

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

In the Matter of)
)
K Q)
_____)

OAH No. 14-2087-MDS
Agency No.

DECISION

I. Introduction

K Q has been receiving Personal Care Assistance (PCA) services paid for by Medicaid. Senior and Disabilities Services (SDS) reevaluated his condition and reduced the number of hours of services Mr. Q would receive. Mr. Q appealed that decision.

A hearing was held on January 7, 2015.¹ Mr. Q was represented by his daughter, who has been granted power of attorney. SDS was represented by a law advocate, Angela Ybarra. SDS agreed at the hearing to make some changes in Mr. Q’s service level authorization. The remainder of SDS’s decision is affirmed.

II. Facts

Mr. Q was 89 years old on the date of his assessment.² He has been diagnosed with diabetes, arthritis, high blood pressure, cerebrovascular disease, lumbago, and heart disease.³ He also suffers from incontinence.⁴ Mr. Q was previously assessed for services on October 25, 2011.⁵ He was re-assessed by Amanda McCrary on September 23, 2014.⁶ On October 28, 2014, SDS issued a decision reducing Mr. Q’s PCA services from 48 hours per week to 24.25 hours per week.⁷

III. Discussion

A. The PCA Program

The purpose of the PCA program

¹ The hearing was held before Administrative Law Judge Kay L. Howard. Upon ALJ Howard’s retirement, this matter was reassigned to ALJ Jeffrey A. Friedman. ALJ Friedman has reviewed the entire record, including the hearing recording.
² Exhibit E1.
³ Exhibit E3.
⁴ *Id.*
⁵ Exhibit F.
⁶ Exhibit E.
⁷ Exhibit D.

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 recipient⁸

SDS uses the Consumer Assessment Tool (CAT) to help assess the level of assistance needed.⁹

The amount of time allotted for needed assistance is determined by the Personal Care Assistance Service Level Computation chart.¹⁰ 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.¹¹ 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.¹² 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.¹³ 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.¹⁴ Full Assistance means the recipient has to rely entirely on the caretaker to perform the activity.¹⁵ To receive PCA time for ADLs, the applicant must have a performance code of at least 2 (limited assistance).¹⁶

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.¹⁷ 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.¹⁸ To

⁸ 7 AAC 125.010(a).

⁹ 7 AAC 125.020(b).

¹⁰ 7 AAC 125.024(1).

¹¹ 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.

¹² Exhibit E6.

¹³ 7 AAC 125.020(a)(1); Exhibit E6.

¹⁴ 7 AAC 125.020(a)(2); Exhibit E6.

¹⁵ 7 AAC 125.020(a)(3); Exhibit E6.

¹⁶ Exhibit B34 (Service Level Computation chart).

¹⁷ Exhibit E26.

¹⁸ *Id.*

receive PCA time for IADLs, the applicant must have a performance code of at least 2 (independent with difficulty), and a support code of at least 3 (physical assistance).¹⁹

This case involves a reduction in benefits. Accordingly, the division has the burden of proving a material change in condition that justifies the reduction.²⁰ Because SDS notified Mr. Q of its decision on October 28, 2014, his condition on that date is used when determining the amount of services he is eligible to receive.²¹

B. Issues in Dispute

Prior to the hearing, Mr. Q's care coordinator submitted a document listing the findings that Mr. Q disagreed with.²² Ms. D testified that she had not seen this document, but she did not raise any additional disputed issues. During the hearing, the parties agreed that Mr. Q should receive additional time for laundry due to his incontinence. The parties also agreed Mr. Q should receive assistance for seven main meals each week, and 14 light meals each week. They did not, however, agree on whether he should be scored as being able to participate in meal preparation or was fully dependent on others for meal preparation.

After reaching the agreement discussed above, the following ADLs and IADLs remained in dispute: Transfers, locomotion, dressing, personal hygiene, meal preparation, and medical escort.

C. Evidence Concerning Mr. Q's Condition

Ms. McCrary assessed Mr. Q on September 23, 2014, and SDS's decision was issued on October 28, 2014. During the hearing, Ms. McCrary confirmed her notes shown in the CAT. She noted that Mr. Q appeared very confused, and rarely answered the questions asked.²³ Much of the information about Mr. Q's condition came from Ms. D.²⁴ Ms. McCrary's notes²⁵ mention that Mr. Q has shoulder pain and spends most of his time in bed. He needed help standing up,

¹⁹ Exhibit B34.

²⁰ 7 AAC 49.135.

²¹ 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 Mr. Q's condition as of the date of SDS's denial.

²² Letter dated December 17, 2014.

²³ Exhibit E4. Mr. Q speaks Yupik, and the questions and answers were translated by Ms. D. *Id.*

²⁴ *Id.*

²⁵ These notes are at various pages in Exhibit E.

but could do so with only limited assistance as he was able to do the weight bearing work with his own legs.²⁶

Mr. Q used a walker to walk within his home without assistance. He needed help putting his clothes on, but there is no indication in the CAT of a need for weight bearing assistance with dressing. Mr. Q was physically able to perform personal hygiene tasks, but could not remember how to do those tasks without limited assistance.

Ms. D also provided information about Mr. Q's condition. She provided very credible testimony concerning his increased need for PCA services as of the day of the hearing. She explained that shortly after the assessment, his condition started to deteriorate slowly. In mid-November, however, Mr. Q's condition started to get worse very quickly.²⁷ Based on her testimony, Mr. Q would have been eligible for more PCA time if the decision were based on his condition on the date of the hearing.²⁸

The decision being appealed was made on October 28, 2014. The evidence in the record is that as of that date, Mr. Q's condition had only slightly declined. He was able to use his walker, get up by himself, and shave.²⁹

Except for those modifications agreed to during the hearing, SDS has met its burden of proving that its decision to reduce Mr. Q's services was correct. Mr. Q needed more services by the time the hearing was held in January, but did not need that level of assistance when the decision being appealed here was made.³⁰

IV. Conclusion

SDS agreed at the hearing that Mr. Q should receive PCA services for laundry twice a week, and should receive services for light meal preparation 14 times a week, and

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²⁶ The notes state that the PCA held Mr. Q around the waist, but in her testimony Ms. McCrary indicated that this was not a weight bearing assist.

²⁷ D testimony.

²⁸ Ms. D testimony is supported by two letters from Mr. Q's physician, and medical records. But the letters and medical records do not discuss Mr. Q's condition as of October 2014.

²⁹ D Testimony.

³⁰ Ms. McCrary mentioned during the hearing that Mr. Q probably qualified for additional services through the waiver program, but his care coordinator would need to apply for those services. It is also worth mentioning that when a recipient's condition changes, a Change of Information can be submitted requesting more services. 7 AAC 125.026.

main meal preparation seven times a week. Except for those changes, SDS's decision of October 28, 2014, is AFFIRMED.

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.]