
Appellant: [REDACTED]
For: Personal Care Assistance (PCA)
Agency: [REDACTED] County
Docket: 240145

**DECISION OF
STATE AGENCY
ON APPEAL**

On February 3, 2021, Human Services Judge Steven S. Collins held a hearing under Minnesota Statutes, section 256.045, subdivision 3.¹

The following people appeared at the hearing:

[REDACTED], Appellant; and
[REDACTED] Language Line Somali Interpreter.

Based on the evidence in the record and arguments of the parties, the human services judge 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 10j; and 626.557, subdivision 9d.

STATEMENT OF ISSUES

The issues raised in this appeal are:

Whether the Agency's properly determined Appellant's was eligible for 1.75 hours of Personal Care Assistance ("PCA") per day.

Whether Appellant's request for more than 1.75 hours of PCA per day should be granted.

Recommended Decision:

The Agency's determination should be AFFIRMED.

Appellant's request for more than 1.75 hours of PCA per day should be DENIED.

PROCEDURAL HISTORY

1. On December 21, 2020, ██████████ County ("Agency") completed a PCA assessment and determined Appellant was eligible for 1.75 hours of PCA services per day. *Exhibit 4*. On December 24, 2020, Appellant filed an appeal requesting more PCA services per day. *Exhibit 2*.

2. On February 3, 2021, the human services judge held an evidentiary hearing on the matter by telephone conference. On February 3, 2021, the record closed consisting of the hearing testimony and four exhibits.²

FINDINGS OF FACT

1. Appellant is a 31-year-old male who has been diagnosed with back pain. *Exhibit 3*. Appellant had surgery on his back on December 17, 2020. *Id.* Appellant is recovering from his surgery and is getting better. *Testimony of Appellant*.

2. On December 21, 2020, the Agency completed a PCA assessment to determine if Appellant was eligible for PCA services. *Exhibit 4*. The assessment found Appellant was eligible for PCA services. *Id.*

3. The assessment found Appellant had no complex health related needs. *Exhibit 4*.

² Exhibit 1 – Notice of Hearing; Exhibit 2 – Appellant's request for appeal; Exhibit 3 – Appeal Summary for Long-Term Services and Supports; Exhibit 4 – PCA assessment dated December 21, 2020.

4. The assessment found Appellant had no Level 1 behaviors and was not verbally aggressive or resistive to cares. *Exhibit 4*. The assessment found Appellant had no increased vulnerability due to cognitive deficits. *Id.*

5. The assessment found Appellant was dependent in three Activities of Daily Living (“ADLs”), specifically dressing, grooming/hygiene and transfers. *Exhibit 4*. The assessment determined Appellant was dependent in one of the critical ADLs, specifically transfers. *Id.*

6. As a result of the 2020 assessment, the Agency determined Appellant had a home health care rating of “P” and authorized PCA services in the amount of 7 units, or 105 minutes (1.75 hours) per day. *Exhibit 4*.

7. Appellant has had back pain since March 2020, which he believes is related to work. *Exhibit 4*. Appellant reported during the assessment that his doctor told him “not really do much of anything especially bending.” *Id.* Appellant range of motion and grip are both within normal limits, but he has pain. *Id.* Appellant cannot lift or hold anything heavy with his hands due to the surgery. *Id.* Appellant is able to move about his residence with a cane. *Id.*

8. Appellant states he needs help with cooking, cleaning, laundry, shopping and going into the community. *Testimony of Appellant*. Appellant is able to walk slowly with a cane. *Id.* Appellant is able to position himself in his bed or in furniture. *Id.* Appellant stated he needs help transferring to the toilet but can complete toileting task on his own. *Id.*

9. Appellant states he needs four or five hours of PCA services per day. *Testimony of Appellant*.

APPLICABLE LAW

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

2. 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. *Minn. Stat. § 256.045, subd. 3(i)*. The individual filing the appeal has the burden of proving good cause by a preponderance of the evidence. *Id.*

3. In an administrative appeal, the burden of proof is governed by the state or

federal laws that apply to the hearing. *Minn. Stat. § 256.0451, subd. 17*. 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. *Minn. Stat. § 256.0451, subd. 17 and 22*. In this case, Appellant is requesting additional PCA hours above what was awarded by the Agency. Therefore, the burden is on Appellant to prove facts supporting his claim for more PCA hours. Appellant also has the burden of proving by a preponderance of the evidence that he is entitled to additional hours of homemaking services.

4. The human services judge's recommended order must be based on all relevant evidence and must not be limited to a review of the propriety of the state or county agency's action. *Minn. Stat. § 256.045, subd. 5*.

5. Medical assistance covers personal care assistance services in a recipient's home. *Minn. Stat. § 256B.0625, subd. 19a*. Effective July 1, 2011, a recipient who is determined to be dependent in one activity of daily living as defined in *Minn. Stat. § 256B.0659, subd. 1(b)*, or in a Level I behavior as defined in *Minn. Stat. § 256B.0659, subd. 1(c)* has a home care rating equivalent to no more than two units (30 minutes) per day and is not subject to the methodology to determine home care ratings under *Minn. Stat. § 256B.0652, subd. 6(c)*. *Minn. Stat. § 256B.0652, subd. 6(d)*. The amount of personal care assistance service time for a recipient who is dependent in two or more activities of daily living as defined in *Minn. Stat. § 256B.0659, subd. 1(b)*, must be determined by the recipient's home care rating, which is calculated by using the relevant home care rating methodology under the governing statute. *Minn. Stat. § 256B.0652, subd. 6(b) and 6(c)*.

6. Assessments for personal care assistance services shall be conducted by the county nurse or a certified public health nurse. *Minn. Stat. 256B.0659, Subd. 3a(a)*. 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 PCA services. *Id.*

7. Under *Minn. Stat. § 256B.0659, subd. 1(f)*, an individual is dependent in activities of daily living (ADLs) if the individual "requires assistance to begin and complete one or more activities of daily living." Under *Minn. Stat. § 256B.0659, subd. 4(b)(1)*, a person must be assessed as dependent in an activity of daily living if there is a daily need or need on the days the activity is performed for either cuing and constant supervision or hands-on assistance to complete the task. *Also see Minn. Stat. § 256B.0659, subd. 2(b)*. Critical activities of daily living are defined as the transfer, mobility, eating, and toileting ADLs. *Minn. Stat. § 256B.0659, subd. 1(e)*.

a. Cuing is construed to mean verbal step-by-step instructions to start and complete all steps of the task, while constant supervision is construed to mean continued interaction (not episodic or intermittent) and/or visibility to ensure the person's safety and task completion. *Minnesota Department of Human Services, PCA*

Assessment and Service Plan Instructions and Guidelines (03/14).

b. Hands-on assistance is construed to mean that help of another person is required throughout the activity, and while the recipient may or may not be able to participate in the activity, without the additional assistance, the ADL would not be started and completed. *Minnesota Department of Human Services, PCA Assessment and Service Plan Instructions and Guidelines (03/14).*

8. Minn. Stat. § 256B.0659, subd. 4(d) says that a person qualifies as having a need for assistance due to behaviors if her or his behavior requires assistance at least four times per week and shows one or more of the following 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.

9. The amount of PCA services authorized must be based on the recipient's home care rating ("HCR"). The HCR is based on the following: (1) total number of dependencies in activities of daily living; (2) presence of complex health-related needs; and (3) presence of Level I behavior. The methodology to determine total time for PCA services for each HCR is based on the median paid units per day for each home care rating from fiscal year 2007 data for the PCA program. Each HCR has a base level of hours assigned. Additional time is added as follows:

- 30 additional minutes per day for a dependency in each critical activity of daily living (eating, transfers, mobility, toileting);
- 30 additional minutes per day for each complex health-related function; and
- 30 additional minutes per day for each behavior issue.

Minnesota Statutes, section 256B.0652, subdivisions 6(b) and (c), and section 256B.0659, subdivision 1(e).

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. The Agency's assessment was objective, independent, detailed and it properly evaluated all of Appellant's needs.

3. Appellant has back pain and in December 2020, he had back surgery. However, Appellant is in recovery and although it is difficult for him to do certain things, he is independent in most activities of daily living. Appellant stated he needs help in preparing food, housework, laundry and other assorted daily chores, but those activities are not covered by PCA service hours.

4. Appellant testified that he needs more help than what was authorized by the Agency. However, Appellant's testimony was contradictory. He testified he needed assistance in some areas, but also stated he was improving since his back surgery. He stated during the assessment that he was independent in toileting but during the hearing, stated he was not independent in toileting. The assessment was the credible evidence presented at the hearing.

5. The credible, preponderant evidence presented at hearing supports the Agency's assessment in this case. Therefore, the Agency's determination that Appellant is entitled to 1.75 PCA hours a day should be AFFIRMED. Appellant's request for additional PCA hours should be DENIED.

RECOMMENDED ORDER

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

- AFFIRM the Agency's December 20, 2020 assessment that Appellant's daily PCA services be 1.75 hours per day.
- DENY Appellant's request for additional PCA hours.



Steven S. Collins
Human Services Judge

February 17, 2021

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.



Renee Ladd
Co-Chief Human Services Judge

February 18, 2021

Date

cc: [REDACTED], Appellant
[REDACTED] County – [REDACTED] (via email)
DHS-Disability Services Division (via email)

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 7.³

³ 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.