

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS
ON REFERRAL BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of:)	
)	
D T)	OAH No. 13-1145-MDS
)	HCS Case No.
_____)	Medicaid ID No.

DECISION

I. Introduction

The issue in this case is whether D T remains eligible for Medicaid Personal Care Assistant (PCA) services. Ms. T currently receives¹ both PCA services and Medicaid Home and Community-Based Waiver Services (waiver services). The Division of Senior and Disabilities Services (DSDS) terminated Ms. T's PCA services on the grounds that her medical and functional condition had materially improved since her last PCA assessment.² More specifically, the Division asserted (1) that Ms. T no longer requires limited (or greater) assistance with at least one Activity of Daily Living (ADL), and (2) that Ms. T is not eligible for PCA services based on her need for assistance with her Instrumental Activities of Daily Living (IADLs), because she already receives similar assistance through chore services provided under the waiver services program.

This decision concludes that Ms. T's condition has improved since her last assessment such that she no longer requires assistance with ADLs. Ms. T's need for assistance with her IADLs could potentially,³ *in the absence of waiver services*, qualify her to continue receiving PCA services. However, the fact that Ms. T is currently authorized to receive chore services through the waiver services program prevents her from qualifying for PCA services based solely on her need for assistance with IADLs. Accordingly, the Division correctly determined that Ms. T is not currently eligible to receive PCA services. The Division's decision terminating Ms. T's PCA services is therefore affirmed.

¹ Ms. T asserted in her post-hearing filing that she currently does not actually receive waiver services. However, it is clear from the Division's post-hearing filings (Exs. G - J) that the Division has *authorized* waiver services for Ms. T, regardless of whether Ms. T has actually taken advantage of them to date.

² Ex. D.

³ Because Ms. T's receipt of chore services under the waiver services program automatically prevents her from qualifying for PCA services based solely on a need for assistance with IADLs, this decision expresses no opinion as to whether Ms. T's current level of need for assistance with IADLs would qualify her to receive PCA services in the absence of her waiver services.

II. Facts

A. *Ms. T's Medical Condition and Physical Impairments*

Ms. T is 61 years old.⁴ She is about five feet tall and weighs about 110 pounds.⁵ She lives by herself in a multilevel private residence.⁶ She has a number of significant medical problems. Her recent diagnoses include cervical spondylosis without myelopathy, degeneration of the lumbar and lumbosacral intervertebral discs, lumbosacral spondylosis without myelopathy, lumbosacral radiculopathy, sciatica, degenerative arthritis of the right shoulder with severe dysfunction following total joint replacement, pain in the hip joints, leg cramps, hernia, gastric ulcer, gastro-esophageal reflux disease (GERD), and migraine headaches.⁷ Because of the problems with her right shoulder and hip, Ms. T must rely almost exclusively on her left hand, and must be careful when walking because her right leg "can go out at any time."⁸

Ms. T's internist is J C. C, M.D.⁹ In a letter dated October 14, 2013, Dr. C wrote that Ms. T has previously had right shoulder¹⁰ and hip replacements, and now has joint pain and a limited range of motion. He stated that Ms. T needs assistance with range of motion exercises 40 minutes per day (10 minutes for each arm and leg), and with walking for exercise (30 minutes per day). Dr. C also opined that Ms. T could benefit from assistance with cleaning, shopping, and other necessary household tasks.

B. *Ms. T's Functional Abilities as Determined by the Division*

Denise Kichura, R.N. of DSDS assessed Ms. T for continuing PCA eligibility on April 15, 2013.¹¹ Ms. Kichura's assessment is recorded and scored on the Division's Consumer Assessment Tool or "CAT."¹² Ms. Kichura found that Ms. T has the following abilities and limitations with regard to the following Activities of Daily Living (ADLs):¹³

Body mobility / bed mobility:¹⁴ Ms. Kichura reported that Ms. T told her that she can turn from side to side independently during the night. Ms. Kichura reported observing Ms. T demonstrate turning from her left side to her right side while in bed, and that Ms. T adjusted her

⁴ Exs. E1, F1.

⁵ Ex. E9.

⁶ Exs. E1, F1.

⁷ Exs. E3, F3.

⁸ D T's hearing testimony.

⁹ This and all subsequent factual findings in this paragraph are based on Ex. 1 unless otherwise stated.

¹⁰ Ms. T's right shoulder replacement surgery was performed in 2011 (Ex. E4).

¹¹ Ex. E.

¹² Ex. E.

¹³ Exs. E6 - E12; *see also* 7 AAC 125.199(1).

¹⁴ Ex. E6.

pillow by reaching above her head with her right hand. Ms. Kichura did not observe any assistive devices in Ms. T's room (coded / scored 0/0).

Transfers:¹⁵ Ms. Kichura reported (1) that Ms. T told her that her PCA leaves at about 3:00 p.m. and that she is able to get up and move around by herself; and (2) that she is able to get into and out of her car independently and drive to a bank and store located about one mile from her house. Ms. Kichura reported observing Ms. T (1) sit down on her sofa independently, and get up from her sofa by "scooting" to the edge of her sofa, supporting herself using her right hand, and standing up; and (2) transfer into and out of bed independently using her right hand to support herself (coded / scored 0/0).

Locomotion:¹⁶ Ms. Kichura reported that Ms. T told her that she can walk around her home from room to room, and down the stairs, independently. Ms. Kichura reported that she observed Ms. T (1) walk from the dining room to the living room without support or assistive devices, stepping over potted plants on the way; and (2) walk down the hall holding her PCA's hand and (subsequently) the assessor's hand, without any weight bearing assistance (scored 0/0). Ms. Kichura also indicated that Ms. T has a cane and is independent with its use.¹⁷

Dressing:¹⁸ Ms. Kichura reported that Ms. T told her she can't don and doff bras by herself, but that she wears undershirts instead; and that, using this arrangement, she can dress and undress herself independently. Ms. Kichura also reported that the PCA concurred with these statements. Ms. Kichura reported that she observed Ms. T don and doff a sweater, vest, and socks independently and without any assistive devices (coded / scored 0/0).

Eating:¹⁹ Ms. Kichura reported that Ms. T told her that she can swallow her medications with water, wears dentures²⁰ but can eat without difficulty, can make sandwiches herself, and can heat up pot pies herself using the oven. Ms. Kichura reported that she observed Ms. T grip her coffee mug and drink by herself, and bring her hands to her mouth by herself (coded / scored 0/0).

Toileting:²¹ Ms. Kichura reported that Ms. T told her that she uses the toilet by herself and performs post-toileting hygiene by herself. Ms. Kichura reported that Ms. T has a strong grip with

¹⁵ Ex. E6.

¹⁶ Ex. E7.

¹⁷ Exs. E18, E27.

¹⁸ Ex. E8.

¹⁹ Ex. E9.

²⁰ Ex. E24.

²¹ Ex. E9.

both hands, is able to walk and transfer independently, and has no grab bars or other assistive devices by the toilet (coded / scored 0/0).

Personal Hygiene:²² Ms. Kichura reported that Ms. T told her she is able to comb / brush her hair, brush her teeth, and wash and dry her face and hands. Ms. Kichura reported that she observed Ms. T use her finger to brush / smooth her shoulder-length hair (scored 0/0).

Bathing:²³ Ms. Kichura reported that Ms. T told her (1) that she can no longer get into and out of the bath tub by herself; (2) that her PCA helps her with this and also sets up her shower / bath products for her and hands her the shower hose / nozzle; and (3) that she can wash herself independently (coded / scored 0/0). Ms. Kichura also reported that Ms. T's bathroom has a bath bench and a hand-held shower, but no grab bars.²⁴

Regarding Instrumental Activities of Daily Living, Ms. Kichura reported that Ms. T is independent as to light meal preparation (score 0/0); independent with difficulty (requiring supervision and cueing) as to main meal preparation (score 1/1); independent as to telephone use (score 0/0); independent with difficulty (requiring supervision and cueing) as to light housework (score 1/1); independent as to finance management (score 0/0); requires set-up assistance with routine housework (score 2/2); requires set-up assistance with grocery shopping (score 2/2); and is independent with difficulty (requiring setup assistance) as to laundry (score 1/2).²⁵

C. Relevant Procedural History

Ms. T began receiving Personal Care Assistant (PCA) services, and Home and Community-Based Waiver services, in March 2012.²⁶ On April 15, 2013 the Division of Senior and Disabilities Services (DSDS or Division) conducted an annual assessment to determine the extent of Ms. T's continuing need for PCA services.²⁷ Based on the April 2013 assessment, the Division determined that Ms. T's functional abilities had improved to the extent that she no longer requires the amount of assistance with her activities of daily living (ADLs) or instrumental activities of daily living (IADLs) necessary for her to remain eligible for PCA services. On August 5, 2013 the Division

²² Ex. E10.

²³ Ex. E11.

²⁴ Ex. E27.

²⁵ Ex. E26.

²⁶ Exs. F, I2.

²⁷ Ex. E.

notified Ms. T that her PCA services were being terminated.²⁸ On August 16, 2013 Ms. T requested a hearing to contest the Division's determination.²⁹

Ms. T's hearing was held on October 16, 2013. Ms. T attended the hearing in person, represented herself, and testified on her own behalf. Ms. T's friend M N also attended the hearing, helped represent Ms. T, and testified on her behalf. Shelly Boyer-Wood participated in the hearing by phone and represented the Division. Health Program Manager Tammy Smith participated by phone and testified on behalf of the Division.

The record was originally closed effective October 28, 2013. However, in preparing the decision the undersigned found that there was an ambiguity in the hearing record concerning whether Ms. T is authorized to receive waiver services.³⁰ Accordingly, the Division was ordered to file and serve a copy of any current waiver services Plan of Care for Ms. T by November 7, 2013. Ms. T was ordered to file her response by November 14, 2013. Both parties submitted the requested filings, and the record closed on November 14, 2013.

III. Discussion

A. *The PCA Program - Overview*

The purpose of the Medicaid personal care services program is to provide assistance to the elderly, people with disabilities, and individuals with chronic or temporary conditions so that they can remain in their homes and communities.³¹ Federal Medicaid law allows personal care services to be provided by states through either of two separate sources.³² First, since 1975 states have had the option of offering personal care services as a Medicaid optional State plan benefit.³³ States that provide personal care services through State plans must comply with the general Medicaid program requirements outlined in section 1902 of the Social Security Act.³⁴ Second, since 1981 states have also been allowed to provide personal care services through the Medicaid Home and Community-

²⁸ Ex. D.

²⁹ Ex. C.

³⁰ Ms. Smith testified that Ms. T is currently receiving Home and Community-Based Waiver Services. However, the Consumer Assessment Tool (CAT) indicates that Ms. T does not currently receive waiver services. Additional information was requested from the parties to resolve this ambiguity.

³¹ See Social Security Act § 1905(a)(24), codified at 42 USC 1396d(a)(24); see also 42 CFR 440.167 (defining personal care services).

³² See LeBlanc, Tonner, and Harrington, *State Medicaid Programs Offering Personal Care Services*, Health Care Financing Review, Volume 22, Number 4 (summer 2001), accessed on line on October 30, 2013 at <http://www.cms.gov/Research-Statistics-Data-and-Systems/Research/HealthCareFinancingReview/downloads/01summerpg155.pdf>.

³³ *Id.*

³⁴ *Id.*

Based Waiver Services Program.³⁵ States providing personal care services via waiver programs must adhere to the terms of the application approved by the federal Centers for Medicare & Medicaid Services (CMS).³⁶

In Alaska, the Personal Care Assistance (PCA) program provides support for about 4,000 Alaskan seniors and individuals with disabilities.³⁷ Alaska's PCA program is subdivided into two sub-programs.³⁸ The first is the Consumer-Directed PCA Program (CDPCA), in which each recipient manages his or her own care by selecting, hiring, firing and supervising their own personal care assistant, but the PCA agency provides administrative support to the consumer and the personal care assistant.³⁹ The second is the Agency-Based PCA Program (ABPCA), in which the PCA agency oversees, manages and supervises the recipient's care.⁴⁰

Alaska's PCA program authorizes services for the purpose of providing "physical assistance with activities of daily living (ADL), physical assistance with instrumental activities of daily living (IADL), and other services based on the physical condition of the recipient . . .".⁴¹ The ADLs for which PCA services are provided are body mobility, transfers, locomotion, dressing, eating, toilet use, personal hygiene, and bathing.⁴² PCA services are provided when the recipient requires limited or extensive assistance to perform an ADL, or when the recipient is fully dependent on the PCA to perform the ADL.⁴³ However, "[t]he department will not authorize personal care services for a recipient if the assessment shows that the recipient only needs assistance with supervision, cueing, and setup in order to independently perform an ADL or IADL."⁴⁴

In order to qualify (or remain qualified) for PCA services, an applicant or recipient must require limited or extensive assistance, or be fully dependent on a caregiver, as to at least one

³⁵ See Section 2176 of the Omnibus Budget Reconciliation Act (OBRA) of 1981, which created Section 1915(c) of the Social Security Act, now codified at 42 USC 1396n(c).

³⁶ See article by LeBlanc, Tonner, and Harrington, cited above.

³⁷ See Alaska Department of Health and Social Services website at <http://dhss.alaska.gov/dsds/Pages/pca/default.aspx> (date accessed October 30, 2013).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ 7 AAC 125.010(a) [emphasis added].

⁴² 7 AAC 125.030(b).

⁴³ 7 AAC 125.020(a).

⁴⁴ 7 AAC 125.020(e). This regulation defines "cueing" as "daily verbal or physical guidance provided to a recipient that serves as a signal to the recipient that the recipient needs to perform an activity;" "setup" as "arranging items for use or getting items ready for use so that the recipient can independently perform an ADL or IADL;" and "supervision" as "observing and giving direction, as needed, so that the recipient can independently perform an ADL or IADL." *Id.*

ADL.⁴⁵ Alternatively, an applicant or recipient can qualify for PCA services by being dependent as to at least one Instrumental Activity of Daily Living (IADL), by needing assistance with at least one IADL, or by being independent with difficulty as to at least one IADL.⁴⁶

Under 7 AAC 125.040(a)(11), PCA services are not available in cases where they would duplicate Home and Community-Based Waiver services provided under 7 AAC 130.

Finally, in cases where (as here) the Division seeks to terminate a recipient's PCA services, the Division must also demonstrate that there has been a material change in the recipient's condition since the recipient's last assessment.⁴⁷

B. The Consumer Assessment Tool (CAT)

The Division uses the Consumer Assessment Tool or "CAT" to determine the level of physical assistance that an applicant or recipient requires in order to perform their activities of daily living (ADLs) and instrumental activities of daily living (IADLs).⁴⁸ The CAT seeks to make the assessment process more objective by attempting to standardize the assessment of an applicant or recipient's functional impairment.⁴⁹

The ADLs coded or scored by the CAT are body mobility, transfers (non-mechanical), transfers (mechanical), locomotion (in room), locomotion (between levels), locomotion (to access apartment or living quarters), dressing, eating, toilet use, personal hygiene, personal hygiene-shampooing, and bathing.⁵⁰

The CAT numerical coding system has two components. The first component is the *self-performance code*. These codes rate how capable a person is of performing a particular activity of daily living (ADL). The possible codes are **0** (the person is independent and requires no help or oversight); **1** (the person requires supervision); **2** (the person requires limited assistance⁵¹); **3** (the

⁴⁵ 7 AAC 125.020(a). The minimum standard applicable to ADLs, "limited assistance," is defined by 7 AAC 125.020(a)(1) as a situation in which the recipient, although "highly involved in the activity, receives direct physical help from another individual in the form of guided maneuvering of limbs, including help with weight-bearing when needed."

⁴⁶ 7 AAC 125.020(a). The minimum standard applicable to IADLs, "independent with difficulty," is defined by 7 AAC 125.020(a)(4) as a situation in which "the recipient can perform the activity without the help of another individual, but does so with difficulty or takes a great amount of time to perform it."

⁴⁷ 7 AAC 125.026(a), (d).

⁴⁸ See 7 AAC 125.010(a).

⁴⁹ Ex. E.

⁵⁰ See Division of Senior and Disability Services' *Personal Care Assistance Service Level Computation* (Exs. B29 - B30).

⁵¹ Pursuant to 7 AAC 125.020(a)(1), limited assistance with an ADL "means a recipient, who is highly involved in the activity, receives direct physical help from another individual in the form of guided maneuvering of limbs, including help with weight-bearing when needed."

person requires extensive assistance⁵²); **4** (the person is totally dependent⁵³). There are also codes that are not treated as numerical scores for purposes of calculating a service level: **5** (the person requires cueing); and **8** (the activity did not occur during the past seven days).

The second component of the CAT scoring system is the *support code*. These codes rate the degree of assistance that a person requires for a particular activity of daily living (ADL). The possible codes are **0** (no setup or physical help required); **1** (only setup help required); **2** (one person physical assist required); **3** (two or more person physical assist required). Again, there are additional codes that do not add to the service level: **5** (cueing required); and **8** (the activity did not occur during the past seven days).

The CAT also codes or scores certain activities known as "instrumental activities of daily living" (IADLs).⁵⁴ These are light meal preparation, main meal preparation, light housekeeping, laundry (in-home), laundry (out-of-home), and shopping.

The CAT scores IADLs slightly differently than ADLs.⁵⁵ The *self-performance codes for IADLs* are **0** (independent either with or without assistive devices - no help provided); **1** (independent with difficulty; the person performed the task, but did so with difficulty or took a great amount of time to do it); **2** (assistance / done with help - the person was somewhat involved in the activity, but help in the form of supervision, reminders, or physical assistance was provided); and **3** (dependent / done by others - the person is not involved at all with the activity and the activity is fully performed by another person).

The *support codes* for IADLs are also slightly different than the support codes for ADLs.⁵⁶ The support codes for IADLs are 0 (no support provided); 1 (supervision / cueing provided); 2 (set-up help); 3 (physical assistance provided); and 4 (total dependence - the person was not involved at all when the activity was performed).

Under the CAT, if a person receives self-performance codes of 2, 3, or 4 and support codes of 2, 3, or 4 with regard to any of the ADLs of transfers, locomotion, eating, toilet use, dressing, or bathing, then the person is eligible to receive PCA services.⁵⁷ Alternatively, if a person receives

⁵² Pursuant to 7 AAC 125.020(a)(2), extensive assistance with an ADL "means that the recipient is able to perform part of the activity, but periodically requires direct physical help from another individual for weight-bearing support or full performance of the activity."

⁵³ Pursuant to 7 AAC 125.020(a)(3), dependent as to an ADL, or dependent as to an IADL, "means the recipient cannot perform any part of the activity, but must rely entirely upon another individual to perform the activity."

⁵⁴ Ex. E26.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Ex. E31.

self-performance codes of 2, 3, or 4 and support codes of 3 or 4 with regard to any of the IADLs of light meal preparation, main meal preparation, light housework, routine housework, grocery shopping, or laundry, then the person is eligible to receive PCA services.⁵⁸

C. *Applicable Burden of Proof and Standard of Proof*

In this case, because the Division is seeking to terminate existing PCA services (services which Ms. T is now receiving), the Division has the burden of proving, by a preponderance of the evidence, that Ms. T is no longer eligible for the PCA services program.⁵⁹

D. *Does Ms. T Require Assistance With her Activities of Daily Living?*

In order to qualify (or remain qualified) for PCA services, an applicant or recipient must require limited or extensive assistance, or be fully dependent on a caregiver, as to at least one of the eight ADLs.⁶⁰

1. *Body Mobility*

For the ADL of body mobility, PCA time is allowed when a non-ambulatory person requires physical assistance to reposition herself in a bed or chair.⁶¹ Ms. T testified at hearing that, although she can't sleep, and although she is not comfortable in bed, she is independent with regard to bed mobility.⁶²

2. *Transfers*

For the ADL of transferring, PCA time is allowed when a person requires physical assistance to move between one surface and another (including to or from a bed, chair, or wheelchair), and/or when a person requires physical assistance to move from a lying or sitting position to a standing position.⁶³ Ms. T testified at hearing that she "has a procedure" that she must

⁵⁸ *Id.*

⁵⁹ See 42 CFR 435.930, 2 AAC 64.290(e), 7 AAC 49.135, and *Alaska Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

⁶⁰ 7 AAC 125.020(a). The minimum standard applicable to ADLs, "limited assistance," is defined by 7 AAC 125.020(a)(1) as a situation in which the recipient, although "highly involved in the activity, receives direct physical help from another individual in the form of guided maneuvering of limbs, including help with weight-bearing when needed."

Alternatively, as discussed in the next section, an applicant or recipient can qualify for PCA services by being dependent as to at least one Instrumental Activity of Daily Living (IADL), by needing assistance with at least one IADL, or by being independent with difficulty as to at least one IADL. 7 AAC 125.020(a). The minimum standard applicable to IADLs, "independent with difficulty," is defined by 7 AAC 125.020(a)(4) as a situation in which "the recipient can perform the activity without the help of another individual, but does so with difficulty or takes a great amount of time to perform it."

⁶¹ 7 AAC 125.030(b)(1).

⁶² See digital recording of hearing at 1:56 - 1:57.

⁶³ 7 AAC 125.030(b)(2).

follow in order to get up and down by herself, but that, using that procedure, she is able to transfer independently.⁶⁴

3. Locomotion

For the ADL of locomotion, PCA time is allowed when a person requires assistance with locomotion within the home, outside the home to keep a medical or dental appointment, or when doing prescribed exercises.⁶⁵ Ms. T testified at hearing that she generally stays in the second floor of her home, uses a quad cane, and must move about slowly and carefully, but that, using these adaptive measures, she is able to walk and move about independently.⁶⁶

4. Dressing and Undressing

For the ADL of dressing, PCA time is allowed for the donning, fastening, unfastening, and removal of the recipient's street clothing, support hose, or prosthesis.⁶⁷ Ms. T testified at hearing that dressing "is always a challenge." She must now wear slip-on shoes and boots, and she wears camisoles because she cannot get bras on and off. However, with those adaptations, she is able to dress and undress herself independently.⁶⁸

5. Eating

For the ADL of eating, PCA time is allowed for feeding through a feeding tube, enteral feeding, and supervising the eating and drinking of a recipient who has swallowing, chewing, or aspiration difficulties.⁶⁹ Ms. T testified that there are some things she can no longer eat (she cannot eat corn on the cob anymore, for example), but that she can still eat independently.⁷⁰

6. Toilet Use

For the ADL of toilet use, PCA time is limited by regulation to time spent moving to and from the toilet, transfers on and off the toilet, general hygiene care of a colostomy, ileostomy, or external catheter, and inserting and removal of a nonmedicated suppository, digital stimulation, or other routine incontinence care.⁷¹ The CAT's definition of "toilet use" is somewhat broader,

⁶⁴ See digital recording of hearing at 1:57 - 1:58; 2:09 - 2:10.

⁶⁵ 7 AAC 125.030(b)(3).

⁶⁶ See digital recording of hearing at 1:58 - 2:02.

⁶⁷ 7 AAC 125.030(b)(4).

⁶⁸ See digital recording of hearing at 2:02 - 2:03.

⁶⁹ 7 AAC 125.030(b)(5).

⁷⁰ See digital recording of hearing at 2:04 - 2:05.

⁷¹ 7 AAC 125.030(b)(6). For reasons that do not appear in the record, the regulation does not cover assisting the recipient with necessary personal hygiene after using the toilet. The PCA regulation for personal hygiene, 7 AAC 125.030(b)(7), likewise fails to cover these necessary activities.

encompassing post-toileting hygiene and clothing adjustments.⁷² Ms. T testified at hearing that she needed help with toilet use right after her 2011 hip replacement surgery. However, she can now use the toilet independently by pushing against the wall to lower herself to the toilet.⁷³

7. Personal Hygiene

For the ADL of personal hygiene, PCA time is allowed for washing and drying the face, hands, and perineum; nail care, skin care, mouth and teeth care; brushing and combing the hair; shaving when done separately from bathing; and shampooing the hair when done separately from bathing.⁷⁴ Ms. Kichura reported that Ms. T told her she is able to comb / brush her hair, brush her teeth, and wash and dry her face and hands, and that she observed Ms. T use her fingers to brush / smooth her shoulder-length hair.⁷⁵ Ms. T testified at hearing that although she can no longer style or fix her hair the way she used to, she can still perform essential personal hygiene tasks independently.⁷⁶

8. Bathing

For the ADL of bathing, PCA time is allowed for "the taking of a full-body bath, shower, or sponge bath and the required transfers in and out of the bathtub or shower."⁷⁷ Ms. T testified that she can't use her Jacuzzi tub anymore, can't stand in the shower, and uses a bath chair or stool while showering, but that with these adaptations, she can take showers by herself.⁷⁸

9. Summary - Ms. T can Perform all her ADLs Independently

In order to remain qualified for PCA services based on the need for help with ADLs, Ms. T must require limited or extensive assistance, or be fully dependent on a caregiver, as to at least one ADL.⁷⁹ Based on Ms. T's own testimony, she can independently perform all ADLs, albeit with difficulty. Accordingly, Ms. T does not need enough help with her ADLs to continue receiving PCA services on that basis.

⁷² The CAT form defines toilet use as "[h]ow person uses the toilet room (or commode, bedpan, urinal); transfers on/off toilet, *cleanses* . . . manages ostomy or catheter, *adjusts clothes*" (Ex. E9, emphasis added).

⁷³ See digital recording of hearing at 2:11 - 2:13.

⁷⁴ 7 AAC 125.030(b)(7).

⁷⁵ Ex. E10.

⁷⁶ See digital recording of hearing at 2:06 - 2:07.

⁷⁷ 7 AAC 125.030(b)(8). The definition of bathing contained in the CAT is essentially identical (*see* Ex. E11).

⁷⁸ See digital recording of hearing at 2:07 - 2:08.

⁷⁹ 7 AAC 125.020(a). The minimum standard applicable to ADLs, "limited assistance," is defined by 7 AAC 125.020(a)(1) as a situation in which the recipient, although "highly involved in the activity, receives direct physical help from another individual in the form of guided maneuvering of limbs, including help with weight-bearing when needed."

E. Does Ms. T Need Assistance With Instrumental Activities of Daily Living?

An applicant or recipient can qualify for PCA services by being dependent as to at least one Instrumental Activity of Daily Living (IADL), by needing assistance with at least one IADL, or by being independent with difficulty as to at least one IADL.⁸⁰ Accordingly, even though Ms. T is independent as to her ADLs, she would normally still be eligible for PCA services if, for any of the six listed IADLs, she scores a 1, 2, or 3 for self-performance and a 3 or 4 for support.

However, under 7 AAC 125.040(a)(11), PCA services are not available in cases where they would duplicate Home and Community-Based Waiver services provided under 7 AAC 130. Ms. T asserted in her post-hearing filing that she currently does not actually receive waiver services. However, it is clear from the Division's post-hearing filings (Exs. G - J) that the Division has authorized waiver services for Ms. T, regardless of whether Ms. T has actually taken advantage of them. The waiver services which Ms. T is currently authorized to receive include 10 hours per week of chore services.⁸¹ Pursuant to 7 AAC 130.245(b), chore services include (1) routine cleaning within the recipient's residence; (2) performing heavy household chores, including washing floors, windows, and walls; (3) securing loose rugs and tiles; (4) moving heavy items of furniture; (5) snow removal sufficient to provide safe access and egress for the recipient; (6) hauling water for use in the recipient's residence; (7) chopping or collecting firewood; and (7) food preparation and shopping for a recipient in the waiver categories of older adults or adults with physical disabilities. These chore services duplicate the assistance with IADLs available under the PCA program. Accordingly, under 7 AAC 125.040(a)(11), Ms. T is not eligible for assistance with her IADLs under the PCA program, and she cannot use her need for assistance with IADLs as a means of qualifying for PCA services.

F. Has the Division Proven a Material Change in the Recipient's Condition?

In cases where (as here) the Division seeks to terminate a recipient's PCA services, the Division must demonstrate that there has been a material change in the recipient's condition since the recipient's last assessment.⁸² When Ms. T's March 1, 2012 PCA assessment is compared with her current (April 15, 2013) assessment, it is clear that Ms. T's functional abilities have improved

⁸⁰ 7 AAC 125.020(a).

⁸¹ Exs. H8, H16.

⁸² 7 AAC 125.026(a), (d).

significantly.⁸³ Accordingly, 7 AAC 125.026's "change in condition" requirement is satisfied in this case.

IV. Conclusion

In general, Ms. T is a person with significant health problems which make it challenging for her to continue to live independently. There is no question that having PCA services would improve her quality of life.

However, Ms. T's own hearing testimony confirms that her condition has improved since her last assessment such that she no longer requires assistance with ADLs. Further, the fact that Ms. T is currently authorized to receive chore services through the waiver services program prevents her from qualifying for PCA services based solely on her need for assistance with IADLs. Accordingly, Ms. T no longer qualifies for publicly-funded PCA services under the narrowly-tailored criteria of the PCA program, and the Division correctly determined that Ms. T is not currently eligible to receive PCA services. The Division's decision terminating Ms. T's PCA services is therefore affirmed.

DATED this 13th day of December, 2013.

Signed _____
Jay Durych
Administrative Law Judge

Adoption

The undersigned, by delegation from of the Commissioner of Health and Social Services, 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 2nd day of January, 2014.

By: *Signed* _____
Name: Jared C. Kosin, J.D., M.B.A.
Title: Executive Director
Agency: Office of Rate Review, DHSS

[This document has been modified to conform to the technical standards for publication.]

⁸³ See Exs. E-3 - E12, E26, F3 - F11, and F27.