

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

In the Matter of)	
)	OAH No. 14-2197-MDS
T L)	Agency No.
_____)	

DECISION

I. Introduction

T L receives Personal Care Assistance (PCA) services. Senior and Disabilities Services (SDS) notified her that her services would be reduced, and Ms. L appealed that decision.

A hearing was held on February 11, 2015.¹ SDS was represented by a lay advocate, Terri Gagne. Ms. L represented herself with the assistance of her personal care assistant, M E. The PCA agency’s representative, B C, was also present.

With the exception of the reduction in authorized time to assist with dressing, SDS’s determination is upheld.

II. Facts

Registered Nurse Marianne Sullivan assessed Ms. L on May 21, 2014.² At that time, Ms. L was 67 years old.³ She lives with her daughter, who also receives PCA services because of her own disability.⁴ Ms. L broke her hip in 2013, and was diagnosed with an abnormal gait, arthritis, and chronic asthma.⁵ Ms. L submitted a letter on February 4, 2015, stating she has an auto-immune problem, and painful swelling in her joints. She lives in constant pain, and her problems have been getting worse since the assessment.⁶

On October 14, 2014, SDS notified Ms. L that her hours were being reduced from 12.50 hours to 2.75 hours per week.⁷ Time for dressing and personal hygiene was removed based on SDS’s conclusion that she was independent in those areas. Time for all IADLs was removed

¹ The hearing was held before Administrative Law Judge Andrew M. Lebo. This matter was reassigned to ALJ Jeffrey A. Friedman, who has reviewed the entire record including listening to the audio recording of the hearing.

² Exhibit E1.

³ *Id.*

⁴ Exhibit E2. Her daughter’s PCA hours were recently reduced, putting an added burden of care on Ms. L. L testimony.

⁵ Exhibit E3.

⁶ L testimony.

⁷ Exhibit D1.

because those same IADLs were authorized as part of her daughter's service level authorization. Time for documentation was removed based on a change in regulations which requires the use of the personal hygiene score as the documentation score.⁸ The only time authorized was for daily assistance with bathing.⁹

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 recipient¹⁰

SDS uses the Consumer Assessment Tool (CAT) to help assess the level of assistance needed.¹¹

The amount of time allotted for needed assistance is determined by the Personal Care Assistance Service Level Computation chart.¹² 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.¹³ 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.¹⁴ 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.¹⁵ 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

⁸ Exhibit D.

⁹ Exhibit D9.

¹⁰ 7 AAC 125.010(a).

¹¹ 7 AAC 125.020(b).

¹² 7 AAC 125.024(1).

¹³ 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.

¹⁴ Exhibit E6.

¹⁵ 7 AAC 125.020(a)(1); Exhibit E6.

week, but not all of the time.¹⁶ Total dependence means the recipient has to rely entirely on the caretaker to perform the activity.¹⁷ To receive PCA time for ADLs, the applicant must have a performance code of at least 2 (limited assistance).¹⁸

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.¹⁹ 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.²⁰ 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).²¹

This case involves a reduction in benefits. Accordingly, the division has the burden of proving a material change in condition that justifies the reduction.²² Because SDS notified Ms. L of its decision on October 14, 2014, her condition on that date is used when determining the amount of services she is eligible to receive.²³

B. Ms. L's PCA Services

1. Transfers

Transferring is the act of moving between surfaces, such as standing up from a bed or chair.²⁴ Ms. L had not previously been receiving PCA services for transfers.²⁵ She testified that at the time of her assessment, she might not have needed help, but it is now almost impossible to get out of a chair without assistance. This hearing is limited to Ms. L's condition at the time SDS made its decision to reduce her hours. She has not shown that she needed hands on physical assistance with transfers when SDS made its decision. If she needs more assistance now, for this or any other ADL, that additional assistance must be requested through a change of information, or identified during her next assessment.

¹⁶ 7 AAC 125.020(a)(2); Exhibit E6.

¹⁷ 7 AAC 125.020(a)(3); Exhibit E6.

¹⁸ Exhibit B34 (Service Level Computation chart).

¹⁹ Exhibit E26.

²⁰ *Id.*

²¹ Exhibit B34.

²² 7 AAC 49.135. For specific increases in services, Ms. L has the burden of proving facts to support the increase. *Id.*

²³ 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, Ms. L's condition after that date may be relevant to the extent it tends to show her condition as of the date of SDS's denial.

²⁴ Exhibit E6.

²⁵ Exhibit D9.

2. *Locomotion*

Locomotion is the act of moving between locations in a room or other areas on the same floor.²⁶ Ms. L can walk using her walker or a cane.²⁷ She did not previously receive PCA services for locomotion, and she has not shown that she needed hands on physical assistance with locomotion when SDS made its decision.

3. *Dressing*

Ms. L was previously authorized to receive limited assistance with dressing 14 times a week.²⁸ The notes in the CAT state that she reported being able to dress herself with a lot of difficulty.²⁹ However, the nurse assessor was not available to testify at the hearing and explain her observations in more detail. Ms. L explained that, because of the pain she experiences, it can take her as long as two hours to get dressed by herself.³⁰ She is unable to lift her legs to get her compression socks on.³¹

Ms. L did need limited assistance to get dressed prior to her reassessment. She has had arthritis for several years, and there is nothing in the record to suggest the arthritis has improved. SDS has not met its burden of proving a material improvement for the ADL of dressing, and Ms. L should be authorized to receive limited assistance, fourteen times a week.

4. *Toileting*

The ADL of toileting includes transfers on and off the toilet.³² Ms. L had not previously been authorized to receive PCA services for this ADL. Ms. L testified that her ability to transfer has become worse since the assessment. As with her other transfers, Ms. L has not shown that SDS's decision was incorrect on the date the decision was made.

5. *Personal Hygiene*

This ADL includes tasks such as washing hands, combing hair, and brushing teeth.³³ Ms. L had previously been authorized to receive limited assistance with her personal hygiene five times a week.³⁴ She was scored as independent with this activity in her recent assessment. According to the notes in the CAT, Ms. L had normal range of motion in her arms, and stated

²⁶ Exhibit E7.

²⁷ L testimony.

²⁸ Exhibit D9.

²⁹ Exhibit E8.

³⁰ This is consistent with the note in the CAT saying she could only get dressed with difficulty.

³¹ L testimony.

³² Exhibit E9.

³³ Exhibit E10.

³⁴ Exhibit D9

that she can brush her teeth and wash her face.³⁵ During the hearing, Ms. L did not identify any area of personal hygiene that she could not perform on her own. Accordingly, SDS has met its burden of proving this reduction.

6. *Instrumental Activities of Daily Living*

Ms. L was previously authorized to receive assistance with meal preparation, shopping, housework, and laundry.³⁶ She continues to be eligible for assistance with at least some of these IADLs.³⁷ However, Ms. L's daughter is currently receiving PCA services for IADLs.³⁸ SDS is not allowed to authorize PCA services for an IADL when another recipient in the home is already receiving service for that same IADL.

(a) Except as provided in (b) of this section, personal care services reimbursable under Medicaid, in both the consumer-directed and agency-based programs, do not include the following:

* * *

(13) assistance with an IADL under 7 AAC 15.030 if

* * *

(C) other recipients living in the same residence receive IADL services under 7 AAC 125.010 – 7 AAC 125.199 or under 7 AAC 130 (home and community-based waiver services).^[39]

Because Ms. L's daughter is authorized to receive services for IADLs, SDS may not authorize additional time for Ms. L to receive the same service. This is because IADLs are activities that only need to be performed once, regardless of the number of people living in the home, and the regulations assume that the IADLs can be performed in the same amount of time regardless of the number of people in the household.

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³⁵ *Id.*
³⁶ Exhibit D9.
³⁷ *Id.* She was previously scored as being fully dependent on others for each IADL. In this recent assessment, she was scored as needing physical assistance with main meal preparation, housework, and laundry.
³⁸ Exhibit D3.
³⁹ 7 AAC 125.040(a)(13)(c).

IV. Conclusion

The division has not met its burden of proof for reducing PCA services for dressing. Accordingly, Ms. L's service level authorization should be recalculated to include limited assistance with dressing, 14 times a week. All remaining portions of the division's decision are affirmed.

Dated this 11th day of August, 2015.

Signed _____
Jeffrey A. Friedman
Administrative Law Judge

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 25th day of August, 2015.

By: *Signed* _____
Name: Rebecca L. Pauli
Title: Administrative Law Judge

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