

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

In the Matter of	)	
	)	
B F	)	OAH No. 15-0778-MDS
_____	)	Agency No.

**DECISION**

**I. Introduction**

At issue in this case is whether B F has the cognitive capacity to direct his own Personal Care Assistant (PCA) services (consumer directed) or whether a Division of Senior and Disabilities Services (division) approved agency will direct his PCA services (agency directed). The evidence presented at hearing is sufficient to support the division's decision.<sup>1</sup> This decision does not preclude Mr. F from moving to a consumer directed PCA service if he has the cognitive capacity to direct his own services or if he has a power of attorney (POA).

**II. Facts**

The division oversees a Medicaid program that provides PCA services to eligible recipients. When assessing eligibility, the division considers whether a person has the cognitive capacity to direct their own PCA services or whether the person requires oversight. The oversight is provided either through a division approved provider or through the appointment of a POA.

Mr. F is eligible to receive PCA services. The division's assessor, Mary Tanaka, R.N., assessed Mr. F twice. The first assessment interview occurred on January 21, 2014 and the second assessment interview occurred on April 15, 2015. The January assessment interview found Mr. F could not recall the season, but he was cognitively capable to direct his own PCA services. The April assessment interview concluded that he lacked the cognitive capacity to direct his own services. The assessment interview was recorded on the division's Consumer Assessment Tool (CAT).

Ms. Tanaka scored Mr. F as having both long and short term memory problems.<sup>2</sup> She found his cognitive skills for daily decision making to be moderately impaired.<sup>3</sup> Mr. F had

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<sup>1</sup> Post hearing, on August 19, 2015, the division submitted additional documents. It is unclear why these documents were submitted after the record closed or whether the documents and the accompanying communication were served upon Mr. F. If they were not served upon Mr. F, the division should serve them immediately to avoid *ex parte* contact. The documents do not alter the decision in this matter because the information does not indicate that Mr. F withdrew his request for hearing.

<sup>2</sup> Exh. E16.

<sup>3</sup> Exh. E16.

difficulty remembering and using information, could not follow written instructions, and required direction from others more than four times a day.<sup>4</sup> He could get lost when out walking, and was able to carry out only simple conversations.<sup>5</sup>

Ms. Tanaka testified regarding her recollection of the April interview. She stated that Mr. F was not “coherent.” Mr. F was unable to answer questions regarding what season it was, point to his bedroom, and he had his medications confused.<sup>6</sup> Ms. Tanaka described how Mr. F rambled and could not remember what he had eaten. She could not explain the dramatic change in Mr. F.

As a result of Ms. Tanaka’s observations, there was concern over whether Mr. F would be able to direct his own PCA services. To address that concern the division sent Mr. F’s doctor, C G, the division’s Cognitive Capacity Letter.<sup>7</sup>

The Cognitive Capacity Letter outlines the specific responsibilities of the recipient in a consumer directed PCA program. In general “it is the patient’s responsibility to schedule, train and supervise the personal care assistant.”<sup>8</sup> The letter then asks the physician to “identify whether you believe the patient is cognitively capable of managing the above outlined requirements to be part of the consumer-directed personal care attendant program.”<sup>9</sup> Dr. G signed the letter with an “X” next to the option stating that “NO, the consumer is not cognitively capable to manage the requirements of the consumer directed personal care attendant program.”<sup>10</sup>

Based on Ms. Tanaka’s observations and Dr. G’s letter, the division concluded that Mr. F lacked the decision making and financial management skills to direct his own PCA services. Mr. F was informed that he could receive services through an agency based PCA provider or he could receive consumer based PCA services if he appoints a POA. Mr. F declined and insisted he could direct his own services.

Mr. F presented the testimony of his PCA agency representative, U Z, R.N. She was present during the April assessment and heard Ms. Tanaka testify. Ms. Z was present with Mr. F throughout the hearing. She confirmed that Ms. Tanaka’s testimony was an accurate representation of Mr. F’s condition at the time of the assessment interview. She also agreed with Dr. G’s letter. Ms. Z does not believe that Mr. F is cognitively capable of directing his own PCA services

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<sup>4</sup> Exh. E17.

<sup>5</sup> Exh. E17.

<sup>6</sup> Tanaka Testimony.

<sup>7</sup> Exh. F8.

<sup>8</sup> Exh. F8.

<sup>9</sup> Exh. F8.

<sup>10</sup> Exh. F8.

### III. Discussion

A PCA recipient receives PCA services through either a consumer directed program or an agency based program.<sup>11</sup> The only difference between the two is who manages the PCA services. In an agency based program, a division approved agency is responsible for the scheduling, training, and supervision of the PCA and in the consumer directed program, the recipient schedules, trains, and supervises the PCA.<sup>12</sup>

If a recipient is found to be cognitively incapable of managing the recipients own care as shown in the assessment under 7 AAC 125.020, the recipient may receive personal care services from an agency –based program only. To receive or continue receiving personal care services from a consumer-directed program, a recipient must obtain a legal representative or submit, on a form provided by the department, documentation from a licensed medical provider stating that the recipient is able to meet the requirements for managing the recipient’s own care.

The CAT is part of the assessment process under 7 AAC 125.020. The CAT looks at four areas regarding cognitive capacity to personally direct PCA services:<sup>13</sup>

- 1) Decision Making Skills (found at CAT § C.3)
- 2) Making Self Understood (found at CAT § I.3)
- 3) Ability to Understand Others (found at CAT § I.4)
- 4) Managing Finances (found at CAT § R.2)
  - a. Self Performance
  - b. Support

Mr. F was found lacking in Decision Making Skills and Managing Finances-Support. His score for Decision Making was 2 (“moderately impaired – decisions poor, cues/supervision required”) and a 1 for Managing Finances (independent with difficulty/supervision cuing provided).<sup>14</sup> Per the CAT, Mr. F would need to score a 0 or 1 in Decision Making skills and a 0 or 2 in Managing Finances, Support. Mr. F’s scores do not indicate that he has the ability to self-direct his PCA services.

The scores assigned are supported by the testimony of Ms. Tanaka, Ms. Z and Dr. G’s letter. Both Ms. Tanaka and Ms. Z observed Mr. F to be incoherent and unable to recall recent events or identify his surroundings. It is important to note that the scores assigned do not

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<sup>11</sup> 7 AAC 125.140E.

<sup>12</sup> 7 AAC 125.190(2) and (3); *See generally* 7 AAC 125.140 (Consumer-Directed Personal Care Program; Recipient Requirements); 7 AAC 125.150 (Agency- Based Personal Care Program; Personal Care Agencies); and 7 AAC 125.160 (Agency Based Program; Personal Care Assistance Education and Training Requirements).

<sup>13</sup> Exh. E 34.

<sup>14</sup> Exhs. E18 and E29.

consider Mr. F to be unable to perform these tasks, but rather that he requires support and supervision.

Mr. F's testimony focused on the difference between the January and April assessment. The contrast between the two assessments gives rise to the question as to what caused the dramatic change in Mr. F's cognitive abilities, but that is not the issue here. Rather, the issue is whether or not Mr. F can manage his own PCA services. The evidence establishes that he cannot.

#### **IV. Conclusion**

At this time, Mr. F is not cognitively capable of directing his own PCA program. If his cognitive capacity changes and he wishes to direct his own PCA services, he should submit a change of information along with supporting documentation to amend his plan. However, until that time, Mr. F is unable to take responsibility for managing this own PCA services. The division's determination is affirmed.

DATED: August 31, 2015.

By: Signed  
Rebecca L. Pauli  
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 15<sup>th</sup> day of September, 2015.

By: Signed  
Name: Cheryl Mandala  
Title: Administrative Law Judge

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