

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

In the Matter of)	
)	
E Y)	OAH No. 14-2233-MDS
_____)	Agency No.

DECISION

E Y is a recipient of Medicaid personal care assistance (PCA) services. The Division of Senior and Disabilities Services (division) reassessed Ms. Y to determine her continuing eligibility for PCA services. Sheila Griffin, R.N., performed the reassessment interview on May 28, 2014.¹

The Medicaid program authorizes PCA services for the purpose of providing “physical assistance with activities of daily living (ADLs), physical assistance with instrumental activities of daily living (IADLs), and other services based on the physical condition of the recipient”² 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.”³

The division uses the Consumer Assessment Tool, or “CAT”, to score eligibility for the PCA program. The CAT assists with assessing whether a person is eligible for the program by scoring a person’s ability to self-perform an activity with or without physical assistance, the amount of assistance needed, and the frequency of the assistance provided.⁴ In general, if certain levels of assistance are required, the regulations prescribe a fixed number of PCA minutes to be assigned per instance of that activity. Once a recipient is found eligible for the program, that person is reassessed on a regular basis by one of the Division’s nurses. Ms. Griffin was the nurse assessor for Ms. Y’s 2014 reassessment. Prior to the 2014 reassessment, Ms. Y was assessed in 2011 by Shalome Cederberg.⁵

¹ Exhibit E.

² 7 AAC 125.010(a).

³ 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.”

⁴ See 7 AAC 125.024(a)(1). The CAT is itself a regulation, adopted in 7 AAC 160.900.

⁵ Exhibit F.

In 2011, Ms. Y was assessed as requiring extensive assistance with transfers (score of 3/2) and limited assistance (score of 2/2) with locomotion, dressing, toileting, personal hygiene, and bathing. At that time she was also assessed as requiring physical assistance (score of 2/3) or being completely dependent on others (score of 3/4) to complete her instrumental activities of daily living. She received approximately 25 hours of PCA services per week.⁶ Using Ms. Griffin's 2014 CAT, the division concluded that Ms. Y no longer required PCA services.

When the division is seeking to reduce or eliminate a benefit a recipient is already receiving, it has the burden to prove, by a preponderance of the evidence,⁷ facts that support the action taken.⁸ The division may change the number of hours of allotted PCA services if there has been a material change in the recipient's condition.⁹ A material change means that the recipient's medical condition has changed, or her living conditions have changed.¹⁰

In 2011, the Division approved Ms. Y for 25 hours of PCA services weekly. At that time, Ms. Cederberg proposed several assistive devices intended to make Ms. Y safer and more independent, such as an elevated toilet and grab bars.¹¹ Some devices were installed (e.g., grab bars) and others were disregarded (e.g., a raised toilet seat).¹² Since 2011, Ms. Y has had a friend living with her. Other than the additional person in the house, and the addition or use of a bath bench, cane, and grab bars, Ms. Y's living situation has not changed.

Division employee Olga Ipatova, who is not a registered nurse, reviewed Ms. Griffin's scoring and written commentary.¹³ Ms. Ipatova issued the division's November 4, 2014 determination letter.¹⁴ Ms. Ipatova has no personal knowledge of the assessment interview or Ms. Y.¹⁵ The termination of PCA services is based upon the division's belief that Ms. Y's functional physical ability has improved to the point that no assistance is required for her to complete the ADLs or IADLs.¹⁶ Ms. Y disputes the termination and requested a hearing.¹⁷

⁶ Y February 9, 2015 Submission to the Record.

⁷ Proof by a preponderance of the evidence means that the fact in question is more likely true than not true.

⁸ 7 AAC 49.135.

⁹ 7 AAC 125.026(a).

¹⁰ 7 AAC 125.026(d). A material change also exists if the services were based on a prescription that has since expired, there was a time-limited amendment to the plan of care, or the services are no longer authorized by regulation. 7 AAC 125.026(d)(3).

¹¹ Exhibit F 27.

¹² Compare Exhibit E27 with Exhibit F27.

¹³ Exhibit D; Ipatova Testimony.

¹⁴ Exhibit D.

¹⁵ Ipatova Testimony.

¹⁶ Exhibit D; Ipatova testimony.

Ms. Y's telephonic hearing was held on February 10, 2015. She was assisted by G Z. Angela Ybarra represented the division. Ms. Griffin, the 2014 assessor, did not testify; Ms. Y and Ms. Ipatova testified. The record consists of a written response by Ms. Y to, and documents submitted with, the division's position statement: the determination letter, the 2014 CAT, and the 2011 CAT.¹⁸ No other records were offered by the division.¹⁹

There was a regulatory change in 2012. This change did not impact the scoring on the ADLs and IADLs at issue in this case, but it did adopt a service level computation chart (SLC).²⁰ The SLC would reduce the time authorized to complete each ADL. The division seeks to terminate Ms. Y's PCA services, not just reduce the time she is authorized for them. Because Ms. Y's living situation has not changed, for the division to prevail, it must establish by a preponderance of the evidence that there was a material change in Ms. Y's medical condition as demonstrated through her functional ability.

Where the CAT provides space for the assessor to write what the consumer reports, Ms. Griffin did not recite any direct quotations from Ms. Y. Instead, the spaces for consumer reports contain statements that match the description written under assessor observations. Ms. Y testified under oath that she disagrees with the statements and observations written by Ms. Griffin in the 2014 CAT.

The division opted not to have Ms. Griffin testify. Without Ms. Griffin's testimony, Ms. Y and Ms. Ipatova simply contradict each other. The division and Ms. Y were equally convincing. Thus, when all the evidence is weighed, the scales are equally balanced. To prevail, the division must establish that it is more likely true than not true that Ms. Y does not require physical assistance to complete the ADLs or IADLs. It has not met that burden and cannot prevail in this appeal.

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¹⁷ Exhibit C.

¹⁸ Exhibits D, E, and F respectively.

¹⁹ Exhibit E 4 references an October 9, 2014 doctor's note relied upon by division but not provided or offered into evidence.

²⁰ See 7 AAC 125.024(a)(1) and the division's *Personal Care Assistance Service Level Computation* chart contained at Ex. B, pp. 34 - 36.

Conclusion

The Division has not met its burden of proving that Ms. Y's PCA services should be terminated. Scoring and frequency will remain at prior levels. Time allocation will be calculated using the Service Level Computation Chart.

Dated April 23, 2015.

Signed _____
Rebecca Pauli
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.]