**Closing Statement for [Client name]’s Appeal of the Change in Authorization of Personal Care Assistance Services**

Date: [Summer 2011]

To: [Appeals Judge]

 Appeals and Regulations

From: Shawn Dean, Attorney at Law

Appellant: [Client name]

Docket No.:

PMI:

Date of action: [Summer 2011]

This is the closing statement of the appellant [Client name], who is appealing the authorization decision regarding personal care assistance services of the PCA Assessment conducted on [date] that resulted in a reduction from [amount of] hours of daily personal care assistance services.

**Appeal Issue: Timeliness**

[Client name] did not appeal the reduction of his PCA services hours within 30 days of receiving notice. But Minnesota law allows for an individual to appeal within 90 days of a termination when the individual “shows good cause why the request was not submitted within the 30-day time limit.” Minn. Stat. § 256.045, subd. 3(a)(10).

[Client name] has good cause for not appealing within the 30-day time limit for two reasons: First, [Client name] has stated that he did not receive any information about his right to appeal. Not receiving the proper notification of his right to appeal is good cause for the delay in [Client name]’s request for appeal.

Second, even had [Client name] received timely notice of his right to appeal there is a language and cultural communication barrier present. [Client name] is from [Country] and does not speak or read English very well. Had he had a clear understanding of any written materials that informed him of his right to appeal he would have submitted his appeal within 30 days after receiving notice of a reduction of his personal care assistance services hours. This language and cultural communication barrier error is clearly good cause for the delay in [Client name]’s request for appeal.

**Appeal Issue: Change in the authorization of personal care assistance services**

Personal care assistance services are authorized based on the in-person assessment conducted by a public health nurse working on behalf of the lead agency. As defined in Minn. Stat. § 256B.0659, subd. 3a, an assessment means a review and evaluation of a recipient’s need for home care services conducted in person. An in-person assessment must include, in part, documentation of health status, determination of need, evaluation of service effectiveness, identification of appropriate services, and service plan development and modification.

The PCA assessment taken of [Client name] on [assessment date] did not represent an accurate assessment of his real, daily personal care assistance services requirements. On the day of the 2011 PCA Assessment the assessor only let [Client name] speak about his personal care assistance needs despite his inability to speak and understand English very well since it is his second language, the slurred speech he exhibits as a result of his [disability], and his issues remembering things correctly also as a result of his [disability]. Not only that, but the assessor did not let his daughter, who acts as one of his primary PCAs and often speaks on his behalf, translate for him and/or supplement much more accurate information about his personal care assistance needs. As a result, the 2011 PCA Assessment was done incorrectly and represents an exchange of bad, highly inaccurate information about [Client name]’s personal care assistance needs. Each apparent change in [Client name]’s condition between the 2010 PCA Assessment (See Exhibit A) and the 2011 PCA Assessment (See Exhibit B) is a direct reflection of this inaccurate and bad exchange of information about [Client name]’s personal care needs. In actuality, [Client name]’s condition did not change between the 2010 PCA Assessment and 2011 PCA Assessment.

For service authorization beginning prior to [date], the access criteria for PCA services is a dependency in at least one activity of daily living and/or the presence of Level I behavior as defined in Minn. Stat. § 256B.0659. The final determination of the total time per day is determined though a structured assessment and time authorization process outlined in the Authorization for PCA Services.

As stated in Minn. Stat. § 256B.0652, subd. 6, the amount of personal care assistance services authorized is based on the recipient’s home care rating and determination of additional time allowed by statute based on three criteria defined in Minn. Stat. § 256B.0659:

* The total number of dependencies in activities of daily living including the critical activities of daily living: eating, mobility, toileting, and transferring
* The presence and number of complex health related needs, and
* The presence of Level I behavior and the frequency of defined behaviors.

[Client name] continues to demonstrate dependencies in the activities of daily living of [list of applicable activities] that are considered critical ADLs. The 2010 PCA Assessment accurately lists [personal care] as an ADL that [Client name] requires hands-on assistance with every day. The 2011 PCA Assessment does not include [personal care] as an ADL that [Client name] requires assistance with every day. As described above, the difference between the 2010 PCA Assessment and the 2011 PCA Assessment is that bad, inaccurate information about [Client name]’s personal care needs was exchanged. It is noted by the assessor on the 2011 PCA Assessment that [Client name] stated that he only needs help with [personal care] three times per week. This was inaccurate and was a direct result of the language and memory barrier that [Client name] faced on the day of the assessment. In fact, he requires hands-on assistance with [personal care] every day, and had his daughter been allowed to speak about his personal cares that information could have been recorded accurately. Accordingly, the ADL of [personal care] should be awarded to [Client name] on appeal because he has had no change in his condition between the 2010 and 2011 PCA Assessments and continues to require daily hands-on assistance with [personal care].

To the question of whether [Client name] has a congenital or acquired disease that creates the need for significantly increased direct hands-on assistance and interventions in 6 of 8 ADLs, the 2010 PCA Assessment accurately recorded that he does (i.e. [disability]). The 2011 PCA Assessment wrongly does not include the ADL of [personal care]. As a result, the complex health related need no longer applies to [Client name]. As we have demonstrated, [Client name] still requires daily hands-on assistance with [personal care], and thus he still has a dependency of hands-on assistance in 6 of the 8 ADLs. Therefore, [Client name] still qualifies for additional PCA time for complex health related needs.

 As was accurately reflected on the 2010 PCA Assessment, [Client name] exhibits Level I behavior as well. It notes that [Client name] is angry and has outbursts when he does not get his way 4-5 times per week. On the 2011 PCA Assessment it is noted that [Client name] has angry verbal outbursts, “yelling – no cussing,” only two times per week. This is inaccurate, as [Client name] wrongly reported that himself. [Client name]’s condition with behavioral outbursts has not changed between the 2010 and 2011 PCA Assessments, as he continues to have [list of aggression related issues] and has increased vulnerability to cognitive deficits 4-5 times per week. Had his daughter/PCA been allowed to speak to the true nature of [Client name]’s aggression it would have been recorded on the assessment accurately. Therefore, [Client name] still qualifies for the additional PCA service time for Level I behavior that he had prior to the 2011 PCA Assessment.

As we have demonstrated, [Client name]’s personal care assistance needs have not changed over the last year. He still requires extensive hands-on assistance with [personal care] and should be awarded that as an additional ADL. With [personal care] included he requires daily hands-on assistance with 6 of the 8 ADLs, so he still qualifies for additional personal care assistance time for complex health related needs. That [Client name] exhibits verbal and physical aggression towards others more than four times a week means that he should still qualify for additional personal care assistance time for exhibiting a Level I behavior as well.

Thus, according to the enclosed authorization for PCA services chart, [Client name] should still qualify for the same [amount of daily units] of PCA assistance that he was awarded on the 2010 PCA assessment. Therefore, at a minimum, [Client name] should have his PCA hours increased from [amount of hours] back to [amount of hours]. Moreover, according to witness testimony the amount of constant supervision and hands-on assistance with personal cares that he requires on a daily basis makes [Client name] a candidate for an increase of the [amount of] hours he was receiving prior to the reduction on [date].

With such a drastic difference from last year’s assessment form to this year’s the Department of Human Services should have known better than to make such a reduction to [Client name]’s PCA services hours. The system should not just accept such a stark change in condition and change of personal care assistance needs without more evidence. The burden of showing that a change in the law that results in a reduction of [Client name]’s PCA hours is on the Department of Human Services, and they have not satisfied that burden of proof. By refusing to let [Client name]’s daughter to speak accurately about the accurate level of his personal care assistance needs they might have even taken steps to ensure that incomplete information about [Client name]’s personal care needs were accepted.

In conclusion, because the 2011 PCA Assessment reflects inaccurate information about his personal care assistance needs, [Client name] should have his PCA hours increased from [amount of] hours back to [amount of] hours, as was accurately reflected on the 2010 PCA Assessment. Moreover, [Client name]’s personal cares also warrant an increase of the [amount of] hours he was receiving prior to the reduction on [date].

Exhibit A: 2010 PCA Assessment and Service Plan

Exhibit B: 2011 PCA Assessment and Service Plan