

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

In the Matter of)
)
 S T) OAH No. 15-0944-MDS
) Agency No.
_____)

DECISION

I. Introduction

S T applied to receive Personal Care Assistance (PCA) services. Senior and Disabilities Services (SDS) approved his application and authorized 3.25 hours of services each week. Mr. T appealed, arguing that he should be authorized for more hours.

A hearing was held on August 20, 2015. Mr. T was represented by his wife, B T, who is his legal guardian. Ms. T was assisted by Mr. T's care coordinator, Q J. SDS was represented by a lay advocate, Laura Baldwin.

Based on the evidence presented, SDS' service level authorization should be increased, though not to the extent requested by Mr. T.

II. Facts

Mr. T was evaluated for services by Registered Nurse Natasha Fromm on June 30, 2015.¹ At that time, he was 53 years old.² In 2014, Mr. T had suffered from a heart attack, which was followed by a stroke.³ He was released from the hospital in May of 2015.⁴

Mr. and Mrs. T live in the village of No Name.⁵ Their house does not have a shower or laundry facilities. Instead, they use the village washeteria, which is a 20-minute walk away from their home in good weather.⁶

III. Discussion

A. *The PCA Program*

The purpose of the PCA program

¹ Exhibit E.
² Exhibit E1.
³ Exhibit E3; Fromm testimony.
⁴ Exhibit E3.
⁵ Mrs. T Testimony.
⁶ *Id.*

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 recipient⁷

SDS uses the Consumer Assessment Tool (CAT) to help 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. 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.¹⁰ 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.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 assistance without any involvement from 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 To receive PCA time for ADLs, the applicant must have a performance code of at least 2 (limited assistance).¹⁵

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.¹⁶ The support code describes whether the support is in the form of

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 E6.

¹² 7 AAC 125.020(a)(1); Exhibit E6.

¹³ 7 AAC 125.020(a)(2); Exhibit E6.

¹⁴ 7 AAC 125.020(a)(3); Exhibit E6.

¹⁵ Exhibit B34 (Service Level Computation chart).

¹⁶ Exhibit E26.

supervision or cueing, set up help, physical assistance, or total performance by others.¹⁷ To 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).¹⁸

This case involves a request for increased benefits. Accordingly, Mr. T has the burden of showing he was eligible for those increased PCA services.¹⁹ Because SDS notified Mr. T of its decision on July 9, 2015, his condition on that date is used when determining whether he is eligible for the amount of services requested.²⁰ Medical records and other evidence of his condition after July 9 would only be relevant if it helped explain his functional abilities as of July 9, 2015.

B. Mr. T's PCA Authorization

SDS authorized 3.5 hours per week of PCA services. This consists of 67.5 minutes per week for assistance with bathing, and 126 minutes per week for assistance with toileting.²¹

C. Areas in Dispute

Mr. T, through his wife, argued that more time should be allowed for bathing and toileting. They also disputed several other areas where SDS did not authorize any time. Each disputed activity is discussed below.

1. IADLS

No time was authorized for assistance with IADLs. Ms. T was concerned about how her husband would be able to manage meals, shopping, and other household tasks when she returns to work. While her concerns are reasonable, the PCA program has specific rules which prevent SDS from authorizing time for these activities. By regulation, the PCA program does not pay for any IADL if that activity is provided by the recipient's spouse.²² This regulation has previously been interpreted to exclude services for any IADL if the recipient lives with a spouse who is capable of performing that service.²³

¹⁷ *Id.*

¹⁸ Exhibit B34.

¹⁹ 7 AAC 49.135.

²⁰ 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>.

²¹ Exhibit D6.

²² 7 AAC 125.040(a)(13)(B).

²³ *In re G H*, OAH No. 13-1327-MDS (Commissioner of Health and Social Services 2013), page 3. Available at <http://aws.state.ak.us/officeofadminhearings/Documents/MDS/PCA/MDS131327.pdf>.

2. Transfers

Transferring is the act of moving between surfaces, such as getting up out of a bed or chair.²⁴ Mr. T was scored as needing supervision only, and therefore was not allowed any time for physical assistance with transfers.²⁵ In her written statement, Ms. T said that because of his poor balance and coordination, Mr. T needs limited assistance (a score of 2) about eight times a week. Mr. T qualifies for limited assistance with transfers if he needs some form of physical assistance at least three times a week.²⁶ Ms. T testified that her husband leans on a chair or table when he gets out of bed or gets up from a chair. She did not describe a need to guide him or steady him when he transfers. If Mr. T's need for assistance has increased – for transfers or any other ADL – that increased need can be addressed by submitting a change of information. However, Mr. T has not provided sufficient evidence to show that he needed limited assistance with transfers as of July 9, 2015.

3. Locomotion

Mr. T was scored as needing supervision with locomotion.²⁷ Mr. T did not claim a need for physical assistance with locomotion in the home, but did ask for time spent walking to and from the washeteria where he takes his showers.

PCA services may be authorized for locomotion (walking) within one's own home and to medical or dental appointments.²⁸ If Mr. T needed limited assistance to walk to a shower within his own home, he would be authorized five minutes of PCA time for each time he walked to the shower. In this case, no time was awarded for walking to the shower because the shower is not within Mr. T's home.

As pointed out during the hearing, living in No Name is different than living in a city or even in a more developed rural area. Mr. T's shower is located 20 minutes from his home. On a windy or stormy day, it takes longer to walk to the shower.²⁹ Although the regulations recognize the importance of bathing as an activity of daily living, the Service Level Computation chart (Exhibit B44) does not allow for additional time when the shower is not in the home. Unless the

²⁴ Exhibit E6.

²⁵ *Id.*

²⁶ *Id.*

²⁷ Exhibit E7.

²⁸ 7 AAC 125.030(b)(3).

²⁹ Ms. T testimony.

current regulations are changed, SDS may not award time for walking to the washeteria to take a shower.

4. *Dressing*

Mr. T was originally not provided with any PCA services to assist with dressing. Prior to the hearing, the parties reached an agreement that he needs limited assistance 14 times a week for dressing. Accordingly, the service level authorization should be increased to provide this additional time.

5. *Toileting*

The ADL of toileting includes how one uses the toilet, transfers on and off the toilet, adjusting clothing, and cleaning after toilet use.³⁰ Mr. T was scored as needing limited assistance three times a day.³¹

According to the notes in the CAT, Mr. T needs assistance with his clothing “sometimes.”³² Mr. T was given a frequency of three times a day because he only needed this assistance some of the time.³³ Ms. T testified that, because of his stroke, Mr. T has the body of an adult, but the mind of a three-year-old. In her written statement, she requested assistance with toileting six times a day. Because this case involves an initial request for PCA services, it is Mr. T’s burden to show he needs assistance with toileting more than three times a day. He has not met that burden of proof.

6. *Bathing*

Bathing includes showering and sponge baths.³⁴ As discussed above, Mr. T showers in the washeteria about three times a week. Ms. T testified that it took about 45 minutes to shower and dress. When the time to walk to and from the shower is added to this, as well as the time waiting for a shower to be available, a trip to the washeteria for a shower can require as much as two hours.³⁵ However, regardless of how long it actually takes to shower, Mr. T can only receive the 22.5 minutes of physical assistance authorized by the Service Level Computation chart.³⁶

³⁰ Exhibit E9.

³¹ *Id.*

³² *Id.*

³³ Fromm testimony.

³⁴ 7 AAC 125.030(b)(8).

³⁵ Ms. T testimony.

³⁶ Exhibit B44.

In between showers, Mr. T receives a sponge bath. Because of his incontinence, he should have some form of a bath or shower every day. This would be in addition to any cleaning that occurred after an incident of incontinence. Mr. T was only allowed time for bathing at the washeteria. He should have been authorized time for bathing on a daily basis. His service level authorization should be adjusted to allow for bathing seven days a week.

7. *Personal Hygiene*

Mr. T was scored as needing limited assistance once a week to trim his beard. The notes in the CAT say that his wife reported “he can wash hands/face alone, he does his own hair by himself. . . . He wears dentures that he cleans by himself.”³⁷ Ms. T testified that the notes are inaccurate. She stated that she told Ms. Fromm that her husband “attempts” to do these things by himself, but he cannot actually complete the tasks. He can’t wash his own face, and he cannot clean his dentures.³⁸ He does not have the necessary coordination for his daily personal hygiene tasks.³⁹ Ms. T’s testimony was convincing. She did not exaggerate his needs in other areas, such as transfers or locomotion, when it might have been possible for her to do so if she were prone to exaggeration. The need for limited assistance with hygiene on a daily basis is consistent with the poor balance and poor coordination noted in his medical records.⁴⁰ Mr. T’s service level authorization should be adjusted to reflect a need for limited assistance with this ADL seven days a week.

8. *Medication*

PCA services may include assisting a recipient

to self-administer routine oral medication, eye drops, and skin ointments; that assistance may include reminding the recipient and placing a medication within the recipient’s reach^[41]

The CAT noted that Mr. T needs assistance with medication three times each day.⁴² However, he was not allowed any time for this activity.⁴³ Ms. T agreed that he needs assistance three times a day. He can’t open the medication container himself, and wouldn’t know which

³⁷ Exhibit E10.

³⁸ Ms. T testimony.

³⁹ *Id.*

⁴⁰ June 30, 2015 Review of Systems; October 28, 2014 Review of Systems.

⁴¹ 7 AAC 125.030(d)(1).

⁴² Exhibit E12.

⁴³ Exhibit D6.

container to open if he could.⁴⁴ Mr. T's service level authorization should be adjusted to increase time for assistance with medication three times a day, seven days a week.

IV. Conclusion

After reviewing all of the evidence, SDS should adjust Mr. T's service level authorization as discussed above.

Dated this 31st day of August, 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 15th 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.]

⁴⁴ Ms. T testimony.