

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

In the Matter of)	
)	
E Q)	OAH No. 14-2205-MDS
_____)	Agency No.

DECISION

I. Introduction

E Q has been receiving personal care assistant (PCA) services since 2010 or before, with the number of hours unmodified since 2010 because the agency had suspended modifications and terminations. With that suspension now lifted, the Division of Senior and Disabilities Services (Division) notified her on November 11, 2014, that her PCA services would be terminated, based primarily on information gathered in an assessment visit conducted the previous month by Nurse Sheila Griffin. Ms. Q requested a hearing.

After multiple continuances to allow Ms. Q to gather documents, the main hearing took place on March 3, 2015. For Ms. Q’s benefit, the record was held open to March 13 for submission of the same medical records, which Ms. Q apparently had not begun to gather as of March 3. No additional records were submitted.

In this case, the Division had the burden of proving that termination was appropriate. After weighing the evidence, the administrative law judge concludes that the Division carried this burden.

II. The PCA Service Determination Process

The Medicaid program authorizes PCA services for the purpose of providing “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”¹ Accordingly, “[t]he department will not authorize personal care services for a recipient if the assessment shows that the recipient only needs assistance with supervision, cueing, and setup in order to independently perform an ADL or IADL.”²

¹ 7 AAC 125.010(a).

² 7 AAC 125.020(e). This regulation defines “cueing” as “daily verbal or physical guidance provided to a recipient that serves as a signal to the recipient that the recipient needs to perform an activity;” “setup” as “arranging items for use or getting items ready for use so that the recipient can independently perform an ADL or IADL;” and “supervision” as “observing and giving direction, as needed, so that the recipient can independently perform an ADL or IADL.” *Id.*

The Division uses the Consumer Assessment Tool, or “CAT”, as a methodology to score eligibility for the PCA program, and the amount of assistance, if any, that an eligible person needs to perform ADLs, IADLs, and the other covered services.³ In general, if certain levels of assistance are required, the regulations prescribe a fixed number of PCA minutes per instance of that activity.

As a gateway to eligibility for PCA services, the CAT evaluates a subset of the ADLs and IADLs. If a person requires some degree of hands-on physical assistance with any one of the specific ADLs of transfers, locomotion, eating, toilet use, dressing, or bathing, or any one of the specific IADLs of meal preparation (either light or main meals), housework (either light or routine housework), grocery shopping, or laundry, then the person is eligible for PCA services. If a person is independent or only requires non-hands-on assistance (oversight, supervision, cueing, setup) with all of these specific ADLs and IADLs, the person is not eligible for PCA services.⁴

PCA services can also be authorized for a few additional functions beyond direct performance of ADLs and IADLs, such as escort to medical appointments. These additional services are never available if the person has been determined to fall below the level for services in every one of the gateway ADL and IADL categories.⁵

III. Background Facts

E Q apparently suffers from the aftereffects of a work-related chemical exposure.⁶ She has been receiving 17.5 hours of PCA services per week since 2010, when she was 52 years old. At the time her PCA hours were set at that level, she was also suffering from a knee sprain and shoulder injury.⁷ In addition, the 2010 award of PCA hours was slightly inflated (by about 1 hour per week) due to an apparent calculation error.⁸

This level of services remained constant for the next four years, during which the Division had suspended all PCA hours reductions while it worked on new regulations,⁹ then

³ See 7 AAC 125.024(a)(1). The CAT is itself a regulation, adopted in 7 AAC 160.900.

⁴ Ex. E, p. 31.

⁵ See *id.*

⁶ Testimony of Ms. Q.

⁷ Ex. F, p. 3.

⁸ Chadwick testimony. She was given 60 minutes of escort time per visit for 60 annual visits to her primary care physician. The number of visits is remarkable, and likely was a transposition error in which the number of minutes was entered in the box for number of visits.

⁹ Ex. D, p. 2.

worked through a backlog of deferred reassessments. Notably, several assessments did occur during the interim, although they were not used to calculate hours. In general, they showed substantial improvement in Ms. Q's condition.¹⁰

Since her chemical exposure in 2000, Ms. Q has worked hard to get back on her feet. She made an effort to do for herself whatever she could, and this helped her improve. In addition, the pain management treatment she has been receiving recently has been quite successful, and she is pleased with the results.¹¹

Ms. Q is frank about the fact that some of her PCAs have encouraged her to milk the system, and she declines to go along with that. Most of the ADLs and IADLs are not really at issue, because she agrees that she can do them herself and, in fact, in many cases she actually prefers to do them herself. However, she would like help with light housework.

On October 16, 2014, a Division nurse conducted an assessment visit with Ms. Q under the new regulations.¹² The 2014 assessor reached a different result from the 2010 assessor, finding that Ms. Q qualified for no PCA services.¹³ The decision was conveyed in a letter dated November 11, 2014.

Ms. Q feels that she is being penalized for pulling herself up by her own bootstraps. She observes, probably correctly, that if she had just lain around passively she would not have improved as much as she has, and might qualify for more services.

IV. Discussion

In this case, in which the Division is seeking to terminate or reduce a benefit a citizen is already receiving, the Division has the burden to prove, by a preponderance of the evidence,¹⁴ facts that show the citizen's level of eligibility has changed.¹⁵ The Division can meet this burden using any evidence on which reasonable people might rely in the conduct of serious affairs,¹⁶ including such sources as written reports of firsthand evaluations of the patient. The relevant

¹⁰ Ex. G, H, I. These assessments show an up and down progression over the years.

¹¹ The findings in this paragraph are based primarily on Ms. Q's testimony.

¹² Ex. E, p. 1.

¹³ Ex. D.

¹⁴ Proof by a preponderance of the evidence means that the fact in question is more likely true than not true.

¹⁵ 7 AAC 49.135.

¹⁶ 2 AAC 64.290(a)(1).

date for purposes of assessing the state of the facts is, in general, the date of the agency's decision under review.¹⁷

A. Gateway ADLs

1. Locomotion

The ADL of locomotion involves moving between locations on the same floor of the person's home. Ms. Q received scores of zero for this activity in both 2010 and 2014. The gist of her testimony at hearing is that she gets around quite well on with no assistance. She keeps her walker and wheelchair in storage.

2. Transfers

The ADL of transfers relates to movement from one surface to another, such as from bed to chair or from sitting to standing. In 2010, Ms. Q needed one-arm guidance (without bearing weight) when she needed to stand up.¹⁸ However, she had a knee sprain at the time, which has since resolved. There is no evidence that she needs physical assistance with this activity anymore.

3. Dressing

Ms. Q has never needed assistance with dressing, and confirms that she does not need it now.

4. Eating

Ms. Q has never needed physical assistance with this activity, and testified that she does not need it now.

5. Bathing

Ms. Q needed considerable assistance with bathing in 2010.¹⁹ Now, however, she makes it very clear that she neither needs nor wants assistance with this activity.

6. Toilet Use

Likewise, toileting was a gateway ADL in which Ms. Q needed physical assistance in 2010, and it qualified her for substantial PCA time.²⁰ Her testimony at hearing was unequivocal, however, that she can use the toilet independently. This is confirmed by the 2014 assessment,

¹⁷ See 7 AAC 49.170; *In re T.C.*, OAH No. 13-0204-MDS (Commissioner of Health & Soc. Serv. 2013) (<http://aws.state.ak.us/officeofadminhearings/Documents/MDS/HCW/MDS130204.pdf>).

¹⁸ Ex. F, p. 6.

¹⁹ Ex. F, p. 11.

²⁰ Ex. F, p. 9.

during which she did use the toilet independently and demonstrated all of the physical abilities needed to do so.²¹

B. Gateway IADLs

A. Meal Preparation

In 2010, Ms. Q was scored as needing physical assistance with both light and main meal preparation.²² The 2014 assessor judged her to be independent with these activities,²³ and that assessment is consistent with the general level of physical functioning she observed. Ms. Q did not present any contrary evidence at the hearing, and hence there is no basis to disbelieve the observations of the assessor.

B. Laundry

Ms. Q needed help with laundry in 2010,²⁴ but now she confirms that she is able to do it herself when it piles up enough to make her sick of it. She reports that it was “helpful” when the PCAs did laundry for her, but this would be true for almost anyone. She has provided no basis to disbelieve the assessor’s judgment that her overall mobility and physical capabilities allow her to do this occasional task.

C. Grocery Shopping

In 2010, Ms. Q was scored as needing physical assistance with grocery shopping.²⁵ The 2014 assessor judged her to be independent with these activities,²⁶ and that assessment is consistent with the general level of physical functioning she observed and with Ms. Q’s admitted independence with such activities as driving. Ms. Q did not present any contrary evidence at the hearing, and hence there is no basis to disbelieve the observations of the assessor.

D. Housework

Housework (either light or routine housework) is one of the gateway IADLs, and it accounted for about an hour of Ms. Q’s weekly PCA time from 2010 until now. In the 2014 assessment, the nurse-assessor gave Ms. Q a non-qualifying score in this area.²⁷ Ms. Q took particular issue with this item at the hearing; she feels housework assistance would be helpful. However, she did not seem able to bring out any specific reason that she could not accomplish

²¹ Ex. E, p. 9.

²² Ex. F, p. 26.

²³ Ex. E, p. 26.

²⁴ Ex. F, p. 26.

²⁵ *Id.*

²⁶ Ex. E, p. 26.

²⁷ *Id.*

these chores, just as she accomplishes so many others. She was able to clear up some clutter during her 2014 assessment,²⁸ and she reports that, although her house is messier than she would like, “I am cleaning as I go” and the progress she is making “does my heart good.” This record does not support a need for physical assistance by a PCA with housework.

V. Conclusion

Because E Q no longer has the requisite need for physical assistance with any of the gateway ADLs or IADLs, the Division has carried its burden of showing that she no longer qualified, as of the date of its decision, for PCA services. The decision to terminate her services is affirmed.

This decision does not preclude Ms. Q from reapplying for services if her situation changes.

DATED this 27th day of April, 2015.

Signed

Christopher Kennedy
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 13th day of May, 2015.

By: *Signed*

Name: Rebecca L. Pauli
Title: Administrative Law Judge

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

²⁸ Ex. E, p. 4.