BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL BY THE COMMISSIONER OF HEALTH

In the Matter of	)	
	)	
B. F.	)	OAH No. 25-0939-MDS
	)	

DECISION

I. Introduction

B. F. is a 50-year-old woman who lives in City A, Alaska with her father and co-guardian, S. K., and her husband and co-guardian, U. F.. Ms. F., who has Huntington's Disease, is a beneficiary of the Alaskans Living Independently Medicaid Home and Community Services Waiver. She receives both respite care and personal care services under the Community First Choice program.

Mr. K., as Ms. F.'s guardian, filed a request for amendment to the approved Plan of Care through the care coordinator, N. J., on March 4, 2025. They requested additional respite care assistance from February 27, 2025, through the end of the Plan year on June 26, 2025. The amendment was denied on March 12, 2025. Mr. K. requested a fair hearing and the matter was referred to the Office of Administrative Hearings (OAH) on April 7, 2025. After mediation was rejected, the parties were notified of a June 5, 2025, telephonic hearing date. Because one of the parties was unavailable that date, in a June 4, 2025, status conference the parties agreed to a June 6, 2025, hearing date.

The hearing convened as scheduled. Mr. K. participated telephonically with Ms. F. and N. J. present. Ms. Victoria Cobo-George represented the Division of Senior and Disability Services. Testimony was presented by Mr. K., Ms. J., Ms. Tammy Smith, a Health Program Manager 1 with the Division, and Ms. Lauren Scarmuzzi, supervisor of the Division's review unit. Previously submitted documentary evidence was admitted without objection. The record closed at the end of the hearing.

II. Facts

Ms. F. has had a long-time Personal Care Attendant (PCA), who provides regular personal care services (PCS). Her Plan of Care provides that she will receive 36 hours per week of PCS and 10 hours per week of respite care. In addition to her regular PCA, other personal care attendants were supplied by In-Home Care A in City A. Mr. K. testified that, because there

were delays getting "PCA numbers" for three attendants supplied by In-Home Care A, the three were paid from the allowed respite care hours (520 hours annually). He testified that these persons were doing PCS work, so should have been paid from PCS hours. He explained that one person (Caregiver A) was able to get her number about a week after he telephoned the Department, one was delayed about a month after she started in November (Caregiver B), and one caregiver (Caregiver C) never did get her number after she started in January. As a result, there are no more respite hours left.

Ms. J. explained that she put in a plan amendment to increase the number of respite hours, based on the explanation offered by Mr. K.. Ms. J. testified that she was not aware of how the agency (In-Home Care A) was billing respite care until sometime in February 2025, when speaking with Mr. K.. Ms. J. testified that respite care was normally used by Ms. F. for "fun stuff," cooking with Ms. F., or going for a drive. She stated that when a respite caregiver has to provide physical assistance, it doesn't mean it is PCA; it's just not the "fun time" that is normal for the family. On the other hand, Ms. J. testified that when respite care givers were doing physical assistance, such as transfers, that activity would "normally be PCA." Ms. J. testified that she got different numbers than Ms. Smith, because she used a "Sunday to Saturday" week. Ms. J. testified that she couldn't recall if she did an average of weekly use.

Ms. Smith testified that she reviewed the proposed Plan of Care amendment.[1] She testified that Ms. F. had authorized 35 hours of PCS; beginning August 30, 2024, she was authorized for 36 hours of PCS. She pulled the reports of all the time billed for PCS and respite care between the time that the Plan of Care began (June 26, 2024) and February 26, 2025, found in Exhibit E, pages 20-26. She found that during this period a total of 520 hours of respite care was billed, and a total of 975.5 PCS hours was billed.[2] She calculated a weekly average of hours of each service, but did not calculate a median.[3]

Ms. Scarmuzzi explained the regulations and conditions of participation[4] that bind the provider (In-Home Care A). She testified that while small variations can be allowed, PCS hours

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1 Ex. E at 2-18, 27-31.

2 Ex. E at 19.

3 A median value is a way of recognizing outlying data, which in this case would be those weeks when no services at all (or very few) were billed. The median value represents the midpoint, that is where half the values in a set are higher and half are lower. Of course, if the weeks with no or few services provided are discarded, the set of billed hours is more condensed, and both the median and average will differ, although likely to be much closer in value.

4 Ex. B at 16-18.

cannot be banked. She testified that the agency (In-Home Care A) was responsible for monitoring the hours and communicating with the state about any problem they were experiencing or for need for more care hours. Respite care providers, she testified, are not just responsible for "fun stuff", but to perform all the care that a regular caregiver would be responsible for, including activities of daily living and physical assistance with locomotion and hygiene. In-Home Care A, she said, was supplying caregivers to do PCA work without the "certified rendering number" for the caregiver. Waiver (respite) caregivers don't have to have a "certified rendering number". It's the agency's responsibility to send a worker with the proper certification to provide the care, it should never have happened that the agency sent someone without proper certification.

III. Discussion

Mr. K. argues that he would not have over-used respite hours but for the delay in getting PCA numbers for caregivers Caregiver A, Caregiver B, and Caregiver C. He claims paying for PCS care by using respite hours was his only way to obtain care his daughter required; essentially his claim is for equitable relief. The Division argues that the regulations bar it from reimbursing respite care hours or "switching" between programs. Under the conditions of participation, respite care may not substitute for PSC hours; that it was not proper for the care provider to do so. The Division argues the reports show that In-Home Care A billed for PCA services in the same weeks as respite hours, demonstrating that PCAs were available to provide the services. Finally, in response to the assertion that the respite workers were only there to do "fun things" with Ms. F. and not assist her with locomotion, transfers, etc., the Division states that is not true; the regulations require respite workers to be able to provide the same level of basic assistance with locomotion, transfers, hygiene, etc., as regular family caregivers.

A. Respite hours would have been exhausted notwithstanding claimed delay.

A close examination of the record of billings provided by the Division shows five periods with little or no PCS billings: August 1 to August 7, August 8 to August 14, October 24 to October 30, October 31 to November 6, and, January 2 to January 8, 2025. Disregarding these weeks, the median hours of PCS billed by In-Home Care A was 32 hours weekly (the average was 32.7 hours weekly), with a variance from 39.75 to 27.75. In the corresponding periods with little or no hours of PCS billings, the records show respite hours billed as follows: August 1 to August 7, 0 respite hours; August 8 to August 14, 0 respite hours; October 24 to October 30, 13

respite hours; October 31 to November 6, 24 respite hours; and, January 2 to January 8, 2025, 24 respite hours. On the other hand, only 3.5 hours of respite were billed December 5 to December 11, notwithstanding only 18 hours of PCS billed that week; and 0 hours of respite billed December 26 to January 1, but 28.75 hours of PCS billed.

Caregiver A billed four hours of PSC care on Friday, June 28, 2024.[5] The same day, four hours of respite care services were billed. Because Caregiver A had her PCA number *before* July, Mr. K.'s explanation for his use of respite care in July does not hold water. Instead, it appears that In-Home Care A was billing about 16 hours per week of respite care during July of 2024. A pattern emerges of low numbers (four hours or less) on weekdays and billing six hours on Sundays. In short, the usage of respite care to pay for PCA work cannot be explained by Caregiver A lacking a number; instead, it appears that an additional six hours of respite care was regularly billed on Sunday, regardless of the availability of a PCA.[6]

Turning now to the period beginning in mid-October 2024, E.S.E. S., the long-time PCA, stopped billing PCS hours on Sunday October 20, 2024, and did not resume her two-hour Sunday billings until November 10, 2024. Caregiver B first submitted a PCS bill for Friday November 8, 2024. Beginning October 9, 2024, a high eight hours of respite is charged at least twice weekly on days when no PCS is charged. This pattern stops after Sunday, November 10, 2024. However, PCS hours are also billed during this time, as can be seen in the chart on the next page.

It appears that for a short period in October and the first Monday of November, In-Home Care A billed eight respite hours on specific days when no PCS hours were billed, on days of the week that previously had PCS hours billed. This pattern lends some credence to Mr. K.'s assertion that hours that would normally be billed as PCS were billed to respite care. Mr. K. testified Caregiver B started in November, and certainly she began billing PCS hours November 8, 2024; but Mr. K. admitted that his memory for dates was uncertain. It appears that on no more than nine days in this period all the caregiving provided was billed as respite, some of which would ordinarily have been billed by Ms. S.. But, there were also eight days with no billed services at all, which is not explained by Mr. K.'s testimony. I find it plausible that that, based

[5] Ex. E at 23.

[6] E. S. , PCA, regularly billed two hours PCS on Sunday in July, and with one exception, remained within a quarter hour of two hours every Sunday until October 20, 2025.

on the records and Mr. K.'s testimony, for nine days between October 9 and November 4, some hours of services that would likely have been billed to PCS were billed to respite care. However, because the evidence provided does not include the name of the caregiver providing respite services, I cannot confidently find that the respite caregiver in October was the same Caregiver B who billed for PCS services on November 8, 2024. Given the prior pattern of use, I cannot say that *all* the care billed as respite should have been billed as PCS.

Chart of Services Oct. 9, 2024 to Nov. 10, 2024

Date	Service	Hours billed
Monday October 7, 2024	PCS (E. S.)	7
Tuesday October 8, 2024	PCS (S.)	6
Wednesday October 9, 2024	Respite	8
Thursday October 10, 2024	PCS (S.)	7
Friday October 11, 2024	Respite	8
Saturday October 12, 2024	PCS (S.)	8
Sunday October 13, 2024	PCS (S.)	2
Sunday October 13, 2024	Respite	6
Monday October 14, 2024	PCS (S.)	8
Tuesday October 15, 2024	PCS (S.)	7
Wednesday October 16, 2024	Respite	8
Thursday October 17, 2024	PCS (S.)	7
Friday October 18, 2024	Respite	8
Saturday October 19, 2024	PCS (S.)	8
Sunday October 20, 2024	Nothing billed	0
Monday October 21, 2024	PCS (S.)	8
Tuesday October 22, 2024	PCS (S.)	6.75
Wednesday October 23, 2024	Respite	8
Thursday, October 24, 2024	PCS (S.)	8
Friday, October 25, 2024	Respite	8
Saturday, October 26, 2024	Nothing billed	0
Sunday, October 27, 2024	Respite	5
Monday October 28 through Thursday October 31, 2024	Nothing billed	0
Friday, November 1, 2024	Respite	8
Saturday November 2, 2024	Respite	8
Sunday November 3, 2024	Nothing billed	0
Monday November 4, 2024	Respite	8
Tuesday November 5 through Wednesday November 6, 2024	Nothing billed	0
Thursday November 7, 2024	PCS (S.)	7
Friday November 8, 2024	PCS (Caregiver B A.)	8
Saturday November 9, 2024	PCS (S.)	7.75

Turning now to the second week of January 2025, there is a sharp increase in the number of respite hours billed.[7] Mr. K. claimed this was the result of a delay in Caregiver C, hired in January, getting a PCA number. On Monday, January 6, eight hours of respite was billed; also on Tuesday and Wednesday of that week. Similar amounts are billed on Monday and Wednesday (or Monday and Tuesday) the weeks of January 12, January 19, and January 26, 2025. At the same time, the regular Sunday usage of six hours of respite care continued. From February 2, 2025, the same pattern continued: six hours on Sunday, eight hours on Monday and Wednesday, through February 19, 2025. Then, the pattern changed; eight hours of respite was billed Thursday, February 20, 2025, 2.25 hours of respite care the following Sunday, and seven hours on Monday, February 24, 2025. Only ½ hour remained at that point, billed Wednesday. Throughout this time, PCS care continued to be billed on Tuesday, Thursday, Friday, and Saturday, with about two hours on Sunday.

In short, Mr. K.'s explanation for the exhaustion of family respite hours is only partly correct. The F. family's median use of respite hours, including all weeks from June 27, 2024, through February 26, 2025, was 16 hours per week; an unsustainable rate for a year-long plan based on 10 hours per week.[8] At the same time, the F. family under-used PCS hours; on average, (excluding weeks of little or no use), they used 32.7 hours per week, but the median usage was only 32 hours per week (or 31.25 hours including all weeks). While it is probable that for a short time in 2024, and for about six weeks in 2025, *some* care was billed as respite care that should have been billed as PCS provided by a PCA, this does not explain the general pattern of over-use of respite care. Because the pattern of use (outside the periods that Mr. K. states billing as respite was caused by a caregiver not having a "PCA number") exceeded the allowed 10 hours per week, respite hours would have been exhausted before the plan period was over.[9]

Thus, while the practice of sending a caregiver to perform PCS work without a "PCA number," and billing the PCS work to respite care, contributed to the rapid consumption of respite hours, the delay in providing PCA numbers is not shown to contribute substantially to the

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[7] Only 5.75 hours of PCS care were billed in the first week in January: on Wednesday, January 1, 2025, by Nova. Thereafter all PCS care is billed by E. S..

[8] This figure includes some periods with no hours of respite care provided. If those periods are excluded, the median over-use is 6.5 hours per week. If confined only to 2024, excluding no use periods, the average usage is 14.77 hour/week.

[9] As of January 1, 2025, 354.5 hours of respite care had been used, leaving only 165.3 hours left for at least 25 weeks, enough to cover the usual six hours on Sunday, but not much else. As it is, the hours were exhausted in eight weeks, instead of 11.2 at the earlier rate of usage (14.77 hrs/week); a three-week difference.

exhaustion of respite hours well before the plan period ended. Therefore, Mr. K.'s claim for what is essentially equitable relief fails on the facts.

B. The Division does not have authority to grant additional hours of respite care in these circumstances.

7 AAC 130.217(b) authorizes Alaska Medicaid coverage of waiver services (including respite care) to pursuant to a support plan if the Department determines that

> (1) the services specified in the support plan are sufficient to prevent institutionalization and to maintain the recipient in the community;
> (2) each service listed on the support plan
> (A) is of sufficient amount, duration, and scope to meet the needs of the recipient;
> (B) is supported by the documentation required in this section; and
> (C) cannot be provided under 7 AAC 105 - 7 AAC 160, except as a home and community-based waiver service under this chapter; and
> (3) if nursing oversight and care management services are to be provided, a nursing plan in accordance with 7 AAC 130.235 is included.

The plan may include respite care services if they are

> (1) are provided in accordance with the department's Respite Care Services Conditions of Participation, adopted by reference in 7 AAC 160.900;
> (2) are approved under 7 AAC 130.217 and 7 AAC 130.218 as part of the recipient's support plan;
> (3) receive prior authorization; and
> (4) do not exceed the maximum number of hours and days specified in (c) of this section.[10]

7 AAC 130.280(c) provides that the department will not pay for respite care services that exceed the following duration limits:

> (1) 520 hours of hourly respite care services per year, unless the department approves more hours because the lack of additional care or support would result in risk of institutionalization, and except that under this paragraph the department will not pay more than the daily rate established in 7 AAC 145.520 for respite care services provided to a recipient in the adults with physical disabilities category;
>
> (2) 14 days of daily respite care services per year; for purposes of this paragraph, daily respite care services for the time that includes the recipient's usual nightly sleep period must be provided in the recipient's home or in the types of facilities specified in (d)(1) of this section.

[10] 7 AAC 130.280(a).

Here, the department has paid for 520 hours of respite care services. The question is whether Mr. K., as Ms. F.'s guardian, has demonstrated that she requires more hours because the lack of additional care or support would result in a risk of institutionalization. This he has not shown.

The over-use of respite hours appears to be driven by the family's unwillingness to confine itself to 10 hours a week of respite care, even when PCA service hours are available. Almost every week, the agency has left hours of PCS services unused, which are for the direct care of Ms. F.. Respite care is to relieve the family unpaid care provider; Mr. K. has not produced any evidence that *he* needs additional respite time to avoid institutionalization of his daughter. Instead, he argued that he needs the equivalent of more PCS time – that is, that he used his respite care hours to fill in for PCS hours needed to care for Ms. F. and as a result he now needs more respite care hours. Respite care is not, as Mr. F. claimed, for "fun stuff," it is

> [T]o offer relief to unpaid or family home habilitation caregivers, [therefore] units of respite care services authorized in the recipient's plan of care may not be used to substitute for, or to supplement the number of personnel providing other home and community-based services or personal care services.[11]

It may be that Ms. F. requires more PCS hours so that she has sufficient assistance coverage during the week. However, that is not the request that was made in this application. Here, there is no showing of a need for more than 520 hours per year of *respite* for Ms. F.'s family unpaid caregivers; or that she would be institutionalized if such relief is not provided. Without such evidence, the applicant has failed to meet his burden of proof.

IV. Conclusion

The Division's denial of additional hours of respite care is AFFIRMED.

Dated: June 6, 2025

SIGNED
Kristin Knudsen
Administrative Law Judge

[11] Respite Care Services Conditions of Participation, Ex. B at 16.

Adoption

The undersigned, by delegation from the Commissioner of Health, 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 10th day of July, 2025.

By: SIGNED
Name: Daniel R. Phelps II
Title: Process Improvement Manager
Office of the Commissioner
Alaska Department of Health

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