

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

In the Matter of	)	
	)	
S S	)	OAH No. 16-0605-MDS
_____	)	Agency No.

**DECISION**

**I. Introduction**

S S applied for personal care assistance Medicaid benefits from the Department of Health and Social Services, Division of Senior and Disabilities Services. The division assessed his condition and approved 6.5 hours of service a week for Mr. S. Mr. S appealed. Mr. S argues that he is entitled to personal care assistance time for transfers, locomotion, and light meal preparation. Mr. S has established that he requires personal care assistance with locomotion.

**II. Facts**

S S is 44 years old.<sup>1</sup> He had a major stroke in 2012.<sup>2</sup> Since then, he has spent time living at home with PCA services, and also in assisted living facilities with waiver services. In 2013 his mother was appointed his guardian. In March of this year, Mr. S' condition had improved sufficiently for the court to dismiss the guardianship and Mr. S resumed control of his affairs.<sup>3</sup> At the end of March, Mr. S moved out of the No Name Assisted Living facility and into the home he now shares with his partner. His partner works a two week on, two week off schedule at a job located in a remote community, so Mr. S lives by himself for two weeks at a time when his partner is at work.<sup>4</sup>

As a result of his stroke, Mr. S has spastic paralysis on the right side of his body.<sup>5</sup> Mr. S wears a brace on his right leg to prevent damage to his right foot and give him more stability when he walks.<sup>6</sup> He uses a four-pointed cane to walk.<sup>7</sup> He holds the cane in his

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<sup>1</sup> Exhibit E at 1.  
<sup>2</sup> S' Areas of disagreement letter dated May 25, 2016 at 1.  
<sup>3</sup> S Ex. 1 at 5 - 6.  
<sup>4</sup> Points of disagreement at 1.  
<sup>5</sup> S Exhibit 2 at 1 and Division Exhibit H at 4; Division Exhibit G at 4. The assessor described this as "hemiplegia." Division Exhibit E at 4.  
<sup>6</sup> Testimony of Chadwick.  
<sup>7</sup> Division Exhibit E at 7.

left hand. He swings his right leg out in a c-shape when he walks, and his gait is unsteady.<sup>8</sup> Mr. S' right arm is in a sling, which was described by the assessor as "like a bike handle attached to a rope." The bike handle-like grip is there to prevent the fingers of Mr. S' right hand from becoming contracted.<sup>9</sup>

Assessor David Chadwick assessed Mr. S in Mr. S' home using the Consumer Assessment Tool (CAT) on April 19, 2016. Based on this evaluation, the division authorized 6.5 hours of PCA services a week for Mr. S. This included time for the activities of daily living (ADLs) of dressing, bathing, and locomotion for access to medical appointments, as well as the instrumental activities of daily living of light housework, and laundry in home. Mr. S appealed.

A formal hearing of the appeal was held on July 22, 2016. At the beginning of the hearing, following an informal conference between the parties off the record, the division announced that the parties had reached an agreement on the ADLs of toilet use and personal hygiene. The division agreed to a score of 2/2 for toilet use, 14 times a week, for a total of 84 minutes. For personal hygiene, the parties agreed to a score of 2/2, once per day, seven days per week, for a total of 70 minutes. For laundry in home, the parties agreed to a score of 2/3, one time per week, for a total of 22.5 minutes. This brought the total weekly hours of PCA to 9.25. The parties were not able to come to an agreement on transfers, single and multi-level locomotion, and light meal preparation. The parties also disagreed about medication assistance and medication reminders, but Mr. S chose not to pursue those issues in this appeal.

At the hearing, Mr. S represented himself with assistance and testimony from Care Coordinator B C of No Name Care Coordination, K X of Consumer Direct Personal Care, his partner Z Y, and his personal care assistant E Y. Fair Hearing Representative and lay advocate Darcie Shaffer represented the division, and Health Program Manager David Chadwick, who conducted the assessment, testified.

### **III. Discussion**

Mr. S argues that his scores for transfers, locomotion, and light meal preparation should be higher, and that he should receive PCA time for each of those activities.<sup>10</sup>

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<sup>8</sup> Division Exhibit E at 7 and 23.

<sup>9</sup> Testimony of Chadwick.

<sup>10</sup> Letter addressing Areas of Disagreement dated May 25, 2016.

A. *Transfers*

The assessor assigned Mr. S a self-performance score of 1 for transfers, meaning Mr. S requires supervision with the activity. Specifically, supervision in this context means "[o]versight, encouragement or cueing provided 3+ times during last 7 days - or - [s]upervision plus nonweight-bearing physical assistance provided only 1 or 2 times during last 7 days."<sup>11</sup> The assessor scored the support level for Mr. S as 1, meaning that the most support provided over each 24 hour period during the last seven days was setup help only.

To qualify for PCA time for the activity of transferring, a person must have a self-performance score of at least 2.<sup>12</sup> A self-performance score of 2 corresponds to "limited assistance," which means "[p]erson highly involved in activity; received [sic] physical help in guided maneuvering of limbs, or other nonweight-bearing assistance 3+ times - or - [l]imited assistance (as just described) plus weight-bearing 1 or 2 times during last 7 days." The person must also have a support score of at least 2, where 2 corresponds to a "one-person physical assist."<sup>13</sup>

The assessor observed Mr. S move from a seated position to a standing position from a hard back chair in the kitchen by pushing off using his left hand on a cane.<sup>14</sup> He noted "[d]ifficult movement coming to standing with slow careful extension. Good stability with feet placed evenly." He also observed that Mr. S' personal care assistant was "standing close for supervision."

The situation is different when Mr. S attempts to move to a standing position when he is seated in his recliner. Mr. S reported needing assistance with getting up from the recliner, and his partner reported helping him with this task at various times throughout the week. However, the areas of disagreement letter referred to Mr. S restricting himself to "the kitchen chair or his lift recliner" when assistance is not available. Getting up from the recliner was the primary area of concern, and if Mr. S has a lift recliner, it is not clear why he still needs assistance gathering the momentum to get up from the recliner.<sup>15</sup> The areas of disagreement letter is not consistent with the hearing testimony on this point.

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<sup>11</sup> Division Exhibit E at 6.

<sup>12</sup> Division Exhibit B at 44 (Personal Care Assistance Service Level Computation Chart, revised as of March 20, 2012). This chart is adopted by reference into the program regulations at 7 AAC 160.900(d)(29).

<sup>13</sup> Division Exhibit E at 6.

<sup>14</sup> Testimony of Chadwick; Division Exhibit E at 6.

<sup>15</sup> Mr. S' partner testified that she assists Mr. S in getting out of the recliner, not on a daily basis but throughout the week.

The areas of disagreement letter and Ms. C's testimony at the hearing indicate that Mr. S is more likely to require assistance with a transfer later in the day. However, they did not establish that the assistance required would be weight-bearing, or that the assistance was actually needed three or more times a week. Getting on and off the toilet is a separate activity, already addressed under toilet use. The division has already allotted Mr. S PCA time for toilet use.

Because this case involves an initial application for PCA services (as opposed to an application for continuation of the waiver services Mr. S received while in the assisted living home), Mr. S has the burden of proof. Mr. S has not clearly demonstrated that he needs more than occasional nonweight-bearing assistance with transfers. The score of 1/1 for transfers is upheld.

*B. Locomotion*

The assessor scored Mr. S 1/1 for locomotion. A score of 2/2 is required to qualify for PCA assistance with locomotion.<sup>16</sup>

The assessor observed Mr. S walking to and from the kitchen using his four-pointed cane.<sup>17</sup> Walking becomes more difficult for Mr. S later in the day as he becomes fatigued.<sup>18</sup> Mr. S argues that he requires hands-on assistance in order to walk safely when fatigued.<sup>19</sup> His care coordinator testified that when Mr. S is having trouble with strength and endurance, Mr. S' right foot drags on the carpet as he moves around the house, and this has contributed to several falls since he has been home. She says she has seen his partner and PCA assist him in locomotion to prevent falls when he is tired and his foot is dragging. Mr. S' partner testified that she assists Mr. S in the afternoons when he is getting tired. She testified that as he walks around the house, when he swings his hip out to take a step, his foot will hit a door jamb or a chair leg. This knocks him off balance. She will have to get up and help him and assist him because his foot is hung up on an obstacle. When this happens, she will grab Mr. S to stabilize him. Sometimes, she reaches down and grabs his leg brace to move his leg around the obstruction, because Mr. S is stuck and can't move his right leg back. According to his partner, "I have to readjust his leg while I am holding him

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<sup>16</sup> Division Exhibit B at 44.

<sup>17</sup> Division Exhibit E at 7; testimony of Chadwick.

<sup>18</sup> Points of disagreement at 2, 4.

<sup>19</sup> Points of disagreement at 4.

for support." She testified that she provides this type of assistance at least four or five times a week.

Mr. S' personal care assistant, who is also his partner's daughter, testified that Mr. S' right leg does get caught and she helps him get unstuck. She does this by grabbing his leg and moving it over while he is holding onto the cane. She then assists him in walking the rest of the way to where he is going. She estimated that she does this four to five times a week.

This testimony indicates that Mr. S receives a one-person physical assist "in guided maneuvering of limbs" three or more times a week. The testimony was credible and consistent with diagnosis of spastic paralysis on Mr. S' right side, his use of arm and leg braces on his right side, and the assessor's observation of Mr. S' gait. Mr. S should be scored 2/2 for the activity of locomotion, with a frequency of five times a week.

Mr. S challenged the scoring for "locomotion multi-level" as well as locomotion. Mr. S' house does have a step up to the front door, and another step between the house and the garage.<sup>20</sup> However, his house is best described as a "single level house" rather than a "multi level house." Because it is a single level house, and the CAT assessor is instructed to "score zero if a single level house," the division correctly assigned Mr. S a score of zero for how he moves in a multi-level house.<sup>21</sup>

### *C. Light Meal Preparation*

Mr. S challenges the CAT score of 1/0 for light meal preparation. Light meal preparation is an instrumental activity of daily living (IADL) and scored differently than an ADL. The first number is the self-performance score. A self-performance score of 1 means "independent with difficulty: Person performed task, but did so with difficulty or took a great amount of time to do it."<sup>22</sup> A person who receives a self-performance score of 1 can qualify for PCA services for that IADL, but only if they also receive a support score of at least 3. A support score of 3 means a person requires physical assistance to perform the task.

The assessor discussed eating and meal preparation with Mr. S. Mr. S gets one meal a day from Meals on Wheels, and is able to open the packaging. In addition to the Meals on

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<sup>20</sup> S Exhibit 1 at 18 - 19.

<sup>21</sup> Division Exhibit E at 7.

<sup>22</sup> Division Exhibit E at 26.

Wheels meal, he eats cereal.<sup>23</sup> The assessor testified that he had seen Mr. S open the refrigerator and pick up a jug of something, possibly milk. Mr. S' care coordinator testified that Mr. S was eating cereal for two meals a day because he is able to prepare cereal without physical assistance. He has to stabilize himself by leaning against something so he can use his left hand. He is able to prepare a bowl of cereal for himself if someone has already opened the box of cereal, and loosened the cap on the jug of milk.<sup>24</sup>

Working with one hand, and needing to balance himself, Mr. S' ability to prepare light meals is limited. However, he is able to prepare light meals with set-up help, which corresponds to a support score of 2.<sup>25</sup> Mr. S should be scored 1/2 for the IADL of light meal preparation. Because Mr. S only requires set-up help with this activity, his score is not sufficient to obtain PCA time for light meal preparation.

#### **IV. Conclusion**

1. The division correctly found that Mr. S requires supervision and set up help with transfers. The transfer score of 1/1 is upheld.

2. The division's finding that Mr. S requires only supervision and set up help with locomotion is reversed. Mr. S' score for locomotion should be 2/2, five times a week.

3. Mr. S requires set up help with light meal preparation. His score for light meal preparation should be 1/2 instead of 1/0.

Dated: August 2, 2016.

*Signed* \_\_\_\_\_  
Kathryn L. Kurtz  
Administrative Law Judge

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<sup>23</sup> Division Exhibit E at 9; Testimony of Chadwick; see Division Exhibit E at 2 re: Meals on Wheels.

<sup>24</sup> Testimony of C.

<sup>25</sup> Division Exhibit E at 26.

## Adoption

The undersigned by delegation from the Commissioner of Health and Social Services, 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 17<sup>th</sup> day of August, 2016.

By: Signed  
Signature  
Kathryn Kurtz  
Name  
Administrative Law Judge  
Title

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