not persuasively rebutted. Similarly, the score of 2/2 for bathing was supported by the evidence of Nurse Cornell's opinion that Ms. Q is capable of washing her feet if she is in the bathtub.

Nurse Cornell's opinion and 1/2 scoring regarding Ms. Q's needs for assistance in light meal preparation were not persuasively rebutted, nor were his findings and scoring on medication. Nurse Cornell noted that he observed Ms. Q using a pen on his visit.

In short, Nurse Cornell's findings are consistent with preponderance of the evidence about the level of Ms. Q's independence that led to the scoring on the CAT. His testimony and the medical documentation provide a somewhat different assessment of Ms. Q's needs and abilities than her witness testimony, and in the balance it was more credible and persuasive. Although Ms. Q's condition varies from day to day, the fact that Nurse Cornell saw Ms. Q shortly after her accident indicates that he did not see her at her best.

Although Ms. Q would like more hours of PCA authorization, she did not meet her burden of proof in showing that the reassessment incorrectly scored her needs and abilities.

¹⁴ See the exhibits of medical records and physical therapy records filed by Ms. Q in support of her areas of disagreement. These records do not indicate that Ms. Q needs as much help with transfers and locomotion, or as much assistance with other activities as asserted by Ms. Q and Mr. W.

IV. Conclusion

The Division's determination that Ms. Q is eligible for 9.75 hours per week of PCA services is affirmed.

Dated this 12th day of June, 2015

Signed _____

Mark T. Handley

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 16th day of July, 2015.

By: *Signed* _____

Name: Jared C. Kosin, J.D., M.B.A.

Title: Executive Director

Agency: Office of Rate Review, DHSS