
Appellant: [REDACTED]
For: Personal Care Assistance
Agency: [REDACTED]
Docket: 225843

**DECISION OF
STATE AGENCY
ON APPEAL**

On September 24, 2019, Human Services Judge Kalli Bennett held a hearing under Minnesota Statutes, section 256.045, subdivision 3.¹

The following people appeared at the hearing:

[REDACTED]

The human services judge, based on the evidence in the record and considering the arguments of the parties, recommends the following Findings of Fact, Conclusions of Law, and Order.

¹The Minnesota Department of Human Services conducts state fair hearings pursuant to Minnesota Statutes, section 256.045, subdivision 3. The Department also conducts maltreatment and disqualification hearings on behalf of the Minnesota Departments of Health and Education pursuant to Minnesota Statutes, sections 626.556, subdivision 10i; and 626.557, subdivision 9d.

STATEMENT OF ISSUES

The issue raised in this appeal is:

Whether the Agency correctly reduced Appellant's personal care services to 1.75 hours (7 units) per day, based on the current assessment of her needs.

Recommended Decision:

The human services judge recommends the Commissioner of Human Services AFFIRM the Agency's assessment of Appellant's personal care assistance at 1.75 hours (7 units) per day.

PROCEDURAL HISTORY

1. On May 3, 2019, [REDACTED] (Agency) sent [REDACTED] (Appellant) a written notice of action informing the Appellant that her personal care assistance (PCA) service hours would be reduced from 3.5 hours daily to 1.75 hours daily effective May 18, 2019.²

2. On May 16, 2019, Appellant made an oral appeal to [REDACTED].³ On June 13, 2019, a first level appeal was completed by the Agency, upholding its original determination.⁴ On August 14, 2019, Appellant filed an appeal with the State Appeals Office.⁵

3. On September 24, 2019, Human Services Judge Kalli Bennett held an evidentiary hearing on the matter by telephone conference. The judge held the record open until October 1, 2019 to receive the 2018 PCA Assessment from the Agency, and allowed the Appellant until October 8, 2019 to provide additional response if desired. The 2018 PCA Assessment was received on September 24, 2019. No additional response by the Appellant was received. On October 8, 2019, the record closed consisting of the hearing testimony and 6 exhibits.⁶

² Exhibit 3.

³ Exhibit 4.

⁴ Exhibit 4.

⁵ Exhibit A.

⁶ Exhibit A: Appeal to State Agency; Exhibit 1: State Agency Appeals Summary; Exhibit 2: Supplemental Waiver PCA Assessment and Service Plan, dated April 17, 2019; Exhibit 3: Notice of Denial of Medical Coverage, dated May 3, 2019; Exhibit 4: Correspondence from Agency to Appellant, dated June 13, 2019; Exhibit 5: Supplemental Waiver PCA Assessment and Service Plan, dated May 11, 2018.

FINDINGS OF FACT

1. **Appellant.** Appellant is a 74-year-old woman.⁷ She lives alone in a public housing high-rise.⁸ Appellant's niece is her PCA, and her daughter and son check on her.⁹ Appellant suffers from: blindness in one eye and low vision in the other eye, unspecified diastolic congestive heart failure, major depressive disorder, abnormalities of gait and mobility, dizziness and giddiness, prediabetes, incontinence, short term memory loss, and gastro-esophageal reflux disease.¹⁰ Appellant also has a history of falls.¹¹

2. **Previous Assessment.** On May 11, 2018, a public health nurse (PHN) conducted an assessment of Appellant's health status and personal care assistance needs.¹²

3. **Assessor Findings.** During the 2018 assessment, the PHN made the following findings regarding Appellant's PCA needs:

a. **Complex Health-Related Needs.** Appellant did not qualify as having a need in the area of complex health-related needs.¹³

b. **Behavior Needs.** Appellant did not qualify as having Level I behaviors.¹⁴ Appellant did qualify for additional time in the behavior area of increased vulnerability due to cognitive deficits or socially inappropriate behavior.¹⁵

c. **Activities of Daily Living.** Appellant was found dependent in four of the eight activities of daily living (ADLs): dressing, grooming, bathing, and positioning.¹⁶ The assessment found the Appellant was not dependent with eating, transfers, mobility, or toileting.¹⁷ The PHN noted the following:

(1) **Dressing.** Appellant reported needing assistance putting on gown due to decreased range of motion in her left shoulder. She also reported needing help putting on her sandals.

(2) **Grooming.** Appellant could use her right hand to brush her teeth

⁷ Exhibit A; Exhibit 2.

⁸ Exhibit 2.

⁹ Exhibit 1; Exhibit 2.

¹⁰ Exhibit A; Exhibit 2.

¹¹ Exhibit 2; Testimony of Appellant.

¹² Exhibit 5.

¹³ Exhibit 5.

¹⁴ Exhibit 5.

¹⁵ Exhibit 5.

¹⁶ Exhibit 5.

¹⁷ Exhibit 5.

and wash her face, but needed help to comb and braid her hair.

- (3) **Bathing.** Appellant needed assistance into the tub for bathing and to wash her back and lower extremities. She also needed help to shampoo her hair.
- (4) **Eating.** Appellant reported she did not need assistance with eating. Her daughter cooks and prepares food for her, but she can eat without assistance.
- (5) **Transfers.** The PHN observed Appellant get out of a chair independently.
- (6) **Mobility.** Appellant uses a cane and reported she could ambulate in her apartment and walk in halls or downstairs independently.
- (7) **Positioning.** Appellant reported she needed help to sit up in bed or position due to decreased range of motion and pain in her left shoulder. The PHN planned to order Appellant a bed rail.
- (8) **Toileting.** Appellant reported she could get on and off the toilet independently and that she can put on her own pull-ups.

4. **Calculation of PCA Time.** The Agency allocated 3.5 hours (14 units) to assist Appellant in these areas, with the following calculation:

Base units (determined by the number of dependencies in ADLs and whether Appellant has complex health-related needs or Level I behavior).	10
Home Care Rating: S	
Additional units for complex health-related needs	0
Additional units for behavior needs	2
Additional units for dependencies in critical activities of daily living: transfers	2 ¹⁸
Total Units¹⁹	14 units (3.5 hours)²⁰

¹⁸ The additional units added for a dependency in the critical ADL of transfers appears to be a discrepancy with the previous assessment. The assessor did not find Appellant dependent in transfers in the ADL section of the assessment, but then calculated additional time for transfers in the critical ADL section. See Exhibit 5.

¹⁹ A unit equals 15 minutes of PCA time.

²⁰ Exhibit 5. It was noted that this was the same amount of units/hours since the last assessment.

5. **Current Assessment.** On April 17, 2019, a PHN conducted a reassessment of the Appellant's health status and PCA needs.²¹ The PHN based the assessment upon her observations and the Appellant's reporting of whether she was able to complete a particular task.²²

6. **Assessor Findings.** During the current assessment, the PHN made the following findings regarding Appellant's PCA needs:

a. **Complex Health-Related Needs.** Appellant does not qualify as having a need in the area of complex health-related needs.²³

b. **Behavior Needs.** Appellant does not qualify as having Level I behaviors. Appellant does qualify for additional time based on increased vulnerability due to cognitive deficits or socially inappropriate behaviors.²⁴

c. **Activities of Daily Living.** Appellant qualifies as having dependencies in the ADLs of dressing, grooming, and bathing due to limited use of left arm and shoulder.²⁵ Appellant is not dependent in eating, transfers, mobility, positioning, or toileting.²⁶ The PHN noted the following:²⁷

- (1) **Dressing.** Appellant stated she needed help to put on socks and shoes, and help to put on her jacket due to right shoulder pain.
- (2) **Grooming.** Appellant needs cues to complete tasks due to short term memory loss, but can use her right hand to brush teeth and wash face. Appellant needs help to comb her hair because she can't raise her left arm above her head due to shoulder pain. She also needs hands-on assistance with nail care due to blindness in left eye and low vision in other eye.
- (3) **Bathing.** Appellant stated she needs assistance into tub for bathing and to wash her back and lower extremities. She also needs help to shampoo her hair.

²¹ Exhibit 2.

²² Exhibit 1; Exhibit 2; Testimony of Agency Representative.

²³ Exhibit 2.

²⁴ Exhibit 2.

²⁵ Exhibit 2.

²⁶ Exhibit 2.

²⁷ Exhibit 2.

- (4) **Eating.** Appellant stated her daughter cooks and prepares food, but she can eat without assistance.
- (5) **Transfers.** The PHN observed Appellant get up from a chair independently. Appellant has episodes of dizziness and sometimes needs someone to guide her.
- (6) **Mobility.** Appellant uses a cane and reported she can ambulate in her apartment and walk in halls or downstairs independently.
- (7) **Positioning.** Appellant stated the bed rail has helped and she only needs help to sit up on days she is sick.
- (8) **Toileting.** Appellant reported she is able to get on and off the toilet independently and she can put on her own pull-ups.

d. **Calculation of PCA Time.** Based on the assessment, the Agency allocated 1.75 hours (7 units) to assist Appellant in these areas, with the following calculation:

Base units (determined by the number of dependencies in ADLs and whether Appellant has complex health-related needs or Level I behavior).	5
Home Care Rating: P	
Additional units for complex health-related needs	0
Additional units for behavior needs	2
Additional units for dependencies in critical activities of daily living	0
Total Units	7 units (1.75 hours)²⁸

7. **Areas of Disagreement.** Appellant believes her condition qualifies her for additional PCA time.²⁹ The parties had disagreements in the following areas:

a. **Transfers.** The Agency argues that the PHN observed Appellant get up from a chair independently.³⁰ The PHN noted that Appellant has episodes of dizziness and sometimes needs someone to guide her.³¹ Appellant did not mention requiring assistance with

²⁸ Exhibit 2.

²⁹ Exhibit A; Testimony of Appellant.

³⁰ Exhibit 1; Exhibit 2.

³¹ Exhibit 2.

transfers in her appeal request.³² However, Appellant's daughter testified that Appellant will call sometimes because Appellant needs assistance with getting up from the toilet.³³

b. **Mobility.** The PHN documented that Appellant uses a cane and that Appellant reported she can ambulate in her apartment and walk in the halls or downstairs independently.³⁴ Appellant's appeal request states she needs help with mobility because she has "difficulty walking about 3-5 times a week due to weakness" and she has difficulty walking due to worsening dizziness and pain.³⁵ Appellant testified both legs are not "doing what they need to do" and not bearing weight as much.³⁶ Appellant testified about a fall that resulted in going to the ER.³⁷ She stated that since then, one of her legs is not bearing as much weight and so she is using a walker.³⁸

c. **Positioning.** The Agency argues that at the current assessment the Appellant reported the bed rail had helped and Appellant only needed help to sit up on days she was sick.³⁹ Appellant's appeal request states she needs help with positioning because she has had a lot of weakness due to pain, dizziness, and it is very hard to position herself.⁴⁰ Appellant testified the bed rail is not helping at all and she is not able to position herself.⁴¹ Appellant argues she is unable to move her upper body when sitting or lying down because she has metal equipment holding her shoulder in place and she doesn't have range of motion in both arms.⁴² Appellant testified she did not have the metal equipment on her shoulder at the time of the PCA assessment and started wearing it after the assessment.⁴³ When asked by the Agency if she can move in bed or if someone needs to reposition her, Appellant testified that her doctor recommended someone stay with her at night and so now she has someone sleep with her and help her "toss and turn" at night.⁴⁴ Appellant could not state when the doctor made this recommendation, but testified the doctor said she should not live in the building alone and someone should stay with her overnight due to her lack of vision, dizziness, and inability to move as much.⁴⁵ The Agency reported checking Appellant's claim history and there had been no ER or hospital claims in the last six months besides an outpatient cardiology appointment.⁴⁶ Appellant declined the opportunity to provide medical records or

³² See Exhibit A.

³³ Testimony of [REDACTED].

³⁴ Exhibit 2.

³⁵ Exhibit A.

³⁶ Testimony of Appellant.

³⁷ Testimony of Appellant.

³⁸ Testimony of Appellant.

³⁹ Exhibit 2; Testimony of Agency Representative.

⁴⁰ Exhibit A.

⁴¹ Testimony of Appellant.

⁴² Testimony of Appellant.

⁴³ Testimony of Appellant.

⁴⁴ Testimony of Appellant.

⁴⁵ Testimony of Appellant.

⁴⁶ Exhibit 1.

documentation to the human services judge.⁴⁷

d. **Toileting.** According to the assessment, Appellant reported she is able to get on and off the toilet independently, and that she can put on her own pull-ups.⁴⁸ Appellant did not mention requiring assistance with toileting in her appeal request.⁴⁹ However, Appellant testified she needs assistance with toileting.⁵⁰ Appellant's daughter testified that Appellant will call sometimes because Appellant needs assistance with getting up from the toilet.⁵¹

e. **Other.** Appellant argues she needs help with cooking, housekeeping, laundry and grocery shopping.⁵² Appellant argues the PHN did not note Appellant's condition correctly in the assessment.⁵³ Appellant argues that both of her arms are not "doing what they need to do," and her right arm is dislocated and cannot bear any weight.⁵⁴ She testified that she has equipment on her right shoulder to hold it in position, so she can't do anything with it and she is right handed.⁵⁵ She testified that her left arm is not any better.⁵⁶ She can't perform her prayers except in a chair in a seated position.⁵⁷ Appellant testified she is not bedridden and doesn't want to be in bed, and so she is pushing herself as much as she can.⁵⁸ Appellant's daughter testified that Appellant calls her for help if the PCA is not available.⁵⁹ Usually Appellant calls when she feels dizziness and Ms. [REDACTED] needs to take off work to go to Appellant's home.⁶⁰ When Ms. [REDACTED] arrives, she will get Appellant water, give her pain medication, and help Appellant into bed.⁶¹ Ms. [REDACTED] stated this has been happening a lot recently, about four times per week.⁶²

APPLICABLE LAW

1. **Jurisdiction.** The Commissioner of Human Services has jurisdiction over appeals involving matters listed in Minnesota Statutes, section 256.045, subdivision 3(a).

⁴⁷ Testimony of Appellant.

⁴⁸ Exhibit 2.

⁴⁹ See Exhibit A.

⁵⁰ Testimony of Appellant.

⁵¹ Testimony of [REDACTED] [REDACTED]

⁵² Exhibit A; Testimony of Appellant.

⁵³ Testimony of Appellant.

⁵⁴ Testimony of Appellant.

⁵⁵ Testimony of Appellant.

⁵⁶ Testimony of Appellant.

⁵⁷ Testimony of Appellant.

⁵⁸ Testimony of Appellant.

⁵⁹ Testimony of [REDACTED] [REDACTED]

⁶⁰ Testimony of [REDACTED] [REDACTED]

⁶¹ Testimony of [REDACTED] [REDACTED]

⁶² Testimony of [REDACTED] [REDACTED]

2. **Timely Appeal.** Unless federal or Minnesota law specifies a different time frame in which to file an appeal, an individual or organization specified in this section may contest the specified action by submitting a written request for a hearing to the state agency within 30 days after receiving written notice of the action or within 90 days of such written notice if the person shows good cause why the request was not submitted within the 30 day time limit.⁶³ The individual filing the appeal has the burden of proving good cause by a preponderance of the evidence.⁶⁴ In an appeal of an action taken by a Managed Care Organization, an enrollee must request a state fair hearing no later than 120 calendar days from the date of the Managed Care Organization's notice of resolution.⁶⁵ An enrollee may request a state fair hearing only after exhausting the Managed Care Organizations' appeal process.⁶⁶

3. **Burden of Proof.** In an administrative appeal the burden of proof is governed by the state or federal laws that apply to the hearing.⁶⁷ When there is no specific law, the party who seeks that a certain action be taken must prove the facts at issue by a preponderance of the evidence.⁶⁸ Therefore, in an appeal involving the termination or reduction of PCA services, the agency seeking the reduction from the previously approved services has the burden of proving why a change is justified. Likewise, if the appeal involves the denial of an application for PCA services or the denial of appellant's request for an increase over a previously approved amount of services, the appellant will have the burden of proof because the appellant is the party seeking a change in the status quo.

4. **Preponderance of the Evidence.** The "preponderance of the evidence" means, in light of the record as a whole, the evidence leads the human services judge to believe that the finding of fact is more likely true than not true.⁶⁹ The legal claims or arguments of a participant do not constitute either a finding of fact or a conclusion of law, except to the extent the human services judge adopts an argument as a finding of fact or conclusion of law.⁷⁰ The human services judge's recommended order must be based on all relevant evidence.⁷¹

5. **Qualifying for PCA Services.** Medical Assistance covers personal care assistance services in a recipient's home.⁷² To qualify for PCA services, a recipient must require assistance and be determined dependent in one activity of daily living as defined in section 256B.0659, subdivision 1, paragraph (b), or in a Level I behavior as defined in section 256B.0659,

⁶³ Minn. Stat. § 256.0451, subd. 3(i).

⁶⁴ Minn. Stat. § 256.0451, subd. 3(i).

⁶⁵ 42 C.F.R. § 438.408(f)(2).

⁶⁶ 42 C.F.R. § 438.408(f)(1).

⁶⁷ Minn. Stat. § 256.0451, subd. 17.

⁶⁸ Minn. Stat. § 256.0451, subd. 17.

⁶⁹ Minn. Stat. § 256.0451, subd. 22.

⁷⁰ Minn. Stat. § 256.0451, subd. 22.

⁷¹ Minn. Stat. § 256.045, subd. 5.

⁷² Minn. Stat. § 256B.0625, subd. 19(a).

subdivision 1, paragraph (c).⁷³

6. **Activities of Daily Living.** Activities of daily living (ADLs) are defined as dressing, grooming, bathing, transferring, mobility, positioning, eating, and toileting.⁷⁴ “Dependency in activities of daily living” means a person requires assistance to begin and complete one or more of the activities of daily living.⁷⁵ A person must be assessed as dependent in an activity of daily living based upon the person’s daily need or need on the days during the week the activity is completed for: (i) cuing and constant supervision to complete the task; or (ii) hands-on assistance to complete the task.⁷⁶

- a. “Cuing” means verbal step-by-step instructions to start and complete all steps of the task.⁷⁷
- b. “Constant supervision” means continued interaction (not episodic or intermittent) or visibility to ensure the person’s safety and task completion.⁷⁸
- c. “Hands-on assistance” means the help of another is required throughout the activity, and without the additional assistance, the activity would not be started and completed.⁷⁹

7. **Instrumental Activities of Daily Living.** Instrumental activities of daily living (IADLs) include meal planning and preparation; basic assistance with paying bills; shopping for food, clothing, and other essential items; performing household tasks integral to the personal care assistance services; communication by telephone and other media; and traveling.⁸⁰ Although IADLs are covered PCA services and should be part of a PCA care plan, additional PCA time is not provided for IADL needs.⁸¹

8. **Behaviors.** Level I behavior is defined as physical aggression towards self, others, or destruction of property that requires the immediate response of another person.⁸² A recipient qualifies as having a need for assistance due to behaviors if the recipient’s behavior requires assistance at least four times per week and shows one or more of the following

⁷³ Minn. Stat. § 256B.0625, subd. 19(a).

⁷⁴ Minn. Stat. § 256B.0659, subd. 1(b).

⁷⁵ Minn. Stat. § 256B.0659, subd. 1(f).

⁷⁶ Minn. Stat. § 256B.0659, subd. 4(b)(1).

⁷⁷ PCA Assessment and Service Plan Instructions and Guidelines issued by the Minnesota Department of Human Services, available at <https://edocs.dhs.state.mn.us/lfsrserver/Public/DHS-3244A-ENG>.

⁷⁸ PCA Assessment and Service Plan Instructions and Guidelines.

⁷⁹ PCA Assessment and Service Plan Instructions and Guidelines.

⁸⁰ Minn. Stat. § 256B.0659, subd. 1(i).

⁸¹ See Minn. Stat. §§ 256B.0659, subd. 2(a)(4), 256B.0659, subd. 7(b)(5); Minn. Stat. § 256B.0652, subd. 6(b).

⁸² Minn. Stat. § 256B.0659, subd. 1(c).

characteristics: (1) physical aggression towards self or others, or destruction of property that requires the immediate response of another person; (2) increased vulnerability due to cognitive deficits or socially inappropriate behavior; or (3) verbally aggressive and resistive to care.⁸³

9. **Complex Health-Related Needs.** During the assessment process, a recipient qualifies as having complex health-related needs if the recipient has one or more of the interventions that are ordered by a physician, specified in a personal care assistance plan, and found among a list found in section 256B.0659, subdivision 4, paragraph (c).

10. **Calculating PCA Time.** The amount of the personal care assistance services authorized must be based on the recipient's home care rating.⁸⁴ The home care rating is based on the following: (1) total number of dependencies of activities of daily living; (2) presence of complex health-related needs; and (3) presence of Level I behavior.⁸⁵ Current Minnesota law does not allow the agency to authorize additional PCA service time for cooking, meal preparation, housekeeping, laundry, or for medical needs which are not complex.⁸⁶ The methodology to determine total time for PCA services for each home care rating is based on the median paid units per day for each home care rating from fiscal year 2007 data for the PCA program.⁸⁷ Each home care rating has a base level of hours assigned.⁸⁸ Additional time is added through the assessment and identification of the following:

- a. 30 additional minutes per day for a dependency in each critical activity of daily living;⁸⁹
- b. 30 additional minutes per day for each complex health-related function; and
- c. 30 additional minutes per day for each behavior issue.⁹⁰

11. **Assessment.** An in-person assessment must occur at least annually or when there is a significant change in the recipient's condition or when there is a change in the need for person care assistance services.⁹¹

⁸³ Minn. Stat. § 256B.0659, subd. 4(d).

⁸⁴ Minn. Stat. § 256B.0652, subd. 6(b).

⁸⁵ Minn. Stat. § 256B.0652, subd. 6(b).

⁸⁶ Minn. Stat. § 256B.0659.

⁸⁷ Minn. Stat. § 256B.0652, subd. 6(c).

⁸⁸ Minn. Stat. § 256B.0652, subd. 6(c).

⁸⁹ "Critical activities of daily living" means transferring, mobility, eating, and toileting. Minn. Stat. § 256B.0659, subd. 1(e).

⁹⁰ Minn. Stat. § 256B.0652, subd. 6(c).

⁹¹ Minn. Stat. § 256B.0625, subd. 3a(a).

CONCLUSIONS OF LAW

1. This appeal is timely and the Commissioner of Human Services has jurisdiction over this appeal under Minnesota Statutes, section 256.045, subdivision 3.

2. PCA assessments are not static – a recipient’s need for services can improve with time and treatment or decline. Due to this fluctuation, at least annual reviews of the recipient’s needs are required. Assessors are qualified and disinterested experts charged with the task of performing these assessments and who perform face-to-face assessments of the recipient’s need while in the recipient’s home; as such, the views of the assessors are entitled to considerable weight. Support for the appellant’s position grows when the appellant or appellant’s witnesses appear and provide credible and detailed support for appellant’s position.

3. The preponderance of evidence submitted in this case shows that the assessment in question was properly done and is without any irregularities. Given this, along with the lack of sufficient, credible evidence to the contrary, I conclude that the PHN properly determined Appellant’s eligibility for daily personal care assistance benefits. The Appellant qualifies as having dependencies in the ADLs of dressing, grooming, and bathing. Appellant is not dependent in eating, transfers, mobility, positioning, or toileting. Appellant does not qualify as having a need in the area of complex health-related needs or Level I behaviors. Appellant does qualify for additional time based on increased vulnerability due to cognitive deficits or socially inappropriate behaviors.

a. **Transfers.** Appellant does not qualify for additional time in the area of transfers. Appellant was observed getting up from a chair by the PHN. Appellant did not dispute in her appeal request or in her testimony that she is independent in transfers. The assessment noted Appellant sometimes needs guidance because of dizziness, and Appellant’s daughter testified Appellant sometimes needs assistance getting off the toilet. Because Appellant does not need hands-on assistance with transfers on a daily basis, she does not qualify for a dependency in this area.

b. **Mobility.** Appellant does not qualify for additional time in the area of mobility. While Appellant has had past episodes of falling down, Appellant is capable of walking on her own with the use of a cane or walker. In her appeal request, Appellant asserts having difficulty walking 3-5 times a week. Because Appellant does not need hands-on assistance with mobility on a daily basis, she does not qualify for a dependency in this area.

c. **Positioning.** The dependency area of positioning is where there appears to be the greatest disagreement on whether or not Appellant qualifies for additional time. The 2018 assessment found Appellant dependent in positioning based on needing help to sit up in bed or position due to decreased range of motion and pain in the left shoulder. After the 2018 assessment, Appellant was provided with a bed rail. At the current assessment, the PHN noted

that Appellant reported the bed rail had helped and she only needed help sitting up on days she was sick. Because Appellant no longer had a daily need for hands-on assistance, the PHN found Appellant was no longer dependent in positioning. In her appeal request, Appellant states she has a lot of weakness due to pain and dizziness and it is “very hard to position” herself, so she needs assistance. At the hearing, Appellant testified that since the assessment she is unable to move her upper body when sitting or lying down because she has metal equipment holding her shoulder in place. She testified that the metal equipment on her shoulder was not there at the time of the assessment. However, the claim history provided by the Agency did not support that there had been any treatment related to Appellant’s shoulder since the assessment. Appellant also did not provide any corroborating evidence regarding the new claimed condition of the shoulder. Considerable weight is given to the assessor’s views unless the appellant provides credible and detailed support for appellant’s position. I find the preponderance of the evidence supports what the PHN documented at the assessment to be the most credible evidence of Appellant’s needs in the area of positioning. Difficulty with performing an ADL does not mean a recipient is unable to perform the ADL, and needing assistance on “sick days” does not qualify as a daily need. Therefore, I find Appellant does not qualify for additional time in the area of positioning.

d. **Toileting.** Appellant does not qualify for additional time in the area of toileting. Appellant was found independent in toileting in both the previous and current PCA assessment. Appellant made no mention of needing assistance with toileting in her appeal request. Appellant generally testified she needs assistance with toileting but provided no further information on what assistance is needed or how often. Appellant’s daughter testified that Appellant will sometimes call for assistance getting off the toilet. I find the preponderance of the evidence supports finding Appellant does not require daily hands-on assistance with toileting and therefore does not qualify for a dependency in this area.

4. While I do not doubt that Appellant would benefit from additional PCA services, the evidence does not show that Appellant’s need for such services qualify as health related needs eligible for payment with public funds. For these reasons, I recommend that the Agency’s action be affirmed. Appellant testified that her condition has changed since the assessment; however, I could not find this assertion is corroborated by the evidence in the record or that the preponderance of the evidence supports reversing the assessment findings. If Appellant’s condition has significantly changed or Appellant is able to provide evidence showing eligibility for additional services, Appellant can request a reassessment.

5. **Use of PCA Service Pending Appeal.** This decision is effective back to the date the new service agreement took effect. As such, the following applies to Appellant’s use of PCA services pending the outcome of this appeal:

a. **Consistent.** If, pending appeal, Appellant received PCA services consistent

with the amount approved in this decision, Appellant may continue to use such level of services until a change in circumstances (e.g., new assessment, end of service agreement, loss of coverage) dictates a different level of service.

b. ***More Than Approved.*** If, pending appeal, Appellant received PCA services at a level higher than approved in this decision, Appellant may be liable for the cost of such additional services received.

c. ***Less Than Approved.*** If, pending appeal, Appellant received services at a level lower than approved in this decision, Appellant will not be compensated for such unused time. Appellant may begin using the higher level of services as of the date of this decision.

RECOMMENDED ORDER

Based on all of the evidence, I recommend that the Commissioner of Human Services:

- AFFIRM the Agency's determination that Appellant was eligible for 1.75 hours (7 units) of daily PCA services.

Kalli Bennett
Human Services Judge

Date

ORDER

On behalf of the Commissioner of Human Services and for the reasons stated above, I adopt the recommended Findings of Fact, Conclusions of Law, and Recommended Order as the final decision of the Department of Human Services.

Date

CC:



FURTHER APPEAL RIGHTS

This decision is final unless you take further action.

Appellants who disagree with this decision should consider seeking legal counsel to identify further legal action. If you disagree with this decision, you may:

- **Request the appeal be reconsidered.** The request must state the reasons why you believe your appeal should be reconsidered. The request may include legal arguments and may include proposed additional evidence supporting the request. If you propose additional evidence, you must explain why the evidence was not provided at the hearing. **The request must be in writing and be made within 30 days of the date this decision was issued by the co-chief human services judge.** You can mail the request to: Appeals Division, Minnesota Department of Human Services, P.O. Box 64941, St. Paul, MN 55164-0941. You can also fax the request to (651) 431-7523. **You must send a copy of the request to the other parties.** To ensure timely processing of your request, please include the name of the human services judge assigned to your appeal and the docket number. The law that describes this process is Minnesota Statutes, section 256.0451, subdivision 24.
- **Start an appeal in the district court.** This is a separate legal proceeding that you must start **within 30 days of the date this decision was issued by the co-chief human services judge.** You start this proceeding by: 1) serving a written copy of a notice of appeal upon the Commissioner of Human Services and upon any other adverse party of record; and 2) filing the original notice and proof of service with the court administrator of the county district court. The law that describes this process is Minnesota Statutes, section 256.045, subdivision 7.⁹²

⁹² County agencies do not have the option of appealing decisions about Supplemental Nutrition Assistance Program (SNAP), Minnesota Family Investment Program (MFIP), or Diversionary Work Program (DWP) benefits to district court under 7 Code of Federal Regulations, section 273.15(q)(2), and Minnesota Statutes, section 256J.40. A prepaid health plan may not appeal this order under Minnesota Statutes, section 256.045, subdivision 7.