

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

In the Matter of)
)
X W) OAH No. 15-0087-MDS
) Agency No.

DECISION

I. Introduction

X W was notified that his PCA services were going to be reduced from 22.75 hours a week to 10.25 hours a week based on information obtained from his September 24, 2014, reassessment by the Division of Senior and Disabilities Services (“Division”). On December 18, 2014, Mr. W requested a hearing concerning the proposed reduction in his PCA services.

Present telephonically at the first hearing session held on March 27, 2015 were Mr. W, who represented himself with the assistance of a Hmong interpreter, and Victoria Cobo, who represented the Division. Midway through the hearing, Mr. W requested that the hearing be continued because he was feeling weak. The hearing was continued to May 26, 2015; when Mr. W failed to appear at the time scheduled for the hearing session, the hearing was continued to June 2, 2015.

At the June 2, 2015, hearing session, Mr. W and Ms. Cobo again appeared telephonically. Because of difficulty in obtaining a Hmong interpreter for the entire duration of the continued hearing, arrangements were made to continue the hearing. However, Mr. W objected to having the hearing continued again and stated that he wanted the case decided on the existing record. The Division did not object.

Because the Administrative Law Judge (ALJ) wanted to review Mr. W’s medical records in the possession of Dr. Z and Mr. W’s care coordinator did not attend the hearing sessions, the Division initially was asked to obtain these medical records. Subsequently, a status conference was held on July 2, 2015, which Mr. W’s care coordinator attended. Mr. W’s care coordinator, D A of No Name Services, LLC, was instructed at that time to produce Dr. Z’s medical records and the record in this case was kept open until July 15, 2015 for that purpose. However, no medical records from Dr. Z were produced.

The Division has met its burden of proof in establishing by the preponderance of the evidence that Mr. W’s condition had improved in many respects by the date of his reassessment. Because of this improvement, Mr. W no longer needs PCA assistance with the ADLs of

transfers, locomotion (single level and access to medical appointments), dressing, toilet use, and personal hygiene or with the covered activities of medication and medical escort. In addition, the level of service Mr. W needs for the IADLs of light meal preparation, main meal preparation, and shopping has decreased so that he needs less PCA time for those tasks. Finally, a change in the Division's regulations concerning the amount of PCA time for the ADL of bathing is what caused a modest reduction of Mr. W's PCA time for this activity.

Based upon the testimony at the hearing and the medical evidence in the record, the Division's decision to reduce Mr. W's PCA hours to 10.25 hours per week is upheld.

II. Facts

Mr. W has been diagnosed as having diabetes, hypertension, osteoarthritis, an unspecified hearing loss, and a depressive disorder.¹ His prior assessment, which was recorded on the Division's Consumer Assessment Tool (CAT), occurred on December 9, 2011 ("Initial Assessment") and was conducted by Shalome Cederberg². As a result of his Initial Assessment, Mr. W was awarded 22.75 hours of PCA services. On September 24, 2014, Sam Cornell, a registered nurse, conducted a reassessment (Reassessment) of Mr. W³ on behalf of the Division, the results of which were recorded on the CAT.⁴ At the time of the Reassessment, Mr. W – who is Hmong -- was seventy-four years old and lived with family members.⁵ Since Mr. W's authorized PCA time for the IADLs of light housekeeping and in-home laundry was not reduced after the Reassessment,⁶ it is not an issue in this appeal.

A. The Initial Assessment

The Initial Assessment, as recorded on the CAT, found that Mr. W needed limited assistance for locomotion-access to medical appointments⁷ (code of 2) and a one-person physical assist (code of 2/2) with regard to the ADLs of transfers, locomotion (in room), dressing, toileting, and personal hygiene.⁸ The Initial Assessment also concluded that Mr. W was completely dependent on others for the IADLs of light meal preparation, main meal preparation,

¹ Ex. E, p. 3.

² Ex. F, p. 1.

³ Ex. E, p. 1.

⁴ Ex. E, p. 1.

⁵ Ex. E, p. 1.

⁶ Ex. D, p. 3. Mr. W was considered to be totally dependent upon others (Code 3/4) for these IADLs on both the Initial Assessment and Reassessment. *See* Ex. D, p. 9 & Ex. F, p. 26.

⁷ Ex. D, p. 9; Ex. F, p. 7.

⁸ Ex. D, pp. 7 & 9; Ex. F, pp. 6-11.

and shopping (code of 3/4).⁹ With regard to the ADL of bathing, the Initial Assessment determined that Mr. W needed extensive assistance and a one-person physical assist (code of 3/2) for that task.¹⁰ The Initial Assessment also concluded that Mr. W needed assistance with his medication¹¹ and needed medical escort.¹²

Based on the results of the Initial Assessment, Mr. W began receiving 22.75 hours of PCA services a week.¹³

B. The Reassessment

The Reassessment, as recorded on the CAT, showed that Mr. W's condition had improved by September of 2014 vis-a-vis certain ADLs (transfers, locomotion, dressing, toileting, and personal hygiene) and IADLS (shopping and main meal preparation), and with regard to the administration of medication and medical escort. In reaching these conclusions, the nurse assessor, in conjunction with his observations at the Reassessment, reviewed various medical records for Mr. W¹⁴ and posed questions to Mr. W and his daughter C, who was his PCA at the time of the Reassessment.¹⁵

The Reassessment found that Mr. W now only needed supervision with the ADL of locomotion--access to medical appointments (code of 1).¹⁶ The Reassessment also concluded that Mr. W could now perform the ADLs of transfers, locomotion (both in-room and for access to medical appointments), dressing, toileting and personal hygiene with only supervision and set-up help (code of 1/1).¹⁷ Moreover, the Reassessment found that Mr. W was self-administering his medication¹⁸ and no longer needed medical escort to his dental and medical appointments.¹⁹ Because the Reassessment found that Mr. W no longer needed PCA assistance with these particular activities, the PCA time which Mr. W had been receiving for these tasks since the Initial Assessment was eliminated.²⁰

⁹ Ex. D, pp. 7 & 9; Ex. F, p. 26.

¹⁰ Ex. D, p. 9; Ex. F, p. 11.

¹¹ Ex. D, p. 3.

¹² Ex. D, p. 4.

¹³ Ex. D, p. 1.

¹⁴ Ex. E, p. 3.

¹⁵ Ex. E, p. 2.

¹⁶ Ex. E, p. 26.

¹⁷ Ex. D, p. 9.

¹⁸ Ex. E, p. 20; Ex. D, p. 3.

¹⁹ Ex. D, p. 4; *see also* Ex. E, p. 26.

²⁰ Ex. D, p. 9.

With regard to the ADL of bathing, the Reassessment, like the Initial Assessment, rated Mr. W as needing extensive assistance one time a day, seven days a week, in the form of a one-person physical assist (code of 3/2) for that task.²¹ However, although Mr. W's level of care on both assessments remained the same, changes in the applicable regulations resulted in a modest reduction on the PCA time allowed for this particular ADL, so that Mr. W's PCA time for the ADL of bathing was reduced from 161 minutes a week to 157.50 minutes per week.²²

While Mr. W still needed physical assistance for the IADLs of light meal preparation, main meal preparation, and shopping (Code 2/3), he was no longer completely dependent on others (Code 3/4) for those IADLs as he had been at the time of his Initial Assessment. Accordingly, his PCA time for the IADLs of light meal preparation,²³ main meal preparation,²⁴ and shopping²⁵ was reduced.²⁶

Based on the overall improvements in Mr. W's condition since his Initial Assessment in 2011, the Division concluded that Mr. W was only entitled to receive 10.25 hours of PCA services each week, rather than the 22.75 hours he had been receiving under the Initial Assessment.

C. Mr. W's Medical Records

Mr. W submitted a note from a Dr. Z dated February 16, 2015, in support of his claim that his PCA hours should not be reduced.²⁷ Dr. Z's note stated that Mr. W suffered from diabetes, thyroid dysfunction, and tuberculosis²⁸ and should be "allowed 20 hours of PCA time

²¹ Ex. D, p. 9.

²² See Ex. D, p. 3.

²³ Previously, Mr. W was receiving 210 minutes a week for light meal preparation; because his service level need had decreased as per the Reassessment, the time for this activity was reduced to 157.0 minutes a week. See Ex. D, p. 3.

²⁴ According to the Division's service level chart, Mr. W was receiving 175 minutes of PCA time each week for IADL of main meal preparation under the Initial Assessment. After the Reassessment, the level of service decreased so that Mr. W was only authorized to receive 131.25 minutes of PCA time each week for this task. Compare Ex. D, p. 6 with Ex. D, p. 9.

²⁵ Mr. W had previously received 60 minutes of PCA time each week for the IADL of shopping. See Ex. D, pp. 6 & 9. Because the Reassessment found that his service level had decreased, Mr. W's PCA time for this IADL was reduced to 45 minutes a week. Compare Ex. D, p. 9 with Ex. D, p. 6.

²⁶ The Division's letter of December 12, 2014 failed to describe the amount of the reduction in PCA time for the IADLs of main meal preparation and shopping. See Ex. D, p. 3. However, the chart accompanying this notice letter showed the amount of PCA time that Mr. W would now be receiving for these two tasks, which was less than the amount of time he previously received utilizing this same chart. Compare Ex. D, p. 6 with Ex. D, p. 9.

²⁷ Ex. D.

²⁸ The Initial Assessment, the Reassessment, and the Emergency Room notes do not mention that Mr. W suffers from tuberculosis. Compare Ex. E, p. 3, Ex. F, p. 3 & Ex. G, p. 1 with Ex. G, p. 2.

to account for his ongoing needs.²⁹ However, Dr. Z did not identify what those needs were or the factual basis for his conclusion.³⁰

There was nothing in the note from Dr. Z to indicate whether he began treating Mr. W prior to the Division's notice to Mr. W on December 12, 2014 that his PCA hours were being reduced.³¹ The medical records reviewed by the nurse assessor did not reference Dr. Z.³² The medical records reviewed by the nurse assessor also did not mention that Mr. W suffered from thyroid dysfunction or tuberculosis. Moreover, emergency room admission records submitted by the Division dated June 23, 2014 identified Dr. Leah Werner as Mr. W's medical provider and did not mention Dr. Z.³³ These emergency room admission records contained a brief medical history for Mr. W; however, there was nothing in these records indicating that Mr. W had a thyroid dysfunction or tuberculosis.³⁴

Because of the discrepancy between Mr. W's testimony and the other evidence in the record, the ALJ at the second hearing session requested that Mr. W's medical records from Dr. Z be produced. When such records were not produced, a status conference ensued and Mr. W's care coordinator was instructed to produce these records on or before July 15, 2015.³⁵ However, no records from Dr. Z were produced. Consequently, the only medical evidence in the record is the Initial Assessment,³⁶ the Reassessment,³⁷ and the emergency department notes.³⁸

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[. ³⁹]

²⁹ Ex. G, p. 3.

³⁰ Ex. G, p. 3.

³¹ Compare Ex. A, p. 2 with Ex. G, p. 2.

³² See Ex. E, p. 3. The nurse assessor reviewed medical records from Dr. Andrea Clark, Dr. Leah Werner, and Dr. Kathryn Turner. See Ex. E, p. 3.

³³ See Ex. H, pp. 2-5.

³⁴ Ex. H, p. 2.

³⁵ See Order, dated July 7, 2015.

³⁶ Ex. F.

³⁷ Ex. E.

³⁸ Ex. H.

³⁹ See 7 AAC 125.010(a).

The Division uses the Consumer Assessment Tool, or “CAT”, as a methodology to score eligibility for the PCA program and determine the amount of assistance, if any, that an eligible person needs to perform ADLs, IADLs, and the other covered services.⁴⁰ The CAT numerical coding system has two components: a self-performance code⁴¹ and a support code.⁴² The CAT’s “self-performance” codes rate how capable a person is with regard to performing a particular ADL⁴³ or IADL.⁴⁴ The CAT’s “support” codes rate the degree of assistance that a person requires for a particular ADL⁴⁵ or IADL.⁴⁶

As a gateway to eligibility for PCA services, the CAT evaluates a subset of the ADLs and IADLs. If the person requires some degree of hands-on physical assistance with any *one* of the specific ADLs⁴⁷ of transfers, locomotion, eating, toilet use, dressing, or bathing, **or** any *one* of the specific IADLs⁴⁸ 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. However, if a person is independent or only requires non-hands-on assistance (oversight,

⁴⁰ See 7 AAC 125.024(a)(1); *see also* 7 AAC 125.020(b). The CAT itself is a regulation, adopted in 7 AAC 160.900.

⁴¹ See Ex. D, at pp. 1-2.

⁴² See Ex. D, at pp. 1-2.

⁴³ With regard to ADLs, the possible self-performance codes are: **0** (person is independent and requires no help or oversight); **1** (person requires supervision); **2** (person requires limited assistance); **3** (person requires extensive assistance); **4** (person is totally dependent); **5** (the person requires cueing); and **8** (the activity did not occur during the past seven days). See Exhibit D, at p. 2; *see also* Ex. E, at pp. 6-11.

⁴⁴ The self-performance codes for IADLs are slightly different from the ADL self-performance codes. With regard to IADLs, the self-performance codes are: **0** (independent either with or without assistive devices – no help provided); **1** (independent with difficulty; the person performed the tasks, but did so with difficulty or took a great amount of time to do the task); **2** (assistance/done with help – the person was somewhat involved in the activity, but help in the form of supervision, reminders, physical assistance was provided); **3** (dependent/done by others – the person is not involved at all with the activity and the activity is fully performed by another person); and **8** (activity did not occur within the past seven days). See Ex. D, at p. 2; *see also* Ex. E, at p. 26.

⁴⁵ The support codes for the ADLs are: **0** (no set-up or physical help); **1** (set-up help only); **2** (one-person physical assist); **3** (two+ persons physical assist); **5** (cueing); and **8** (activity did not occur). See Ex. D, at p. 2; *see also* Ex. E, pp. 6-11.

⁴⁶ The support codes for the IADLs are slightly different from the ADL support codes. With regard to IADLs, the support codes are: **0** (no support provided); **1** (supervision/cueing provided); **2** (set up help only); **3** (physical assistance was provided); **4** (total dependence – person not involved); and **8** (activity did not occur). See Ex. D, at p. 2; *see also* Ex. E, at p. 26.

⁴⁷ 7 AAC 125.020(a). “Limited Assistance” – the minimum hands-on physical assistance standard applicable to ADLs – is a situation in which the recipient, although “highly involved in the activity, receives direct physical help from another individual in the form of guided maneuvering of limbs, including help with weight-bearing when needed.” See 7 AAC 125.020(a)(1).

⁴⁸ 7 AAC 125.020(a). “Independent with Difficulty” – the minimum hands-on physical assistance standard applicable to IADLs -- is defined in AAC 125.020(a)(4) as a situation in which the “the recipient can perform the activity without the help of another individual, but does so with difficulty or takes a great amount of time to perform it.” If a potential recipient’s IADL self-performance score is a “1” – *i.e.*, independent with difficulty – then the support code must be a “3” or a “4” in order for the person to receive PCA services. See Ex. B, at p. 34.

supervision, cueing, and set-up) with all of these specific ADLs and IADLs, then the person is not eligible for PCA services, regardless of whether he or she may require hands-on physical assistance with the ADLs or IADLs other than the specific ones used to determine eligibility.⁴⁹ In Mr. W’s case, there is no dispute that he needs hands-on help with the gateway ADL of bathing and the gateway IADLs of light housework and laundry and thus is eligible for PCA services.

B. The Reduction in Mr. W’s PCA Services

At the first hearing session, Mr. W testified that he could not walk.⁵⁰ When the Division’s representative attempted to question Mr. W further about his inability to walk, Mr. W stated that he was unable to answer more questions because he felt weak.⁵¹ The hearing was continued and at the next hearing session, Mr. W again testified that he was unable to walk and further stated that he needed PCA assistance to transfer from one surface to the other, was unable to dress himself, and needed his PCA’s assistance to get to the bathroom.⁵²

By contrast, the Reassessment found that Mr. W was able to walk using a cane and was able to perform the ADLs of transfers, locomotion, and dressing with merely supervision and set-up.⁵³ The emergency room notes state that when Mr. W “walks, the cramping [in his leg] improves”⁵⁴ and further state that Mr. W “[m]oves all extremities well.”⁵⁵

When the Division attempted to question Mr. W further about his statements that he could not walk and needed PCA assistance with transfers, dressing, and locomotion to the bathroom, he responded by saying that “this is all I am going to say.”⁵⁶ Mr. W then told the ALJ to “review my medical paperwork and make a decision.”⁵⁷

Because the only medical information⁵⁸ in the record is the Initial Assessment, the Reassessment, and the emergency room notes, there are no medical records which would support Mr. W’s statement that he is unable to walk or that he still needs PCA assistance with the ADLs

⁴⁹ See Ex. E, at p. 31 (part of the CAT, adopted by reference in 7 AAC 125.02(a)(1) and 7 AAC 160.900).

⁵⁰ Testimony of Mr. W.

⁵¹ Testimony of Mr. W.

⁵² Testimony of Mr. W.

⁵³ See Ex. E, pp. 6.

⁵⁴ See Ex. G, p. 2.

⁵⁵ Ex. H, p. 4.

⁵⁶ Testimony of Mr. W.

⁵⁷ Testimony of Mr. W.

⁵⁸ Because Dr. Z’s note was conclusory in nature, it did not support Mr. W’s statements about his inability to walk, get dressed, to transfer from one surface to the other or his need to have PCA assistance for getting to the bathroom. See Ex. G, p. 3.

of transfers, locomotion, dressing, toileting, or personal hygiene⁵⁹ or needs assistance with administering medication or needs a medical escort.⁶⁰ Similarly, there was no evidence in the record to support Mr. W's position that his service level with regard to light meal preparation, main meal preparation, and shopping had not improved so as to warrant a reduction in his PCA hours for these particular IADLs.⁶¹ Finally, the reduction in PCA time for the ADL of bathing was solely due to a change in the regulations, since Mr. W's service level was the same for both the Initial Assessment and the Reassessment.⁶²

IV. Conclusion

For the reasons set forth above, the Division has met its burden of proof in establishing that Mr. W's PCA hours should be reduced to 10.25 hours per week.

DATED this 17th day of September, 2015.

Signed _____
Kathleen A. Frederick
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 1st day of October, 2015.

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

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

⁵⁹ Mr. W declined to submit to further questioning by the Division and stated that he wanted his case decided upon his medical paperwork. *See* Testimony of Mr. W. The Reassessment determined that Mr. W only needed supervision and set-up for these ADLs, rather than hands-on physical assistance from a PCA, and the emergency department notes likewise contain no information which would support Mr. W's contention that he needs PCA assistance with the ADLs of transfers, locomotion, dressing, toileting, and personal hygiene. *See* Ex. E & H.

⁶⁰ *See* Ex. E, pp. 20 & 26 & Ex. H.

⁶¹ The Reassessment and the emergency department notes contain no information which would support Mr. W's contention that he is totally dependent upon others for the IADLs of light meal preparation, main meal preparation, and shopping. *See* Ex. E, pp. 26 & Ex. H.

⁶² Ex. D, p. 9; *see also* Ex. D, p. 3.