

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

In the Matter of	)	
	)	OAH No. 15-0628-MDS
X C	)	Agency No.
_____	)	

**DECISION**

**I. Introduction**

X C receives Personal Care Assistance (PCA) services paid for by Medicaid. No Name Agency is the PCA agency that coordinates those services for him. No Name Agency submitted a change of information form, requesting an increase in PCA services. Senior and Disabilities Services (SDS) reviewed the request and allowed some changes, but not all of the requested changes. Mr. C contested that denial.

A hearing was held on June 29, 2015. Mr. C was represented by his legal guardian, K D, who is also his sister. At her request, S F, a care coordinator for No Name Agency, served as Mr. C’s advocate during the hearing. Based on the testimony presented and the documents in the record, Mr. C is entitled to receive PCA services for locomotion within his home.

**II. Facts**

Mr. C is 62 years old.<sup>1</sup> He received a traumatic brain injury 28 years ago in a motor vehicle accident. This injury caused partial paralysis on his left side and left him with significant cognitive defects.<sup>2</sup>

There is conflicting evidence in the record concerning whether Mr. C is able to walk within his home using a cane and without physical assistance from a caregiver. On May 15, 2015, Mr. C was assessed by Nurse Christopher Rygh.<sup>3</sup> Mr. Rygh recorded that he observed Mr. C “walk from living room to bedroom, then bathroom, back to living room holding onto cane with right hand, and one person supervising.”<sup>4</sup> In Mr. C’s medical records, Dr. G states “patient is able to walk but is very unstable due to weakness in legs. He needs assistance with walking ...”<sup>5</sup> His occupational therapy assessment states, “He walks around his house for short

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<sup>1</sup> Exhibit E, page 1.  
<sup>2</sup> Testimony of Ms. D and E J (who is his mother and primary care provider).  
<sup>3</sup> Exhibit E.  
<sup>4</sup> Exhibit E7. Mr. Rygh did not testify at the hearing.  
<sup>5</sup> Exhibit 1, page 3.

distances without any assistive devices” and, “He could probably manage walking short distances around his house, but would not be safe for longer distances.”<sup>6</sup>

However, Ms. J and Ms. D testified that Mr. C does not use a cane at all, and – contrary to the notes recorded by Mr. Rygh – did not use one in Mr. Rygh’s presence. Instead, they asserted that Mr. C held onto Mr. Rygh when he walked between rooms during the assessment. They also testified that Mr. C’s cognitive limitations make it difficult for him to understand what he is supposed to do even when he has the physical ability to do it.

Mr. C used a cane in the past after a foot operation, but has not used one since then.<sup>7</sup> Both Ms. J and Ms. D explained that Mr. C drags his left foot behind him when he walks. He moves his right foot forward and then has to hold onto someone or something to drag his left foot forward. They do not believe he would be able to do this holding onto a cane.

Ms. J and Ms. D were both credible witnesses. They did not appear to be intentionally exaggerating Mr. C’s difficulties with walking. However, their testimony was directly contradicted by Mr. Rygh’s notes. Mr. Rygh did not testify, so it was not possible to question him about his observations.<sup>8</sup> Mr. Rygh’s notes are considered here, but they are given less weight because of the inability to question him about those notes.

The medical records also say Mr. C has some ability to walk. However, the occupational therapy notes were based on a one-time evaluation visit.<sup>9</sup> In addition, these notes do not define what is meant by “short distances.” This could mean walking between rooms, but could also mean walking just a few steps within one room. Dr. G has seen Mr. C more often, and indicates that he can walk, but is unstable and needs assistance with walking.<sup>10</sup>

Ultimately, the question in this case is not whether Mr. C is *ever* able to walk on his own, but whether he requires some physical assistance when walking in his own home at least three times each week.<sup>11</sup> Ms. J and Ms. D believe Mr. C needs someone to help him move between rooms in the home, which is not inconsistent with the notes in the medical records. Based on the

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<sup>6</sup> Exhibit 1, pages 9 & 10.

<sup>7</sup> Testimony of Ms. J.

<sup>8</sup> It would also have been useful to hear about his regular practice for recording his observations, as that practice may have added to the credibility of his assessment notes. For example, it would be helpful to know whether the notes were written when the assessment was conducted or at a later date. It might also have been helpful to know whether Mr. Rygh conducted other assessments around the same time which he may have confused with Mr. C’s assessment.

<sup>9</sup> Exhibit 1, page 10.

<sup>10</sup> Exhibit 1, page 3.

<sup>11</sup> See Exhibit E7 (definition of limited assistance).

totality of the evidence, it would be very difficult for Mr. C to balance on his right foot while dragging his left foot forward with only a cane for support. While a cane supports a person's weight, it does not provide much support when pulled on horizontally.

As noted by both Dr. G and the occupational therapist, Mr. C is unsteady on his feet. He has fallen several times in the home.<sup>12</sup> In addition, his cognitive limitations make it difficult for him to understand the need to use a cane, and would increase his reasonable fear of falling while attempting to walk on his own. Mr. C has met his burden of proving that he does need limited assistance with locomotion at least three times every week.

### **III. Discussion**

#### **A. 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>13</sup>]

SDS uses the Consumer Assessment Tool (CAT) to help it assess the level of assistance needed.<sup>14</sup> The amount of time allotted for needed assistance is determined by the Personal Care Assistance Service Level Computation Chart.<sup>15</sup> This chart shows the amount of time allotted for each ADL or IADL, depending on the level of assistance needed for each task.

The different levels of assistance with ADLs are defined by regulation and in the CAT.<sup>16</sup> 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>17</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>18</sup> Extensive Assistance is defined as requiring direct physical help with weight-bearing support at least three times a week, but not all

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<sup>12</sup> Testimony of Ms. J.

<sup>13</sup> 7 AAC 125.010(a).

<sup>14</sup> 7 AAC 125.020(b).

<sup>15</sup> 7 AAC 125.024(1).

<sup>16</sup> The July 29, 2009 version of the CAT has been adopted by reference in 7 AAC 160(d)(6). Therefore, the definitions in the CAT have the same effect as a regulation.

<sup>17</sup> Exhibit E6.

<sup>18</sup> 7 AAC 125.020(a)(1); Exhibit E6.

of the time.<sup>19</sup> Full assistance means the recipient has to rely entirely on the caretaker to perform the activity.<sup>20</sup>

The division may change the number of hours of allotted PCA services if there has been a material change in the recipient's condition.<sup>21</sup> When SDS wishes to reduce the amount of allotted time, SDS has the burden of proving a change justifying that reduction.<sup>22</sup> When the recipient is seeking additional time for services, the recipient has the burden of showing a change that justifies the requested increase.<sup>23</sup>

***B. Issues in Dispute***

Originally, Mr. C contested the denial of increased services for three ADLS: Transfers, Locomotion, and Toileting. Prior to the hearing the parties were able to reach a resolution as to two of the issues in dispute. SDS had approved time for limited assistance for 42 transfers each week. As part of the resolution, Mr. C agreed to this level of service for transfers. SDS had also approved limited assistance with toileting. SDS agreed to increase the frequency of that service to 42 times a week. This agreement was placed on the record at the beginning of the hearing. Based on this agreement, the only remaining issue to be resolved at the hearing was whether Mr. C should receive physical assistance with locomotion.

One issue that was not addressed in reaching the partial resolution was the effective date of that resolution. The parties asked for a status conference the day after the hearing was held, but the undersigned ALJ was not available.<sup>24</sup> The parties did go on the record with ALJ Pederson, but he declined to rule on the effective date.

By regulation, any change in the service level authorization does not take effect until it is authorized.<sup>25</sup> This implies that the change does take effect at the time it is authorized, and not at some unspecified later date. Accordingly, in the absence of an agreement to the contrary, the effective date of the change is the date the agreement between the parties is authorized by SDS. In this case, the agreement between the parties only resolved some of the disputed issues. However, SDS did officially authorize the increase in toileting services. That increase was effective as of June 29, 2015.

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<sup>19</sup> 7 AAC 125.020(a)(2); Exhibit E6.

<sup>20</sup> 7 AAC 125.020(a)(3); Exhibit E6. Bathing and the IADLs have their own assistance level definitions.

<sup>21</sup> 7 AAC 125.026(a).

<sup>22</sup> 7 AAC 49.135.

<sup>23</sup> *Id.*

<sup>24</sup> The undersigned ALJ has listened to the recording of that status conference.

<sup>25</sup> 7 AAC 125.024(d).

**C. Locomotion**

Locomotion refers to the manner in which a person moves within his or her own room or other areas on the same floor.<sup>26</sup> It does not, however, include the time spent walking to or from the toilet, as that time is included as part of the toileting ADL.<sup>27</sup> As discussed above, Mr. C does need assistance moving between rooms. In addition to the time spent changing location to use the toilet, it is reasonable for Mr. C to change locations three times during the day.

**IV. Conclusion**

The only issue in dispute for this hearing was whether Mr. C needs limited assistance with locomotion. The evidence shows that he does need that assistance. SDS should adjust his service level authorization to include limited assistance with locomotion three times each day for a total of 21 times each week. This change is in addition to the other changes previously authorized by SDS.

Dated this 9<sup>th</sup> day of July, 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 23<sup>rd</sup> day of July, 2015.

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

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

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<sup>26</sup> Exhibit E7.  
<sup>27</sup> 7 AAC 125.030(b)(6).