

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

In the Matter of:	)	
	)	OAH No. 16-0262-MDS
K H	)	Agency No.
_____	)	

**DECISION**

**I. Introduction**

K H receives Personal Care Assistant (PCA) services. She requested that time for light meal preparation and shopping be added to her PCA service plan. The Division of Senior and Disabilities Services (Division) denied her request because Ms. H lives with her husband and he is capable of providing those services. A review of the evidence presented at hearing shows that Mr. H is capable of performing light meal preparation and shopping. As a result, the Division’s denial of Ms. H’s request to amend her PCA service plan is AFFIRMED.

**II. The PCA Service Determination Process**

The Medicaid program authorizes PCA services for the purpose of providing “physical assistance with activities of daily living (ADLs), physical assistance with instrumental activities of daily living (IADLs), and other services based on the physical condition of the recipient . . .”<sup>1</sup> “The department will not authorize personal care services for a recipient if the assessment shows that the recipient only needs assistance with supervision, cueing, and setup in order to independently perform an ADL or IADL.”<sup>2</sup> If a recipient lives with his or her spouse, that recipient cannot receive PCA services for IADLs when the spouse is capable of performing those IADLs.<sup>3</sup>

**III. Facts**

The following facts were established by a preponderance of the evidence.

---

<sup>1</sup> 7 AAC 125.010(a).

<sup>2</sup> 7 AAC 125.020(e). This regulation defines “cueing” as “daily verbal or physical guidance provided to a recipient that serves as a signal to the recipient that the recipient needs to perform an activity;” “setup” as “arranging items for use or getting items ready for use so that the recipient can independently perform an ADL or IADL;” and “supervision” as “observing and giving direction, as needed, so that the recipient can independently perform an ADL or IADL.” *Id.*

<sup>3</sup> 7 AAC 125.040(a)(13)(B).

Ms. H is 88 years old. She lives with her husband, who is also elderly.<sup>4</sup> In 2013, the Division assessed her to determine if she was eligible for PCA services. That assessment found that she was eligible for PCA services and that she required assistance with all of her IADLs (light meal preparation, main meal preparation, light housekeeping, shopping, and laundry).<sup>5</sup> During this same time period, Ms. H's husband was also eligible for PCA services. Between Ms. H and her husband, they received full PCA assistance for all IADLs, with the exception of shopping, for which they received partial assistance.<sup>6</sup>

Mr. H was reassessed in November 2014 to determine his continuing eligibility for the PCA program. That assessment found that he no longer qualified for PCA assistance. The assessment specifically found that while it was difficult for him, he was able to perform all of his IADLs with only setup assistance. His PCA services were terminated shortly thereafter in December 2014.<sup>7</sup> Mr. H reapplied for PCA services. That application was turned down in December 2015, based upon a November 2015 assessment, where he was again found to not be eligible for PCA assistance.<sup>8</sup>

In January 2016, shortly after the December 2015 denial of Mr. H's PCA application, the Division cancelled Ms. H's PCA services for light meal preparation and shopping because her husband was capable of performing those tasks.<sup>9</sup> Ms. H did not appeal the cancellation.<sup>10</sup> Instead, after the time for an appeal had run, Ms. H requested that PCA services for light meals and shopping be added back into her PCA service plan. The Division denied that request, again because her husband was capable of performing those tasks.<sup>11</sup>

Ms. H requested a hearing to challenge the denial of her request to add light meal preparation and shopping to her PCA service plan. Her hearing was held on June 10, 2016. Ms. H was represented by her designated power-of-attorney P Q, who testified on her behalf. Darcie Shaffer represented the Division, and testified on its behalf.

Mr. H's medical records from April and May 2016 show that he has prostate cancer, hypertension and chronic obstructive pulmonary disease. They also show that he is ambulatory

---

<sup>4</sup> Ex. E, p. 1.

<sup>5</sup> Ex. E, pp. 27, 32.

<sup>6</sup> Ex. H, p. 2; Ex. J, p. 9.

<sup>7</sup> Ex. J.

<sup>8</sup> Ex. K.

<sup>9</sup> Ex. H.

<sup>10</sup> Ms. Shaffer's testimony.

<sup>11</sup> Ex. D.

and do not identify any physical or mental limitations.<sup>12</sup> Mr. Q has known Mr. and Ms. H for over ten years, and holds Ms. H's power-of-attorney. He is familiar with Mr. H's functional abilities. He credibly testified that Mr. H is able to walk and stand and did not identify any functional limitations. He stated that Mr. H was able to shop, but did not drive, so he needed transportation to and from the store. He also stated that the Hs' family used to care for them, but that option is no longer available.<sup>13</sup> A registered nurse from one of the Anchorage PCA service agencies, who is not a Division employee, saw Mr. H in the fall of 2015 and observed that he was able to walk without difficulty and had an active range of motion.<sup>14</sup>

#### **IV. Discussion**

Ms. H previously received PCA services for light meal preparation and shopping in the past. These services were removed and she did not appeal that decision. Her request to add these services back to her plan is therefore treated as a request to add new services. Consequently, she has the burden of proof by a preponderance of the evidence.<sup>15</sup> She can meet this burden using any evidence on which reasonable people might rely in the conduct of serious affairs,<sup>16</sup> including such sources as written reports of firsthand evaluations of the patient. The relevant date for purposes of assessing the state of the facts is, in general, the date of the agency's decision under review.<sup>17</sup>

The undisputed facts show that Ms. H is not able to perform her IADLs herself. The evidence shows that Mr. H is capable of performing those IADLs, with the exception of driving to and from the grocery store for shopping. However, the PCA regulations specifically provide that transportation for shopping is not an allowable PCA service.<sup>18</sup> Because the PCA program does not allow someone to receive PCA services for IADLs when he or she has a capable spouse residing in the household, Ms. H is not entitled to have PCA assistance for light meal preparation and shopping added back into her PCA service plan.

---

<sup>12</sup> Exs. 5, 6.

<sup>13</sup> Mr. Q's testimony.

<sup>14</sup> Ex. I.

<sup>15</sup> 7 AAC 49.135.

<sup>16</sup> 2 AAC 64.290(a)(1).

<sup>17</sup> See 7 AAC 49.170; *In re T.C.*, OAH No. 13-0204-MDS (Commissioner of Health & Soc. Serv. 2013) (<http://aws.state.ak.us/officeofadminhearings/Documents/MDS/HCW/MDS130204.pdf>).

<sup>18</sup> 7 AAC 125.030(c)(5).

**V. Conclusion**

The Division's denial of Ms. H's request to add light meal preparation and shopping assistance added to her PCA service plan is AFFIRMED.

DATED this 20th day of June, 2016.

*Signed* \_\_\_\_\_  
Lawrence A. Pederson  
Administrative Law Judge

**Adoption**

The undersigned, by delegation from 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 6<sup>th</sup> day of July, 2016.

By: *Signed* \_\_\_\_\_  
Name: Lawrence A. Pederson  
Title/Agency: Admin. Law Judge, OAH

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