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**STATE OF ALASKA
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF PUBLIC ASSISTANCE**

In the Matter of)
)
 [REDACTED],)
)
 Claimant)
) OHA Case No. 08-FH-565
) Division Case No. [REDACTED]

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (hereinafter "Claimant") has been a recipient of Personal Care (PCA) Services. (Ex. A). On April 3, 2008, Claimant was assessed for continuing PCA services. On July 2, 2008, the Division of Senior and Disabilities Services (hereinafter "Division") sent him notice his PCA service were terminated based on the information provided in the assessment. (Ex. A). On August 1, 2007, the Claimant requested a fair hearing contesting the denial. (Ex. C). This office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to the Claimant's request, a hearing was scheduled for September 4, 2008, but was continued. The hearing was held on September 17, 2008. Claimant attended the hearing in person. He was assisted in his representation by [REDACTED]. [REDACTED], from Optimal, a translation service employed by the Division, interpreted the hearing for the Claimant.

[REDACTED], a Medical Administrator III with the Division, attended in person to represent the Division. [REDACTED], Health Program Manager II, also with the Division, testified for the Division. [REDACTED], from the Division, was present but did not testify.

ISSUE

Was the Division correct to terminate the Claimant's PCA services because he did not qualify under the Personal Care Assessment Tool (PCAT)?

FINDINGS OF FACT

1. Claimant is a fifty-seven year old man with diabetes II uncontrolled, and chronic neck and back pain. (Ex. E, p. 1). He is currently receiving PCA services. He lives in his own home with his wife, who is also receiving PCA services. (Id.). Claimant was assessed for PCA services on April 3, 2008. The person conducting the assessment was a registered nurse. (Id.).
2. The April 3, 2007 assessment (Consumer Assessment Tool) found he did not qualify for PCA services. (Ex. E, p. 17) Specifically, the assessment found that as of April 3, 2008:
 - a. The Claimant did not require any assistance (a score of 0) in each of the following activities of daily living: transferring (moving to and from a bed, couch, chair, etc.), locomotion (walking), eating, toilet use, and dressing. (Ex. E, p. 4 & 7).
 - b. The nurse stated the following regarding bathing: “Consumer with observed and demonstrated ability to transfer in/out of the bathtub by himself. Movements were smooth & in rote routine. No unsteadiness observed during the transfer in or out. Functional assessment supports observations of consumer having capability to wash self. Independent – No help or oversight – or – Help/oversight provided only 1 or 2 times during last 7 days. (Ex. E, p. 1). Bathing was coded as a “1” in self performance, and a “0” in support. (Ex. E, p. 7).
3. The Claimant and Ms. [REDACTED] both testified at the September 17, 2008 hearing that when he takes his medication he is dizzy, and therefore incapable of performing the following activities of daily living: transfer, locomotion, eating, toilet use, dressing or bathing. When he does not take his medication, he is in so much pain he cannot perform those activities.
4. The Claimant appeared at the hearing and walked with an assistive devise.

PRINCIPLES OF LAW

The party wishing to change the status quo has the burden of proof. This case involves the denial of renewal benefits. When a renewal of benefits is denied, the party wishing to change the status is the Division, therefore it has the burden. The burden of proof on all these issues is by a preponderance of the evidence.¹

The PCA program is designed to assist Medicaid recipients with physical assistance with personal care and limited domestic chores in their homes, when the alternative would be placement in a medical or assisted living facility, or loss of Medicaid recipient’s job. 7 AAC 43.750; 7 AAC 43.752.

¹¹ Amerada Hess Pipeline v. Alaska Public Utilities Comm’n, 711 P.2d 1170, 1179 n. 14 (Alaska 1986). Preponderance of the evidence is evidence which as a whole shows the fact sought to be proved is more probable than not.

“The department may authorize personal care services for up to a 12-month period. Reauthorization by the department for personal care services will be done on an annual basis and based upon a PCAT.” 7 AAC 43.750(c); See also, 7 AAC 43.751.

A person’s eligibility for PCA services is determined using the Personal Care Assessment Tool (PCAT). 7 AAC 43.751. The PCAT measures a person’s need for assistance in six specific activities of daily living (ADLs): transfer, locomotion (walking), eating, toilet use, dressing, and bathing. *See* Ex. E, pp. 4, 14. Each of these ADLs is scored in two categories, self-performance and support provided.

The self-performance codes rate how capable a person is of performing a particular ADL by himself:

0 - Independent, no help/oversight, or help/oversight provided two times or less during the last seven days.

1 - Supervision, which consists of encouragement/oversight/encouragement provided three or more times during the last seven days plus non-weight bearing physical assistance provided one or two times during the last seven days.

2 - Limited Assistance, which consists of non-weight bearing physical assistance three or more times during the last seven days, or limited assistance plus weight bearing assistance one or two times during the last seven days.

3 - Extensive Assistance, which consists of weight bearing support three or more times during the past seven days, or the caregiver provides complete performance of the activity during a portion of the past seven days.

4 - Total Dependence, which consists of the caregiver performing the activity for the applicant during the entire previous seven day period.

5 – Cueing, which is spoken instruction or physical guidance for a particular activity required seven days per week.

8 – Activity did not occur during the previous seven days.

The support codes rate the amount of assistance a person receives for each ADL:

0 – None.

1 – Setup assistance only.

2 – One person physical assistance.

3 – Physical assistance from two or more people.

5 – Cueing required seven days per week.

8 – Activity did not occur during the previous seven days.

(Ex. E, p.7)

In order to qualify for PCA services, pursuant to the PCAT, an “individual must need extensive assistance with at least one ADL and limited assistance with at least one other ADL.” 7 AAC 43.750. Specifically, for an individual to require minimum limited one person assistance, that person must have a self performance code of 2, 3, or 4 and support codes of 2 or 3 in one of the following six ADL’s: transfer, locomotion, dressing, eating, toilet use, and bathing. In addition this requirement, a person must receive a minimum of extensive on person assistance (self-performance code of 3 or 4 and a support code of 2 or 3) in at least one other ADL. (Ex. E, p. 17)

ANALYSIS

The Claimant was found not eligible for PCA services based upon his April 3, 2008 PCAT. The resulting issue is whether or not the Division's decision was correct. As the party seeking a change in the status quo, the Division has the burden of proof by a preponderance of the evidence.

The evidence consisted of the PCAT assessment (Ex. E), the three page denial letter (Ex. D) and the testimony of the Claimant and his representative. The PCAT assessor was not present and did not testify at the hearing, however the assessor showed no bias when making her assessment. In contrast, Claimant and Ms. [REDACTED]'s testimony at the hearing was self-serving. In addition, the Claimant did not provide any other unbiased evidence to bolster his position. Finally, the Hearing Officer's own observation of the Claimant's appearance and ability in the area of locomotion contradicted Ms. [REDACTED] and his' testimony. Therefore, the nurse's PCAT score is the more credible, primarily because of it lacks bias and contradictions.

The Claimant's April 3, 2008 PCAT show the Claimant did not meet the level of care needed for PCA services. The PCAT measures the following: specific activities of daily living were transfers, locomotion, eating, toilet use, dressing and bathing. The April 3, 2008 PCAT scored all but the activity of bathing as a "0." (Independent, meaning the Claimant did not require any physical assistance or that help or oversight was provided twice or less during the week preceding the date of the April 3, 2008 PCAT.) The PCAT in the bathing category shows the Claimant requires supervision, therefore, scoring a "1." (Ex. E, p. 7). These scores were well below the requirements for eligibility. These scores were also credible.

In order the qualify for PCA services, a person must receive a minimum of limited one person assistance (self performance code of 2, 3, or 4 and support codes of 2 or 3) for at least one of the six ADLs (transfer, locomotion, eating, toilet use, dressing, and bathing). In addition to this requirement, a person must receive a minimum of extensive one person assistance (self-performance code of 3 or 4 and a support code of 2 or 3) in at least one other ADL. Based upon the Claimant's score on activities of daily living, he does not qualify for PCA services – he only scored a "1" in the bathing category.

The results of the Claimant's April 3, 2008 PCAT show the Claimant does not meet the level of care for PCA services. Accordingly, the Division met its burden of proof by a preponderance of the evidence and it was correct when it denied the Claimant's application for PCA services based upon his PCAT.

Pursuant to the PCAT, the Claimant does not meet the level of care for PCA services and no further evaluation is necessary. (Ex. 17).

CONCLUSIONS OF LAW

1. The Claimant's April 3, 2008 PCAT correctly scored the Claimant as being independent (a score of "0") in the following scored activities of dialing living: transfer, eating, locomotion, dressing, and toilet use. The PCAT correctly scored his need for assistance for bathing as "1."
2. The Division met its burden of proof by a preponderance of the evidence and it was correct when it denied the Claimant's application for PCA services based upon his April 3, 2008 PCAT.

