

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

In the Matter of )  
 )  
S O ) OAH No. 14-2319-MDS  
 ) Agency No.  
\_\_\_\_\_ )

**Non-Adoption Options**

The undersigned, in accordance with AS 44.64.060(e)(5), rejects, modifies or amends the interpretation or application of a statute or regulation in the decision as follows and for these reasons:

The dispute in this case is whether the meal delivered to Ms. O should be considered a main meal or a light meal. I agree with the proposed decision's adoption of a bright line rule, but I adopt the Division's interpretation for that rule. For reasons of policy and regulatory interpretation, I agree with the Division's Proposal for Action and conclude that the first delivered meal is the main meal and any additional meal prepared through the PCA program would be a light meal.

SDS correctly authorized time for the preparation of two meals per day, and correctly characterized both of those meals as light meals.

DATED this 16<sup>th</sup> day of September, 2015.

By: Signed \_\_\_\_\_  
Name: Jared C. Kosin, J.D., M.B.A.  
Title: Executive Director  
Agency: Office of Rate Review, DHSS

**APPEAL RIGHTS**

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.

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

In the matter of: )  
)  
[REDACTED] ) OAH: No. 14-2319-MDS  
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AUG 19 2015

State of Alaska  
Office of Administrative Hearings

**DIVISION'S PROPOSAL FOR ACTION**

**I. INTRODUCTION**

Senior and Disabilities Services (Division), hereby submits this proposal for action concerning the proposed decision issued by the Office of Administrative Hearings (OAH) in the above-captioned matter on August 6, 2015. The sole issue in this case is whether a meals on wheels (MOW) meal can always be considered a main meal, or if a personal care services (PCS) recipient can show that *their* main meal of the day is one other than their MOW meal.<sup>1</sup> The Division requests that the Commissioner of the Department of Health and Social Services (Commissioner) reject the OAH's interpretation of the applicable regulations—which seems to misread the regulations—and determine that the Division's interpretation is reasonable. In the alternative, the Division would ask the Commissioner to find, as Ms. [REDACTED] argued, that it should be a factual determination whether a MOW meal is a recipient's main meal.

<sup>1</sup> Some recipients of PCS receive more than one meal per day through meals on wheels, but the same logic would apply whether it is one meal or multiple and Ms. [REDACTED] only receives one.

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**II. Relevant regulations**

**7 AAC 125.024**

(a) For each recipient, based upon that recipient's assessment conducted under 7 AAC 125.020, the department will

(1) determine the total number of hours of personal care services for which the department will pay using the *Personal Care Assistance Service Level Computation*, adopted by reference in 7 AAC 160.900; and

(2) develop a personal care service level authorization that identifies the specific ADL tasks, IADL tasks, and other services covered under 7 AAC 125.030 that the personal care assistant must complete to provide the level of assistance approved by the department.

**7 AAC 125.030**

(a) The department will pay a personal care agency, whether it is enrolled in the consumer-directed or agency-based program, for the personal care services identified in this section if those services are provided in accordance with 7 AAC 125.010 – 7 AAC 125.199 and a recipient's personal care service level authorization.

(c) Personal care services include the following types of physical assistance provided to a recipient who is 18 years of age or older so that the recipient may complete an IADL:

(1) for the IADL of light meal preparation, the preparation, serving, and cleanup in the recipient's home of any meal that is essential to meet the health needs of the recipient and that is not the main meal of the day, subject to the limitations of (f) of this section;

(2) for the IADL of main meal preparation, the preparation, serving, and clean up in the recipient's home of one main meal per day that is essential to meet the health needs of the recipient, subject to the limitations of (f) of this section.

(f) The department will pay for light meal preparation and main meal preparation under (c) of this section, if the meal preparation service is

(1) not duplicated by another meal service approved under 7 AAC 130.295 or 42 U.S.C. 3001 – 3058ff (Older Americans Act);

(2) provided in the recipient's home; and

(3) provided in accordance with 42 U.S.C. 3030g.

**7 AAC 130.295**

(a) The department will pay for meal services that

(1) are provided to a recipient 18 years of age or older;

(2) are provided in accordance with the department's *Meal Services Conditions of Participation*, adopted by reference in 7 AAC 160.900;

ITMO: [REDACTED]  
Division's Proposal For Action

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(3) are approved under 7 AAC 130.217 as part of the recipient's plan of care; and  
(4) receive prior authorization.  
(b) The department will consider services to be meal services if the meals  
(1) are provided in a congregate setting other than an assisted living home licensed  
under AS 47.32, or are delivered to the recipient's residence; and  
(2) enable the recipient to remain in the recipient's residence by meeting the recipient's  
nutrition needs.

**III. Discussion**

Ms. [REDACTED] receives PCS and waiver services through the Division. She reapplied for  
both programs and was assessed on July 31, 2014 at her home in [REDACTED] Alaska by  
Angela Hanley.<sup>2</sup> On November 12, 2014, Ms. [REDACTED] was sent a notice reducing her  
PCS authorization from 32 to 26.25 hours.<sup>3</sup> She requested a fair hearing with the OAH.<sup>4</sup>  
However, prior to holding a hearing, Ms. [REDACTED] through counsel, Eric Vang, was able  
to resolve all issues except for one. Because both parties agreed that the issue was a  
matter of regulatory interpretation instead of an issue of fact, they agreed to submit  
briefing, and a hearing has not been held.<sup>5</sup>

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<sup>2</sup> Exhibit E.

<sup>3</sup> Exhibit D.

<sup>4</sup> Exhibit C.

<sup>5</sup> After reading Ms. [REDACTED] briefing, it is clear that her argument actually does  
require a factual determination. As discussed in the Division's prior briefing on this  
issue, a list of meals does not determine whether a certain meal takes more time to  
prepare. However, the Division agrees that this factual determination is not currently at  
issue, but rather whether there needs to be a factual determination. If determined that  
there does need to be a factual determination, the parties should be able to reach  
agreement in this particular case.

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Ms. [REDACTED] receives one meal daily through meals on wheels. These are provided as a waiver service and are part of her waiver plan of care.<sup>6</sup> She eats this meal midday.<sup>7</sup> Her personal care assistant helps her prepare breakfast and dinner.<sup>8</sup> She is eligible to receive PCS assistance to prepare all meals<sup>9</sup> unless duplicated by a meal provided by a waiver.<sup>10</sup> If a recipient receives a meal through their waiver, the Division removes the main meal from the recipient's service level authorization.<sup>11</sup> Ms. [REDACTED] argues that there should be a factual determination done as to whether the MOW meal is a recipient's main mail. It is a bit unclear how the OAH reaches the proposed conclusion—but the proposed decision would have the effect of *always* treating a MOW meal as a light meal regardless of that person's personal eating habits.

For the reasons stated in the Division's prior brief, the Division's interpretation is a reasonable one and consistent with a program that awards time for physical assistance for a person's needs, rather than their wants. To address additional comments in the proposed decision—it says that MOW meals are not part of the PCS program, so the duplication clause in 7 AAC 125.030(f) does not come into play. But that regulation

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<sup>6</sup> Exhibit 1 at 11.  
<sup>7</sup> Exhibit 3.  
<sup>8</sup> Exhibit 3.  
<sup>9</sup> Exhibit E at 26.  
<sup>10</sup> 7 AAC 125.030(f).  
<sup>11</sup> Exhibit 4.

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1 specifically refers to duplication “by another meal service approval under  
 2 7 AAC 130.295”—in other words a MOW delivered meal on a waiver plan of care—or  
 3 the meals Ms. [REDACTED] receives.  
 4

5 The proposed decision also refers to the language in the service level  
 6 authorization chart.<sup>12</sup> That says a recipient can receive one main meal and ‘up to’ two  
 7 light meals per day.<sup>13</sup> But this chart is to calculate time when someone is otherwise  
 8 eligible. The regulatory language in 7 AAC 125.030(f) makes clear that a person is not  
 9 eligible for any meal that is a duplication of a meal provided through their waiver.  
 10

11 **IV. Conclusion**

12 For the reasons stated here and in the Division’s prior briefing on this issue, the  
 13 Division respectfully requests that the Commissioner or her designee reject the proposed  
 14 decision in this case. The Division asks that the Division’s interpretation be upheld. If  
 15 the Department disagrees, the Division at least would ask that the Claimant’s argument  
 16 be upheld.  
 17

18 DATED August 19, 2015

19 CRAIG W. RICHARDS  
 20 ATTORNEY GENERAL

21 By: [REDACTED]

22 Elizabeth J. Smith  
 23 Assistant Attorney General  
 Alaska Bar No. 1012118

24 <sup>12</sup> Proposed Decision at 4.

25 <sup>13</sup> Exhibit B at 34.

26 *ITMO:* [REDACTED]  
 Division’s Proposal For Action

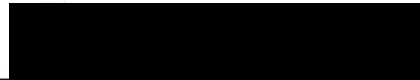
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**CERTIFICATE OF SERVICE**


I hereby certify that on August 19, 2015, a true and correct copy of the foregoing  
**DIVISION'S PROPOSAL FOR ACTION**  
was served via electronic mail to the following parties of record:

Eric Vang  
Alaska Legal Services Corporation  
419 Sixth Street Suite 322  
Juneau, AK 99801



T.J. Duffy ~~Law~~ Office Assistant  
Alaska Department of Law

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ITMO:   
Division's Proposal For Action

OAH No. 14-2319-MDS  
Page 6 of 6

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

In the Matter of	)	
	)	OAH No. 14-2319-MDS
S O	)	Agency No.
_____	)	

***[PARTIALLY REJECTED PROPOSED] DECISION***

**I. Introduction**

Ms. O receives Personal Care Assistance (PCA) services paid for by the Medicaid program. Senior and Disability Services (SDS) reevaluated her need for services, and reduced the amount of PCA time available to her. She appealed that decision. Although there were originally other items in dispute, the parties were able to resolve all but one disputed reduction: The remaining dispute is whether the Meals on Wheels meal she receives should be considered a light meal or a main meal.

The parties submitted that dispute for adjudication on the written record. Based on an analysis of the applicable regulations and service level computation chart, the meal delivered by Meals on Wheels should not be counted as a main meal.

**II. Facts**

Most of the facts are not in dispute. Ms. O was awarded PCA time to help prepare two light meals each day, seven days a week. She was not given any time for main meal preparation.<sup>1</sup> Both parties agree that she receives a hot meal delivered by the Meals on Wheels program at lunch time, seven days a week.<sup>2</sup>

Ms. O was scored as being able to prepare a light meal with assistance, but dependent on others for the preparation of a main meal.<sup>3</sup> Those scores are not in dispute.

**III. Discussion**

The only issue in this case is whether Ms. O may receive PCA services for preparing a main meal each day in light of the fact that she receives one meal from the Meals on Wheels program.<sup>4</sup>

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<sup>1</sup> Exhibit D9.

<sup>2</sup> SDS's Opposition at 3; Ms. O's Brief, Exhibit 1, page 11. Ms. O's brief asserts she only receives this meal five times a week, but for purposes of resolving the legal issue in dispute, the number of days she receives this meal is not important.

<sup>3</sup> Exhibit D9.



The PCA program “will pay” for certain identified personal care services in accordance with a recipient’s service level authorization.<sup>5</sup> The identified services include the preparation of both main and light meals.<sup>6</sup> Light meal preparation is defined as:

the preparation, serving, and cleanup in the recipient’s home of any meal that is essential to meet the health needs of the recipient and that is not the main meal of the day, subject to the limitations of (f) of this section[.]<sup>7</sup>

Main meal preparation is defined as

the preparation, serving, and cleanup in the recipient’s home of one main meal per day that is essential to meet the health needs of the recipient, subject to the limitations of (f) of this section[.]<sup>8</sup>

The limitation referred to in both of these provisions says:

The department will pay for light meal preparation and main meal preparation under (c) of this section, if the meal preparation service is

- (1) not duplicated by another meal service approved under 7 AAC 130.295 or 42 U.S.C. 3001-3058ff (Older Americans Act);
- (2) provided in the recipient’s home; and
- (3) provided in accordance with 42 U.S.C. 3030g.<sup>9</sup>

It is undisputed that the Meals on Wheels meal provided to Ms. O is duplicative of a meal, and undisputed that she should not receive PCA time for preparing that meal. The parties dispute whether the meal that is delivered replaces a main meal or a light meal. This distinction is important because more time is authorized for main meal preparation than for light meal preparation. In addition, Ms. O is able to assist with the preparation of a light meal, but not with her main meal. If the Meals on Wheels meal replaces her main meal, then she would be authorized to receive 22.5 minutes of PCA time to prepare her two light meals. If, however, the

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<sup>4</sup> Prior decisions have not clearly defined the distinction between light meals and main meals. *See In re L D*, OAH No. 13-1187-MDS (Commissioner of Health and Social Services 2014), page 8 (main meal is more complex to prepare); *In re N U*, OAH No. 13-1439-MDS (Commissioner of Health and Social Services 2013), page 6 (ability to bend while standing is important to preparing main meal); *In re H V*, OAH No. 12-0991-MDS (Commissioner of Health and Social Services 2013), pages 8 – 9 (ability to move about kitchen, open refrigerator, and take items off refrigerator shelf is evidence of ability to assist with main meal and light meal preparation). Ms. O also submitted an SDS training memo which states that any delivered meal must be counted as the main meal. Exhibit 4. The training memo is not binding because it has not been adopted as a regulation of general application.

<sup>5</sup> 7 AAC 125.030(a).

<sup>6</sup> 7 AAC 125.030(c)(1) & (2).

<sup>7</sup> 7 AAC 125.030(c)(1) (emphasis added).

<sup>8</sup> 7 AAC 125.030(c)(2).

<sup>9</sup> 7 AAC 125.030(f).

Meals on Wheels meal is a replacement for one of her light meals, Ms. O would be authorized to receive 36.25 minutes each day for meal preparation.<sup>10</sup>

SDS argues that the main meal is a hot, cooked meal, and that the regulations only allow one hot meal each day.<sup>11</sup> Unfortunately, the regulations are not that specific. Nothing in the regulations says that a provider cannot, for example, prepare oatmeal for breakfast, soup for lunch, and grilled chicken and vegetables for dinner. All three would be hot meals, but only one could be counted as the main meal. Alternatively, someone could eat three cold meals a day, but one would still count as the main meal.

SDS also points out that the meal provided by Meals on Wheels provides 1/3 of Ms. O's nutritional requirements. That is not helpful in distinguishing between light and main meals because the other two meals would also have to each provide 1/3 of her nutritional requirements.<sup>12</sup> In terms of meeting a recipient's nutritional requirements, there is no difference between a light meal and a main meal.

Ms. O contends that SDS can determine which meal is the main meal by looking at which is the largest meal of the day.<sup>13</sup> As SDS points out, it is not always possible to tell how many calories one gets from a list of food without knowing the quantity of food eaten.<sup>14</sup> In addition, each meal must meet the "health needs" of the recipient.<sup>15</sup> A high calorie meal may not be a well-balanced meal that meets the recipient's health needs. Finally, the largest, or most nutritious meal may not be the same meal from day to day or week to week. It would be extremely burdensome to calculate how often a delivered meal replaced a light meal, and how often it replaced a main meal if this changes from day to day.

Guidance for distinguishing between light and main meals can be found in the service level computation chart. More time is allowed for the preparation of the main meal than is

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<sup>10</sup> Exhibit B34, Service Level Computation Chart adopted by reference in 7 AAC 160.900(29). 11.25 minutes per light meal is authorized because Ms. O can assist with light meal preparation, and 25 minutes per main meal is allowed when, as in this case, the recipient is totally dependent on someone to prepare the main meal. Significantly, these times are added for a weekly total included in Ms. O's service level authorization. The caretaker preparing or assisting with these meals may spend more or less time depending on the actual meal being prepared. The only limitation is that a caretaker may not bill the program for more than the service level authorization each week.

<sup>11</sup> Opposition at 4.

<sup>12</sup> Or, if one meal provided less than 1/3 of her daily requirements, the other meal would have to meet more than 1/3 of her nutritional needs so that the three meals each day satisfied 100% of her nutritional needs.

<sup>13</sup> Ms. O's Brief at 4.

<sup>14</sup> Opposition at 5, n. 25.

<sup>15</sup> 7 AAC 125.030(c)(1) & (2).

provided to prepare each light meal.<sup>16</sup> A reasonable inference is that the distinction between the two revolves around preparation time. The regulations allow extra time to prepare one time consuming or complex meal each day. The text in the service level computation chart also says time will be authorized for a main meal “one per day” while the light meals are allowed “up to two per day.”<sup>17</sup> The lack of any qualifying language for the main meal – one per day is allowed – along with the limiting language for the light meals – up to two – implies that when any meal preparation time is allowed, the first meal allowed should be the main meal, while any subsequent meals, up to two per day, would be the light meals.

Under this analysis, there is no need for SDS to enquire about the nutritional value of the delivered meal unless there is a dispute as to whether the delivered meal is duplicative under 7 AAC 125.030(f). Delivered meals, such as the Meals on Wheels meal at issue here, are provided outside of the PCA program. The PCA regulations defining main meals and light meals, and allowing preparation time for those meals, do not apply to Meals on Wheels deliveries. The existence of this meal simply relieves the PCA program of paying a caretaker to prepare the meal.

#### **IV. Conclusion**

The applicable regulation, 7 AAC 130.030, says that the PCA program “will pay” for personal care assistance, including “one main meal per day.”<sup>18</sup> Thus, when the PCA program pays for any meal preparation, one meal must be the main meal. The program may then pay for up to two light meals per day, if appropriate.<sup>19</sup>

In this case, SDS has authorized two meals per day. Ms. O’s service level authorization should be adjusted to reflect time for one main meal and one light meal. The third meal provided by Meals on Wheels is a replacement for what would have been a second light meal if three meals were provided through the PCA program.

Dated this 6<sup>th</sup> day of August, 2015.

Signed  
\_\_\_\_\_  
Jeffrey A. Friedman  
Administrative Law Judge

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

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<sup>16</sup> Exhibit B34.

<sup>17</sup> *Id.*

<sup>18</sup> 7 AAC 130.030(a) & (c)(2).

<sup>19</sup> 7 AAC 130.030(c)(1).