

The PCA program “will pay” for certain identified personal care services in accordance with a recipient’s service level authorization.⁵ The identified services include the preparation of both main and light meals.⁶ Light meal preparation is defined as:

the preparation, serving, and cleanup in the recipient’s home of any meal that is essential to meet the health needs of the recipient and that is not the main meal of the day, subject to the limitations of (f) of this section[. ^{7]}

Main meal preparation is defined as

the preparation, serving, and cleanup in the recipient’s home of one main meal per day that is essential to meet the health needs of the recipient, subject to the limitations of (f) of this section[. ^{8]}

The limitation referred to in both of these provisions says:

The department will pay for light meal preparation and main meal preparation under (c) of this section, if the meal preparation service is

- (1) not duplicated by another meal service approved under 7 AAC 130.295 or 42 U.S.C. 3001-3058ff (Older Americans Act);
- (2) provided in the recipient’s home; and
- (3) provided in accordance with 42 U.S.C. 3030g.^[9]

It is undisputed that the Meals on Wheels meal provided to S.O. is duplicative of a meal, and undisputed that she should not receive PCA time for preparing that meal. The parties dispute whether the meal that is delivered replaces a main meal or a light meal. This distinction is important because more time is authorized for main meal preparation than for light meal preparation. In addition, S.O. is able to assist with the preparation of a light meal, but not with her main meal. If the Meals on Wheels meal replaces her main meal, then she would be authorized to receive 22.5 minutes of PCA time to prepare her two light meals. If, however, the

to prepare); *In re N U*, OAH No. 13-1439-MDS (Commissioner of Health and Social Services 2013), page 6 (ability to bend while standing is important to preparing main meal); *In re H V*, OAH No. 12-0991-MDS (Commissioner of Health and Social Services 2013), pages 8 – 9 (ability to move about kitchen, open refrigerator, and take items off refrigerator shelf is evidence of ability to assist with main meal and light meal preparation). S.O. also submitted an SDS training memo which states that any delivered meal must be counted as the main meal. Exhibit 4. The training memo is not binding because it has not been adopted as a regulation of general application.

⁵ 7 AAC 125.030(a).

⁶ 7 AAC 125.030(c)(1) & (2).

⁷ 7 AAC 125.030(c)(1) (emphasis added).

⁸ 7 AAC 125.030(c)(2).

⁹ 7 AAC 125.030(f).

Meals on Wheels meal is a replacement for one of her light meals, S.O. would be authorized to receive 36.25 minutes each day for meal preparation.¹⁰

SDS argues that the main meal is a hot, cooked meal, and that the regulations only allow one hot meal each day.¹¹ Unfortunately, the regulations are not that specific. Nothing in the regulations says that a provider cannot, for example, prepare oatmeal for breakfast, soup for lunch, and grilled chicken and vegetables for dinner. All three would be hot meals, but only one could be counted as the main meal. Alternatively, someone could eat three cold meals a day, but one would still count as the main meal.

SDS also points out that the meal provided by Meals on Wheels provides 1/3 of S.O.'s nutritional requirements. That is not helpful in distinguishing between light and main meals because the other two meals would also have to each provide 1/3 of her nutritional requirements.¹² In terms of meeting a recipient's nutritional requirements, there is no difference between a light meal and a main meal.

S.O. contends that SDS can determine which meal is the main meal by looking at which is the largest meal of the day.¹³ As SDS points out, it is not always possible to tell how many calories one gets from a list of food without knowing the quantity of food eaten.¹⁴ In addition, each meal must meet the "health needs" of the recipient.¹⁵ A high calorie meal may not be a well-balanced meal that meets the recipient's health needs. Finally, the largest, or most nutritious meal may not be the same meal from day to day or week to week. It would be extremely burdensome to calculate how often a delivered meal replaced a light meal, and how often it replaced a main meal if this changes from day to day.

Guidance for distinguishing between light and main meals can be found in the service level computation chart. More time is allowed for the preparation of the main meal than is

¹⁰ Exhibit B34, Service Level Computation Chart adopted by reference in 7 AAC 160.900(29). 11.25 minutes per light meal is authorized because S.O. can assist with light meal preparation, and 25 minutes per main meal is allowed when, as in this case, the recipient is totally dependent on someone to prepare the main meal. Significantly, these times are added for a weekly total included in S.O.'s service level authorization. The caretaker preparing or assisting with these meals may spend more or less time depending on the actual meal being prepared. The only limitation is that a caretaker may not bill the program for more than the service level authorization each week.

¹¹ Opposition at 4.

¹² Or, if one meal provided less than 1/3 of her daily requirements, the other meal would have to meet more than 1/3 of her nutritional needs so that the three meals each day satisfied 100% of her nutritional needs.

¹³ S.O.'s Brief at 4.

¹⁴ Opposition at 5, n. 25.

¹⁵ 7 AAC 125.030(c)(1) & (2).

provided to prepare each light meal.¹⁶ A reasonable inference is that the distinction between the two revolves around preparation time. The regulations allow extra time to prepare one time consuming or complex meal each day. The text in the service level computation chart also says time will be authorized for a main meal “one per day” while the light meals are allowed “up to two per day.”¹⁷ The lack of any qualifying language for the main meal – one per day is allowed – along with the limiting language for the light meals – up to two – implies that when any meal preparation time is allowed, the first meal allowed should be the main meal, while any subsequent meals, up to two per day, would be the light meals.

Under this analysis, there is no need for SDS to enquire about the nutritional value of the delivered meal unless there is a dispute as to whether the delivered meal is duplicative under 7 AAC 125.030(f). Delivered meals, such as the Meals on Wheels meal at issue here, are provided outside of the PCA program. The PCA regulations defining main meals and light meals, and allowing preparation time for those meals, do not apply to Meals on Wheels deliveries. The existence of this meal simply relieves the PCA program of paying a caretaker to prepare the meal.

IV. Conclusion

The applicable regulation, 7 AAC 130.030, says that the PCA program “will pay” for personal care assistance, including “one main meal per day.”¹⁸ Thus, when the PCA program pays for any meal preparation, one meal must be the main meal. The program may then pay for up to two light meals per day, if appropriate.¹⁹

In this case, SDS has authorized two meals per day. S.O.’s service level authorization should be adjusted to reflect time for one main meal and one light meal. The third meal provided by Meals on Wheels is a replacement for what would have been a second light meal if three meals were provided through the PCA program.

Dated this 6th day of August, 2015.

Signed

Jeffrey A. Friedman
Administrative Law Judge

¹⁶ Exhibit B34.

¹⁷ *Id.*

¹⁸ 7 AAC 130.030(a) & (c)(2).

¹⁹ 7 AAC 130.030(c)(1).

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

In the Matter of:)	
)	OAH No. 14-2319-MDS
S.O.)	Agency No. 14-SDS-0779
_____)	

Non-Adoption

The undersigned, in accordance with AS 44.64.060(e)(5), rejects, modifies or amends the interpretation or application of a statute or regulation in the decision as follows and for these reasons:

The dispute in this case is whether the meal delivered to S.O. should be considered a main meal or a light meal. I agree with the proposed decision's adoption of a bright line rule, but I adopt the Division's interpretation for that rule. For reasons of policy and regulatory interpretation, I agree with the Division's Proposal for Action and conclude that the first delivered meal is the main meal and any additional meal prepared through the PCA program would be a light meal. SDS correctly authorized time for the preparation of two meals per day, and correctly characterized both of those meals as light meals.

DATED this 16th day of September, 2015.

By: Signed

 Signature
Jared C. Kosin

 Name
 Executive Director, Office of Rate Review
Department of Health and Social Services
 Title

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]