

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

In the Matter of )  
 ) OAH No. 14-2218-MDS  
D U W ) Agency No.  
\_\_\_\_\_ )

**DECISION**

**I. Introduction**

D U W receives Personal Care Assistance (PCA) services. He was reevaluated by Senior and Disabilities Services (SDS) and notified that his services would be reduced from 31.25 hours per week to 11.00 hours per week. Mr. W appealed that decision.

A hearing was held on February 19, 2015. Mr. W was represented by his son, L W, who holds a limited power of attorney.<sup>1</sup> SDS was represented by a lay representative, Angela Ybarra.

Based on the evidence presented, Mr. W's service level should be reduced, but not by the amount proposed by SDS.

**II. Facts**

Mr. W was evaluated by Nurse Geetha Samuel on September 18, 2014.<sup>2</sup> At that time, Mr. W was 69 years old.<sup>3</sup> He has been diagnosed with chronic kidney disease, hypertension, deafness in his left ear and hearing loss in his right ear, blindness in his right eye and vision loss in his left eye, and traumatic brain injury.<sup>4</sup> He receives dialysis three days a week.<sup>5</sup>

**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<sup>[6]</sup>

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<sup>1</sup> The limited power of attorney, Exhibit Q, states, in part, that L W is appointed as Mr. W's agent "for health care decisions related to personal care assistance[.] I authorize my agent(s) to make any health care decision related to and including giving direction to a personal care assistant regarding services provided." A broad reading of this form authorizes L W to make decisions related to administrative hearings concerning the level of PCA services Mr. W should receive.

<sup>2</sup> Exhibit E.

<sup>3</sup> Exhibit E1.

<sup>4</sup> Exhibit H3, medical records from No Name Hospital.

<sup>5</sup> *Id.*

<sup>6</sup> 7 AAC 125.010(a).

SDS uses the Consumer Assessment Tool (CAT) to help assess the level of assistance needed.<sup>7</sup> The amount of time allotted for needed assistance is determined by the Personal Care Assistance Service Level Computation chart.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup> Full Assistance means the recipient has to rely entirely on the caretaker to perform the activity.<sup>13</sup> To receive PCA time for ADLs, the applicant must have a performance code of at least 2 (limited assistance).<sup>14</sup>

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.<sup>15</sup> 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.<sup>16</sup> To

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<sup>7</sup> 7 AAC 125.020(b).

<sup>8</sup> 7 AAC 125.024(1).

<sup>9</sup> 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.

<sup>10</sup> Exhibit E6.

<sup>11</sup> 7 AAC 125.020(a)(1); Exhibit E6.

<sup>12</sup> 7 AAC 125.020(a)(2); Exhibit E6.

<sup>13</sup> 7 AAC 125.020(a)(3); Exhibit E6.

<sup>14</sup> Exhibit B34 (Service Level Computation chart).

<sup>15</sup> Exhibit E26.

<sup>16</sup> *Id.*

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).<sup>17</sup>

This case involves a reduction in benefits. Accordingly, SDS has the burden of justifying the reduction.<sup>18</sup> Because SDS notified Mr. W of its decision on October 24, 2014, his condition on that date is used when determining the amount of services he should receive.<sup>19</sup> Medical records and other evidence of his condition after October 24, 2014 would only be relevant if it helped explain his functional abilities as of that date.

**B. Mr. W's PCA Services**

*1. Mr. W's General Concerns*

L W argued that the large reduction from 31.25 hours to 11 hours per week was not fair, and that his father needed more time authorized. Some of this reduction was required by regulation. Mr. W previously received 112 minutes each week for Bed Mobility assistance. Under current regulations, SDS may not authorize PCA services for bed mobility of the recipient can walk.<sup>20</sup> Even though Mr. W needs assistance with walking, he is able to walk.

Mr. W had also previously received 35 minutes each week for documentation. Under current regulations, time for documenting vital signs is only allowed if documentation is done pursuant to the orders of a medical provider.<sup>21</sup>

Setting these two reductions aside, SDS's reduction is still very large and a change of this size can be difficult to adjust to. However, SDS is required to follow the regulations and award services that are consistent with a recipient's demonstrated functional limitations.

*2. Transfers*

Mr. W was scored as needing limited assistance with transfers, which is the same score he received in his prior assessment. Ms. Samuel reduced the frequency of assistance from 56 times a week to 12 times a week.<sup>22</sup> The notes in the CAT say that Mr. W only needs assistance after his dialysis. Ms. Samuel found that he needs assistance with transfers four times on his

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<sup>17</sup> Exhibit B34.

<sup>18</sup> 7 AAC 49.135.

<sup>19</sup> 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>.

<sup>20</sup> 7 AAC 125.030(b)(1)(A).

<sup>21</sup> 7 AAC 125.030(d)(3).

<sup>22</sup> Exhibit D10 and Exhibit E6.

dialysis days.<sup>23</sup> However, those notes also say that when he needs assistance, he needs “a hand pull up assist.”<sup>24</sup> He was observed to need this type of assistance on the day he was evaluated.<sup>25</sup> Pulling someone up is weight-bearing assistance. Weight-bearing assistance does not require that the assistant bear most of the weight; it is enough that the recipient cannot complete the task without the care giver holding a portion of the recipient’s weight.<sup>26</sup> Accordingly, Mr. W should have been scored as needing extensive assistance with transfers, twelve times each week.<sup>27</sup>

### 3. *Locomotion*

Mr. W’s score for locomotion was reduced from limited assistance to supervision only.<sup>28</sup> No time is allowed for supervision.<sup>29</sup> The notes in the CAT say that Mr. W was observed walking: “son held under his L arm when DW could bear his weight & could walk w/o assist.”<sup>30</sup> It is reasonable to believe Mr. W would need this type of limited assistance on dialysis days. While Ms. Samuel was told by the staff at the dialysis unit that Mr. W can walk independently, that hearsay is given little weight. Those employees did not testify, and they may not be aware of Mr. W’s functional ability once he gets home from dialysis. He might be able to walk independently at first, but be weaker after traveling home. SDS did not meet its burden of justifying the reduction in Mr. W’s score.

SDS did meet its burden of showing Mr. W only needed this assistance on dialysis days. He should have been scored as needing limited assistance with locomotion three times a day, three days a week.

### 4. *Locomotion to Medical Appointments*

Mr. W had previously been scored as needing extensive assistance six times a week to get to and from his dialysis appointments.<sup>31</sup> Ms. Samuel reduced this to limited assistance, six times

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<sup>23</sup> Exhibit E6; Samuel testimony.

<sup>24</sup> *Id.*

<sup>25</sup> Exhibit E6.

<sup>26</sup> See *In re K T-Q*, OAH No. 13-0271-MDS (Commissioner of Health and Social Services 2013), page 4.

Available at

[http://aws.state.ak.us/officeofadminhearings/Documents/MDS/HCW/MDS130271.pdf?\\_ga=1.262423052.1266647519.1439859015](http://aws.state.ak.us/officeofadminhearings/Documents/MDS/HCW/MDS130271.pdf?_ga=1.262423052.1266647519.1439859015).

<sup>27</sup> Because this is an increase in the scoring, Mr. W had the burden of justifying the increase. 7 AAC 49.135. The evidence presented by SDS was sufficient to meet that burden.

<sup>28</sup> Exhibit D10.

<sup>29</sup> Exhibit B34.

<sup>30</sup> Exhibit E7.

<sup>31</sup> Exhibit D10.

a week. Mr. W can use a cane, and was observed walking with only limited assistance from his care giver. SDS has met its burden of justifying this reduction.

#### 5. *Dressing*

Mr. W's score for dressing was reduced from limited assistance to supervision. In making that determination, Ms. Samuel relied on her belief that Mr. W had no limitations in his upper extremities.<sup>32</sup> However, in a prior assessment the assessor noted "Experiences difficulties raising & maneuvering limbs, poor vision requiring support to navigate on/off clothes."<sup>33</sup> Notes in a January 2012 CAT say "Requires hands on help to navigate on/off clothes as he experiences difficulties maneuvering limbs, poor dexterity & poor vision."<sup>34</sup> The medical records note that Mr. W is blind in one eye with "min vision in the other."<sup>35</sup> The notes also indicated impaired mobility.<sup>36</sup>

The range of motion needed to get dressed is more extensive than what is needed to raise one's arms in the air. SDS has not met its burden of demonstrating that a reduction in the dressing score was justified. Mr. W should have been scored as needing limited assistance twice a day, seven days a week.

#### 6. *Eating*

There was no evidence in the record to suggest that Mr. W needs assistance with the ADL of eating.

#### 7. *Toileting*

Mr. W was scored as needing limited assistance with toileting, one time a day on his three dialysis days.<sup>37</sup> His CAT evaluation occurred on a Thursday, which is not a dialysis day.<sup>38</sup> On that day, he was observed to need a pull up assist to stand from the closed toilet.<sup>39</sup> As stated above, a pull up assist is weight-bearing.<sup>40</sup>

SDS did meet its burden of showing he only needed this assistance one time a day. Mr. W should have been scored as needing extensive assistance with toileting one time a day, seven days a week.

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<sup>32</sup> Exhibit E8; Samuel testimony.

<sup>33</sup> Exhibit K8 (November 2012 CAT).

<sup>34</sup> Exhibit J8.

<sup>35</sup> Exhibit H4.

<sup>36</sup> *Id.*

<sup>37</sup> Exhibit D10

<sup>38</sup> His dialysis is Monday, Wednesday, and Friday, and September 18, 2014 was a Thursday.

<sup>39</sup> Exhibit E9.

<sup>40</sup> Mr. W has met his burden of justifying the increase in this score.

8. *Personal Hygiene*

Mr. W's score for this ADL was reduced from limited assistance to supervision only.<sup>41</sup> Mr. W reported needing help with shaving. Ms. Samuel called the staff at the dialysis unit, and she testified that they asked Mr. W to raise his arm, and he was able to do so.<sup>42</sup> They did not report how far he raised his arm, or whether he was able to do so repeatedly. However, since Mr. W is able to feed himself, it is likely that he can also shave. SDS has met its burden of justifying this reduction.

9. *Bathing*

Mr. W was scored as needing physical help with transfers into and out of the tub, but not needing physical help with washing himself.<sup>43</sup> Ms. Samuel relied on his ability to raise his arms to conclude that he could wash himself without assistance.<sup>44</sup> As with dressing, the range of motion necessary to wash is greater than just lifting one's arms in the air. SDS has not met its burden of justifying this reduction. Mr. W should have received a score of 3/2, seven times a week for bathing.

10. *IADLs*

Mr. W's scores for instrumental activities of daily living were all reduced from 3/4 (totally dependent on others) to 2/3 (able to participate in the IADL with physical assistance from another).<sup>45</sup> L W testified that his father does go shopping once a week with his personal care assistant. Mr. W is able to perform his ADLs with varying degrees of assistance. While he may not be able to do these activities on his own, he likely can help with meal preparation, housework, shopping, and laundry. SDS has met its burden of proof for reducing the scoring for these IADLs.

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<sup>41</sup> Exhibit D10.  
<sup>42</sup> Exhibit E10; Samuel testimony.  
<sup>43</sup> Exhibit E11.  
<sup>44</sup> Exhibit E11; Samuel testimony.  
<sup>45</sup> Exhibit D10; Exhibit E26.

#### **IV. Conclusion**

SDS met its burden of proving that Mr. W's service level authorization should be reduced, but not to the extent it originally proposed. In addition, Mr. W has shown that he needs extensive assistance with transfers and toileting at least three times a week. Mr. W's service level authorization should be recalculated as discussed above.

Dated this 31<sup>st</sup> 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 15<sup>th</sup> day of September, 2015.

By: *Signed* \_\_\_\_\_  
Signature  
Cheryl Mandala \_\_\_\_\_  
Name  
Administrative Law Judge \_\_\_\_\_  
Title

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