

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

In the Matter of)
) OAH No. 14-2436-MDS
 Y Z) Agency No.
_____)

DECISION

I. Introduction

Y Z has been receiving Personal Care Assistance (PCA) services. She was re-evaluated by Senior and Disabilities Services (SDS), which found her no longer eligible for the PCA program. Ms. Z appealed that decision.

A hearing was held on August 4, 2015. Ms. Z represented herself at the hearing. SDS was represented by a lay advocate, Darcie Shaffer. The proceedings were interpreted for Ms. Z by a Hmong interpreter.

SDS met its burden of proving that the PCA service level authorization should be reduced, but has not proven that Ms. Z's services should be completely terminated.

II. Facts

Ms. Z had been receiving PCA services. On September 23, 2014, her functional abilities were reassessed by Nurse Geetha Samuel.¹ Ms. Z was 42 years old at that time.² Based on its assessment, SDS notified her that she was no longer eligible for the PCA program.³ The date of this notice is November 5, 2014.

Ms. Z suffers from poorly controlled diabetes and experiences low back pain, and leg pain.⁴ She has pins and needle sensations, but no numbness.⁵

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^[6]

¹ Exhibit E.
² Exhibit E1.
³ Exhibit D.
⁴ Exhibits G6, H5, H6, H11.
⁵ Exhibit H14.

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

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.¹⁵ 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.¹⁶ To

⁶ 7 AAC 125.010(a).

⁷ 7 AAC 125.020(b).

⁸ 7 AAC 125.024(1).

⁹ 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.

¹⁰ Exhibit E6.

¹¹ 7 AAC 125.020(a)(1); Exhibit E6.

¹² 7 AAC 125.020(a)(2); Exhibit E6.

¹³ 7 AAC 125.020(a)(3); Exhibit E6.

¹⁴ Exhibit B34 (Service Level Computation chart).

¹⁵ Exhibit E26.

¹⁶ *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).¹⁷

This case involves a reduction of benefits. Accordingly, SDS has the burden of showing Ms. Z is not eligible for PCA services.¹⁸ Because SDS notified Ms. Z of its decision on November 5, 2014, her condition on that date is used when determining whether she is eligible.¹⁹

B. Ms. Z's PCA Services

1. Body Mobility

Ms. Z has been receiving services to assist her with turning in bed. She testified that she cannot turn in bed on her own and needs her daughter-in-law's help. Under current regulations, SDS is only allowed to authorize PCA services for body mobility if the recipient is unable to walk.²⁰ Ms. Z is able to walk. Accordingly, she is not eligible for PCA services for this activity even though she may need assistance.

2. Transfers

Transferring is the movement between surfaces, such as standing from a bed or chair.²¹ Ms. Samuel observed Ms. Z stand up from a couch using her cane.²² During the evaluation, Ms. Z said she has her PCA help her, but she did not testify that she needed someone to physically assist her with transfers.²³ There is nothing in the medical records (Exhibits G & H) discussing an inability to transfer unassisted. SDS has met its burden of proving that, more likely than not, Ms. Z does not need physical assistance to transfer three or more times a week.

3. Locomotion

Locomotion is the manner in which a person moves within their own home or to access medical and dental appointments outside the home.²⁴ Ms. Samuel observed Ms. Z walking in the home. She attempted to use her cane, but did not know how to use it, so she was assisted by her

¹⁷ Exhibit B44.

¹⁸ 7 AAC 49.135.

¹⁹ 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>. Evidence of Ms. Z's condition after that day is relevant only if it indicates what her condition was on November 5, 2014.

²⁰ 7 AAC 125.030(b)(1)(A).

²¹ 7 AAC 125.030(b)(2)

²² Samuel testimony.

²³ Exhibit E6; Z testimony. Because SDS had the burden of proof, Ms. Z was not required to testify or provide any evidence at all. However, once SDS provided some credible evidence in support of its position, that evidence could be sufficient to meet SDS's burden of proof if not rebutted by other evidence in the record.

²⁴ 7 AAC 125.030(b)(3).

daughter-in-law.²⁵ It did not appear to Ms. Samuel that Ms. Z needed assistance, so she stood by her side and assisted Ms. Z.²⁶ Ms. Z did not need any weight-bearing support to walk.²⁷

Nothing in the medical records indicates that Ms. Z needs assistance with walking. Her testimony did not address a need for this assistance. She did say during the assessment that she likes to have someone walk with her.²⁸ But to qualify as limited assistance, the person walking with her must be guiding, steadying, or providing some form of assistance.²⁹ It is not enough that the person simply have a hand on Ms. Z's arm or shoulder. SDS has met its burden of proving that, more likely than not, Ms. Z does not need physical assistance to walk at least three times a week.³⁰

4. *Dressing*

During the assessment, Ms. Z explained that she cannot dress herself because of pain in her right thumb.³¹ Ms. Z also testified that she can use her left hand, but cannot use her right hand at all. Ms. Samuel observed that she could reach her hands behind her back, and reach up and touch the wall above head height. She also had good hand grips.³² She could touch her feet while sitting.³³ On the other hand, the medical records indicate that Ms. Z does have pins and needle sensations. This would make it difficult for her to dress herself.

The medical records in Exhibits G and H begin in February of 2013, and go through March of 2015. Other than the notation of pins and needle sensations, there is nothing in these records indicating an inability to use her right hand. While it is likely difficult for Ms. Z to dress herself, SDS has met its burden of showing she does not need physical assistance with this activity.

5. *Eating*

The ADL of eating refers to how a person feeds herself, regardless of skill.³⁴ Because of her diabetes, her doctors ask her about eating during her medical appointments.³⁵ Her medical

²⁵ Exhibit E7; Samuel testimony.

²⁶ Samuel testimony.

²⁷ *Id.*

²⁸ Exhibit E7.

²⁹ *Id.*

³⁰ SDS has also shown Ms. Z does not need assistance walking to medical appointments.

³¹ Exhibit E8.

³² Samuel testimony.

³³ *Id.*

³⁴ 7 AAC 125.030(b)(5). Eating and meal preparation are different tasks and are scored separately.

³⁵ *See e.g.* Exhibit G9.

records do not indicate that Ms. Z is unable to feed herself. Ms. Z is right-handed and has trouble using her right hand.³⁶ Thus, she likely has difficulty feeding herself. However, SDS has met its burden of showing that she is able to eat without physical assistance.

6. Toilet Use

Ms. Z was observed to have good range of motion with her arms, and was observed to transfer independently.³⁷ Ms. Z's testimony did not discuss a need for assistance with toileting, and there is nothing in the medical records that suggest she does need physical assistance. SDS has met its burden of showing that Ms. Z does not need at least assistance with this ADL.

7. Personal Hygiene

During the assessment, Ms. Z stated that she is not able to perform her own personal hygiene tasks because of the pain in her right thumb.³⁸ She did not address this issue during her testimony. Ms. Samuel found she could perform these tasks with difficulty.³⁹ As previously noted, Ms. Z has good range of motion in her arms. SDS has met its burden of showing that Ms. Z does not need physical assistance to complete her personal hygiene.

8. Bathing

Bathing is the act of taking a bath, shower, or sponge bath, and any necessary transfers in or out of the bath or shower.⁴⁰ Ms. Z uses a bathtub with a bath chair.⁴¹ Transferring into a tub is different than transferring to or from a chair, as it requires lifting each leg over the side of the tub.

Ms. Z testified that she needs help transferring to and from the tub. Ms. Samuel's testimony about why she scored Ms. Z as needing supervision only addressed Ms. Z's functional ability to wash herself, but did not directly address transferring into or out of the tub. Because SDS has reduced PCA services for this activity, SDS has the burden of proof. Based on the totality of the evidence, SDS has shown that Ms. Z does not need physical assistance washing herself, but has not shown that she can transfer without assistance. She should have been given a score of 2/2, indicating she needs assistance from one person with transfers. She should continue receiving this assistance seven days a week.

³⁶ Z testimony.

³⁷ Samuel testimony; Exhibit E9.

³⁸ Exhibit E10.

³⁹ *Id.*

⁴⁰ 7 AAC 125.030(b)(8).

⁴¹ Z testimony.

9. IADLs

Ms. Samuel found that Ms. Z could perform the IADLs of meal preparation, shopping, housework, and laundry by herself with difficulty. Her conclusions were based on the lack of any functional impairment that would limit Ms. Z's ability to compete these tasks, and on Ms. Z's ability to participate in the tasks. However, a person who can participate in IADLs may still qualify for PCA services if they need hands-on help completing those tasks (self-performance score of 2 and support score of 3).

Based on the totality of the evidence in this case, SDS correctly found that Ms. Z is not totally dependent on others for completion of her IADLs. She can participate in those tasks. However, based on the pins and needle sensations in her hands, the difficulty she has with her right hand, and the back pain noted in the medical records, SDS has not met its burden of showing she needs no assistance at all.⁴²

Main meals and light meals have similar definitions, except that a light meal is described as any meal that is not the main meal of the day.⁴³ In addition, the time allowed to assist with light meal preparation is significantly less than the time allowed for main meal preparation.⁴⁴ Preparing a main meal requires similar functional ability, but over a longer period of time.

Based on all of the evidence presented, Ms. Z can likely prepare her own meals. Because of the problems with her hands, she would have difficulty with meal preparation, but could complete the task. SDS met its burden of proving she no longer needs assistance with light meal and main meal preparation.

The task of light housekeeping includes dusting, vacuuming, floor-cleaning, cleaning the kitchen, cleaning the bathroom, and making the recipient's bed.⁴⁵ Ms. Z can participate in these tasks, but housekeeping requires more movement, bending, and lifting over a longer period of time than meal preparation. SDS has not met its burden of showing she can complete all of the housekeeping tasks without physical assistance. She should have been given a score of 2/2.

The IADL of laundry includes washing clothes and changing the bed linens on the recipient's bed.⁴⁶ Ms. Z can participate in this task, but SDS has not met its burden of showing

⁴² Whether Ms. Z needs assistance with IADLs is a close question, and a different result might have been reached if Ms. Z had the burden of proof.

⁴³ 7 AAC 125.030(c)(1) & (2).

⁴⁴ Exhibit B34.

⁴⁵ 7 AAC 125.(c)(3).

⁴⁶ 7 AAC 125.(c)(4).

that she can complete this IADL without some physical assistance. She should have been given a score of 2/2.

Shopping involves walking through a store, taking items off a shelf, placing them in a grocery cart, and then carrying those items home. SDS has shown that Ms. Z can participate in this process, but has not shown that she can complete all of her grocery shopping without physical assistance. She should have been given a score of 2/2.

10. Documentation

PCA services are allowed to assist with setting up for diabetic testing and documentation.⁴⁷ The amount of time allowed is based on the recipient's personal hygiene score.⁴⁸ Here, no time is allowed because Ms. Z's self-performance score for personal hygiene is a 1.

11. Escort

PCA services may be authorized to provide a caregiver to travel with a person to medical appointments, and to confer with medical staff.⁴⁹ Based on Ms. Samuel's testimony and the medical records, Ms. Z does not need someone to travel with her to medical appointments. She can get to those appointments without the assistance of a caregiver. She also does not need assistance conferring with the medical providers. While she does need an interpreter, that need is not covered by the PCA program, which only pays for services that are needed due to a physical condition of the recipient.⁵⁰

IV. Conclusion

SDS has shown that Ms. Z's service level authorization should be reduced. However, it has not met its burden of proving a complete reduction in all areas. Ms. Z's service level authorization should be recalculated in accordance with the discussion above, allowing her time for bathing and the IADLs of shopping, light housework, and laundry. If her condition has changed, or if it changes in the future, Ms. Z may reapply for services.

Dated this 9th day of September, 2015.

Signed

Rebecca L. Pauli
Administrative Law Judge

⁴⁷ 7 AAC 125.030(d)(3).

⁴⁸ Exhibit B35.

⁴⁹ 7 AAC 125.030(d)(9).

⁵⁰ 7 AAC 125.010(a).

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 24th day of September, 2015.

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

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