

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

In the Matter of)	
)	
N K)	OAH No. 15-0760-MDS
_____)	Agency No.

DECISION

I. Introduction

N K receives Personal Care Assistance (“PCA”) services that are paid for by Medicaid. He submitted a request to amend his PCA service level. The Division of Senior and Disabilities Services (“Division”) denied that request on May 28, 2015.¹ Mr. K contested the denial and requested a hearing.

A hearing was held on August 6, 2015. Mr. K appeared in person, accompanied by his personal care assistant E P and PCA agency representative U Z. The Division was represented by fair hearing representative Darcie Shaffer. Health program manager Angelika Fey-Merritt and nurse assessor Angela Hanley testified for the Division.

Based on the evidence in the record, the Division’s decision to deny the amendment request is affirmed.

II. Facts

Mr. K is 44 years old. He has multiple medical diagnoses and symptoms. For purposes of this hearing, the relevant medical issues are his general weakness, poor balance, cardiac problems, cerebral palsy, and seizures.²

Mr. K was most recently assessed for PCA services on November 6, 2014.³ Based on that assessment, he was authorized to receive 22.75 hours of PCA services. On May 15, 2015, Mr. K submitted an Amendment to Service Plan request.⁴ In this request Mr. K asked for changes in services for transfers, locomotion, and walking exercises. Mr. K submitted a letter from his physician, a Verification of Diagnosis, a Prescribed Task Form with exercise

¹ Exhibit D.
² See Exhibit E; testimony of Mr. K; testimony of Ms. P.
³ Exhibit E.
⁴ Exhibit F.

descriptions, medical records from April of 2015, an activity diary, and the results of a nerve conduction study from December 2014.⁵

During the hearing, Mr. K and Ms. P testified about changes in his medical condition since May of 2015. They stated that he has had adjustments to his medications which have led to increased difficulties with balance and his ability to transfer and walk without assistance. He has also had an increase in the number of scheduled medical appointments.

At the hearing, the parties confirmed that the three issues in dispute were locomotion, transfers, and prescribed exercises.⁶

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[.7]

The Division uses the CAT to help it assess the level of assistance needed.⁸ The amount of time allotted for needed assistance is determined by the Personal Care Assistance Service Level Computation chart.⁹ 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.

The different levels of assistance with ADLs are defined by regulation and in the CAT.¹⁰ “Supervision” is defined as oversight, encouragement, or cueing three or more times a week, with physical assistance no more than two times a week.¹¹ “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.¹² “Extensive assistance” is defined as requiring direct physical help with weight-bearing support at least three times a week, or full

⁵ Exhibit F.

⁶ On August 3, 2015, the Division submitted a letter signed by Mr. K’s physical therapist. This letter was sent by the Division to Mr. K’s PCA agency representative, but not to Mr. K. Because Mr. K did not appoint the agency representative as his legal representative in this hearing, the document was not properly served on the opposing party. The Division is reminded to, in the future, always serve the opposing party or their duly appointed legal representative with documents that are filed with the Office of Administrative Hearings.

⁷ 7 AAC 125.010(a).

⁸ 7 AAC 125.020(b).

⁹ 7 AAC 125.024(1).

¹⁰ 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.

¹¹ Exhibit E.

¹² 7 AAC 125.020(a)(1); Exhibit E.

assistance without any involvement by the recipient at least three times a week, but not all of the time.¹³ “Total dependence” means the recipient has to rely entirely on the caretaker to perform the activity.¹⁴

The Division may change the number of hours of allotted PCA services if there has been a material change in the recipient’s condition.¹⁵ A material change means that the recipient’s medical condition has changed, or his living conditions have changed.¹⁶ When the Division wishes to reduce the amount of allotted time, it has the burden of proving a change of condition justifying that reduction by a preponderance of the evidence. When a recipient requests an increase in services, the recipient has the burden of proof.¹⁷

B. Locomotion

There is no dispute that Mr. K needs assistance with locomotion.¹⁸ Based on the November 2014 assessment, Mr. K was authorized limited assistance with locomotion 21 times a week, extensive assistance with multi-level locomotion 14 times a week, and extensive assistance to access medical appointments four times a week. Thus, he is currently authorized to receive locomotion assistance 39 times each week.¹⁹

Mr. K’s amendment request asked for assistance with locomotion 35 times a week, but did not specify whether he was asking for more assistance with locomotion in the home, going up and down stairs, or to access medical appointments.²⁰ He stated that his medical conditions are getting worse, and that he has difficulty moving around.²¹ Mr. K’s physician stated:

He has been seeing neurologists who have been increasing his medications to decrease (but not eliminate) his seizure/pseudoseizure activity, but the increase in the medications also worsens Mr. K’s balance and strength and increases his risk

¹³ 7 AAC 125.020(a)(2); Exhibit E.

¹⁴ 7 AAC 125.020(a)(3); Exhibit E. Bathing and the IADLs have their own assistance level definitions.

¹⁵ 7 AAC 125.026(a).

¹⁶ 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).

¹⁷ 7 AAC 49.135.

¹⁸ Exhibit E9; testimony of Mr. K; testimony of Ms. P; testimony of Ms. Hanley.

¹⁹ Service Level Authorization chart submitted by SDS at the hearing.

²⁰ “35” was written in the column asking about the requested number of locomotion assists per day. Ms. Fay-Merritt interpreted that as requesting assistance 35 times per week because many people are confused as to how to fill out the form.

²¹ Exhibit F1.

of falling. I feel he would benefit from additional assistance during the day to allow him to have all of his needs met.^[22]

This letter was faxed on April 24, 2015, and it is evidence of increased difficulties since the November assessment. However, neither this letter nor the other medical documents submitted with the amendment request indicate the amount of additional assistance Mr. K might need. In addition, the hearing testimony did not help clarify this question.

Mr. K testified that he had trouble with his balance, and that he particularly needs help going up and down stairs. Ms. P noted that Mr. K was particularly weak in the morning, and needed more help then. Neither testified, however, about how often Mr. K needs hands-on physical assistance with locomotion, or that in May he needed hands-on assistance more than 39 times each week.²³ Based on the absence of evidence regarding the amount of additional assistance Mr. K may need, he did not meet his burden of showing that the Division was wrong to deny an increase in PCA services for locomotion.

C. Transfers

It is also undisputed that Mr. K needs extensive assistance with transfers.²⁴ He was authorized to receive extensive assistance with this ADL 14 times each week.²⁵ During the assessment, Ms. Hanley observed Mr. K almost fall off his chair a couple of times, and observed the PCA using weight bearing support during transfers.²⁶ As with locomotion, however, there was no testimony concerning how often Mr. K needs additional hands-on physical assistance to transfer. Therefore, Mr. K did not meet his burden of showing a need for an increase in PCA services for transfers.

D. Prescribed Tasks

The PCA program will pay for walking exercises and simple exercises prescribed by a licensed physician, physician assistant, or advanced nurse practitioner.²⁷ When the

²² Exhibit F3.

²³ Mr. K did testify that he had three to four medical appointments each week. The current service level authorization provides for assistance four times each week with locomotion to access medical appointments.

²⁴ Exhibit E8; testimony of Mr. K; testimony of Ms. P; testimony of Ms. Hanley.

²⁵ Service Level Authorization chart.

²⁶ Exhibit E8.

²⁷ 7 AAC 125.030(b)(3)(B).

prescribed simple exercise is a range-of-motion or stretching exercise, the PCA program will only pay for services if they are provided through a personal care agency.²⁸

Mr. K submitted a prescribed task form (PTF) prescribing a series of exercises.²⁹ The Division agrees that these exercises are medically appropriate. However, the request was denied for several, independent reasons.

The PTF contains different spaces for prescribing passive range of motion exercises and walking exercises. Mr. K's physician filled in the space for prescribing a walking exercise. Ms. Fay-Merritt testified that the exercises prescribed do not meet the definition of a walking exercise. However, the regulations authorize "walking and simple exercises."³⁰ There is no place on the PTF to prescribe a simple exercise that is neither a walking exercise nor passive range of motion exercise. The Division should not deny a prescription for a simple exercise simply because it is prescribed in the wrong place on the PTF, especially since there is no designated place for those exercises.

Ms. Fay-Merritt also testified that some of the prescribed exercises were range-of-motion exercises, but were not "passive" range-of-motion exercises. She explained that a passive range-of-motion exercise is one where the assistant moves the limb for the recipient.

Nothing in 7 AAC 125.030 limits prescribed range-of-motion exercises to only passive exercises. Instead, as with most PCA services, the question is whether the recipient needs hands-on assistance to complete the exercise. If a recipient needs help with balance, or other types of physical assistance to complete an exercise, then the prescribed task may be approved even if it is not a passive exercise.

While the prescribed exercises are medically appropriate and appear to be approvable under 7 AAC 125.030, there were two additional reasons why this particular PTF could not be approved. Mr. K's physician indicated that the exercises should be performed twice a day, but did not indicate how many days per week. Some exercise routines are performed daily, while others are performed less often. The Division must assign a weekly time value to each activity, and cannot do so if it doesn't know how often the activity occurs. In addition, the duration of the exercise was listed as 30–40 minutes. The Division authorizes specific amounts of time for each PCA service, and cannot authorize a range of time.

²⁸ 7 AAC 125.030(e).

²⁹ Exhibit F5.

³⁰ 7 AAC 125.030(b)(3)(B) (emphasis added).

Finally, there is no indication in the record that Mr. K needs hands-on assistance to complete these exercises. He testified that he likes to have his PCA present when he does the exercise in case he has a seizure, but that is not hands-on assistance. Without some evidence that he needs some form of physical support, the Division cannot approve these exercises.

Based on the latter two factors discussed above, Mr. K did not meet his burden of proving that the Division erred in denying time for these exercises.

IV. Conclusion

Based on his physician's letter, Mr. K's medical condition may have changed and he may need more assistance with locomotion and transfers. However, it is not possible to determine from the evidence in the record how much additional assistance is needed, if any. In addition, while the prescribed exercises are medically appropriate, Mr. K has not shown how much time is needed for those exercises or that he needs physical assistance to complete them. The Division's denial of his amendment request is AFFIRMED.

Dated this 12th day of October, 2015.

Signed

Andrew M. Lebo

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 27th day of October, 2015.

By: *Signed*

Name: Andrew M. Lebo

Title: Administrative Law Judge

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