

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

In the Matter of	)	
	)	OAH No. 12-0844-MDS
C K	)	Agency No.
_____	)	

**DECISION**

**I. Introduction**

C K qualifies to receive Personal Care Assistant (PCA) services. On October 31, 2012, the Division of Senior and Disabilities Services (division) notified her that it was reducing her services from 28 hours per week to 20 hours per week. Ms. K contested that determination, and requested a hearing.

A hearing was held on January 2, 2013. Based on the testimony and other evidence in the record, the division's determination that Ms. K was not entitled to PCA services for the Activity of Daily Living of Body Mobility was incorrect. In all other areas, the division's determination is affirmed.

**II. Facts**

Ms. K was assessed for PCA services by Registered Nurse Marianne Sullivan on September 13, 2012.<sup>1</sup> She had previously been assessed in 2009, and the recent assessment resulted in a reduction of PCA time in the following areas:

- Body Mobility
- Dressing
- Personal Hygiene
- Bathing
- Light Meal Preparation
- Changing Non-Sterile Dressings
- Documentation.<sup>2</sup>

In addition, a regulatory change between the first and most recent assessment became effective in January of 2012.<sup>3</sup> That change also caused a change in the calculation of Ms. K' PCA time.

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<sup>1</sup> Exhibit E 1.

<sup>2</sup> Exhibit D 2 – D 4.

### III. Discussion

#### A. PCA Program

Alaska has opted to provide personal care services as part of the state's Medicaid program.<sup>4</sup> Personal care services include a wide variety of personal assistance including help with turning in bed, walking, eating, toileting, personal hygiene, shopping, and record keeping.<sup>5</sup>

The division uses the Consumer Assessment Tool (CAT) to determine the appropriate level of PCA services.<sup>6</sup> 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 assistance); **3** (the person requires extensive assistance); **4** (the person is totally dependent); **5** (the person requires cueing); and **8** (the activity did not occur during the past seven days).<sup>7</sup>

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); **5** (cueing required); and **8** (the activity did not occur during the past seven days).<sup>8</sup>

The ADLs coded by the CAT are bed 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.<sup>9</sup> In addition, the CAT codes five other ADL-like activities. These are medication, vital signs/glucose levels, dressings/bandages/oxygen, sterile wound care, and documentation.<sup>10</sup>

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<sup>3</sup> 7 AAC 125.024; 7 AAC 160.900(d) (*adopting Personal Care Assistance Service Level Computation*, revised as of August 12, 2011). The division's website contains a *Personal Care Assistance Service Level Computation* document revised October 29, 2012, but the division properly used the prior version in this case, which is the 2011 version adopted in 7 AAC 160.900.

<sup>4</sup> AS 47.07.030(b).

<sup>5</sup> See 7 AAC 125.030.

<sup>6</sup> 7 AAC 125.020(b). The January 29, 2009 CAT has been adopted by regulation. 7 AAC 160.900(d)(6).

<sup>7</sup> See Exhibit E 6 (Instructions in Consumer Assessment Tool).

<sup>8</sup> See Exhibit E 6.

<sup>9</sup> See Personal Care Assistance Service Level Computation adopted by regulation. 7 AAC 160.900(d)(29); Exhibit B 29.

<sup>10</sup> *Id.*

The CAT also codes activities known as "instrumental activities of daily living" (IADLs). These are light meal preparation, main meal preparation, light housekeeping, laundry (in-home), laundry (out-of-home), and shopping.<sup>11</sup> Finally, the CAT codes one other IADL-like activity, oxygen maintenance.<sup>12</sup>

The amount of PCA time for which a person qualifies is generally dependent on how high the person's self-performance codes are. A self-performance code of 4 gets more time than a self-performance code of 3, and a self-performance code of 3 gets more time than a self-performance code of 2. However, the number of minutes awarded for the particular code (2, 3, or 4) varies by activity (for example, a code of 4 qualifies a person for 30 minutes of PCA assistance for bathing, but only 12 minutes of PCA assistance for toileting).<sup>13</sup> Time is generally not awarded for codes of "5" (cueing only) or "8" (activity did not occur). After determining how many minutes are required for each activity, that time is multiplied by how many times that assistance is needed each week to get a total number of minutes for the week.

### ***B. Body Mobility***

This is referred to as "Bed Mobility" in the CAT which describes bed mobility as how a "person moves to and from lying position, turns side to side, and positions body while in bed."<sup>14</sup> The applicable regulation similarly defines body mobility as

- (A) moving a recipient to and from a lying position;
- (B) turning a recipient from side to side; or
- (C) positioning a recipient in a bed or chair[. <sup>15</sup>]

Ms. K had previously received a self performance score of 2 and a support score of 2 (score of 2/2) in this ADL.<sup>16</sup> In the 2012 CAT, she was given a score of 0/0. Ms. Sullivan testified that the reason for this change was that Ms. K was now sleeping in her recliner instead of in a hospital bed. The recliner is electric, and Ms. K is able to operate the remote control. In addition, Ms. Sullivan testified that someone sleeping in a recliner does not turn on her side. Her notes in the CAT are consistent with her testimony:

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<sup>11</sup> *Id.*  
<sup>12</sup> *Id.*  
<sup>13</sup> *Id.*

<sup>14</sup> Exhibit E 6. There is no ADL of Body Mobility in the CAT.

<sup>15</sup> 7 AAC 125.030(h)(1).

<sup>16</sup> Exhibit D 9. Exhibit E 12 shows a prior score of 3/2. It is not necessary to address this potential inconsistency because the issue in this hearing is the proper score for 2012, and not the degree of change between the two assessments.

Participant reports no longer sleeps in hospital bed, sleeps in lift recliner  
Daughter reports ‘she can reposition the [pads] behind her back for comfort  
and maneuver the chair for comfort by herself’ Skin intact, Reports I dream I  
can walk I dream a lot. Observed participant . . . seated in lift recliner to  
operate controls and reposition self for comfort during assessment. Observed  
to reach behind back to reposition pad for comfort using bilateral hands  
unassisted.<sup>[17]</sup>

Ms. K’ daughter, M T, testified that her mother can operate the chair controls to  
make the chair recline or sit up. Ms. K cannot, however, reposition herself within the  
chair.<sup>18</sup> Ms. T testified that Ms. K does use pads behind her back for comfort, and that she  
can move them, but she cannot place them behind her back if one is not already there, and  
cannot remove a pad without assistance.

Ms. Sullivan concluded that Ms. K did not need assistance with bed/body mobility  
because she could change the orientation of the chair by herself. This ADL includes  
more than just raising and lowering one’s feet or head. It includes Ms. K’ ability to turn on  
her side,<sup>19</sup> move to and from a lying position, and most importantly in this case, reposition  
her body within the chair.<sup>20</sup> Ms. Sullivan relied on a definition of body mobility narrower  
than what is provided for in the regulation. The weight of the evidence is that Ms. K is not  
able to reposition herself within her chair without weight-bearing physical assistance from  
one person.<sup>21</sup> Ms. K should have received a score of 3/2 for this ADL.

The denial letter also noted that the division would not pay for a PCA to assist with  
positioning or turning in a bed or chair because Ms. K is ambulatory.<sup>22</sup> The applicable  
regulation states

Personal care services include the following type of physical assistance  
provided to a recipient so that the recipient may complete an ADL:

(1) for the ADL of body mobility,

(A) positioning or turning in a bed or chair, if the recipient is  
nonambulatory.<sup>23</sup>

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<sup>17</sup> Exhibit E 6.

<sup>18</sup> Testimony of Ms. T

<sup>19</sup> Depending on the size and shape of the recliner, Ms. K may be able to be turned onto her side while in this  
chair.

<sup>20</sup> 7 AAC 125.030(h)(1) (definition of body mobility).

<sup>21</sup> Nothing in the CAT notes or in Ms. Sullivan’s testimony suggest otherwise.

<sup>22</sup> Exhibit D 5.

<sup>23</sup> 7 AAC 125.030(b) (emphasis added).

Ms. K uses an electric wheelchair inside and outside of the home.<sup>24</sup> The notes in the CAT say

Participant reports new electric w/c is [too] wide to get through front door easily, reports difficult to get through bathroom doorway, uses new electric w/c when going outside of apartment, continues to use old electric w/c inside apartment. Independent to operate controls on both electric w/c. Reports new w/c has roho cushion and reclining back w/elevating foot piece. Participant/daughter reports no longer able to ambulate.<sup>[25]</sup>

Ms. Sullivan testified that Ms. K was no longer able to bear weight on her lower extremities and required a wheel chair. Ms. T testified that her mother cannot take one step on her own. The uncontradicted evidence is that Ms. K cannot walk. She is not ambulatory and may, therefore, receive PCA services for body mobility.

### ***C. Dressing***

Dressing is the “donning, fastening, unfastening and removal of the recipient’s street clothing, support hose, or prosthesis[.]”<sup>26</sup> The prior assessment found Ms. K needed extensive assistance (score 3) while the 2012 assessment found she needed limited assistance (score of 2).<sup>27</sup> The difference between limited and extensive assistance is that for extensive assistance, weight bearing support must have been provided three or more times during the previous seven days.<sup>28</sup> The testimony in this case was that Ms. K needs someone to pull her clothes on for her, but there was no testimony about weight bearing support. The division’s score of this ADL is correct.<sup>29</sup>

### ***D. Personal Hygiene***

Ms. K needed extensive assistance with personal hygiene in 2009, but her current assessment shows a need for only limited assistance.<sup>30</sup> Again, the difference between these two involves the amount of weight bearing support provided while assisting with these

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<sup>24</sup> Ms. Sullivan testified that Ms. K was “ambulatory” in the sense that she is “mobile in her electric wheelchair.”

<sup>25</sup> Exhibit E 7.

<sup>26</sup> 7 AAC 125.030(b)(4).

<sup>27</sup> Exhibit D 9. Exhibit E 12 shows the prior score as 2/2. As stated in note 16, above, it is not necessary to resolve this potential inconsistency.

<sup>28</sup> See Exhibit E 6.

<sup>29</sup> In discussing this ADL, both the denial letter (Exhibit D 3) and the CAT (Exhibit E 8) mention that Ms. K is no longer using ace bandages on her legs daily. PCA time for this task is more appropriately considered under the section addressing “other covered activities.”

<sup>30</sup> Exhibit D 9. Exhibit E 12 shows a prior score of 2/2.

tasks. There was no testimony or other evidence that Ms. K needed weight bearing support while being helped with personal hygiene. The division's score for this ADL is correct.

***E. Bathing***

It was determined in a prior settlement that Ms. K was totally dependent on PCA assistance for this ADL.<sup>31</sup> The 2012 assessment found that she needed extensive assistance.<sup>32</sup> The division determined that Ms. K should receive daily PCA time for this activity because her doctor had prescribed daily showers.<sup>33</sup> Ms. K did not argue that she was still totally dependent.<sup>34</sup> The division's score for this ADL is correct.

***F. Light Meal Preparation***

The division's denial letter explained:

In 2009, this was considered an ADL and you were allowed time for this activity. On your most recent assessment dated 9/13/12, this is now considered an IADL and time is not allowed since you are receiving Chore services (home and community-based waiver services) (7 AAC 130.245). Time for this activity has been removed.<sup>[35]</sup>

A person approved for the waiver program may not receive PCA services for a chore service if there is a waiver service provider willing to provide the service under the waiver program.<sup>36</sup> Ms. K does not dispute that she is receiving her meals through the waiver program. Accordingly, she is not entitled to additional PCA time for light meal preparation.

***G. Changing Non-Sterile Dressing***

Ms. K was previously receiving PCA time to assist her in wrapping her legs with ace bandages as prescribed by her physician.<sup>37</sup> It is undisputed that she is not currently using ace bandages on her legs. Accordingly, the division properly determined that she should not receive PCA time for this service.<sup>38</sup>

***H. Documentation***

PCA services are allowed for

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<sup>31</sup> OHA Case No. 11-FH-2269 (August 10, 2011). See discussion in Exhibit D 3.

<sup>32</sup> Exhibit E 11.

<sup>33</sup> Exhibit D 3.

<sup>34</sup> Total dependence means the ADL was fully performed by the caregiver without any active participation by the recipient during the entire seven day period.

<sup>35</sup> Exhibit D 4.

<sup>36</sup> 7 AAC 125.040(d).

<sup>37</sup> Exhibit D 4.

<sup>38</sup> If her doctor re-prescribes this treatment, her personal care services agency may request a change in the number of minutes authorized. 7 AAC 125.026.

Taking and documenting the recipient's temperature, pulse, blood pressure, and respiration if ordered by the recipient's physician, physician assistant, or advanced nurse practitioner, and setting up for diabetic testing and documentation[. <sup>39</sup>]

The denial letter explains that Ms. K had previously been allowed ten minutes daily for this task.<sup>40</sup> Under the current regulations, her personal hygiene score is used to determine the amount of time needed for documentation, and that resulted in a decrease to five minutes per day.<sup>41</sup> This calculation was not in dispute at the hearing.

#### **IV. Conclusion**

Ms. K is non-ambulatory and cannot reposition herself within her recliner chair without weight bearing assistance. Accordingly, she should have received a self-performance score of 3 in the ADL of body mobility. The division's assessment and calculations for all other ADLs and IADLs was correct. The division shall recalculate the number of authorized minutes of PCA service in accordance with this decision, and notify Ms. K of the new authorization. Ms. K has the right to request a hearing on that calculation if she disagrees with it.

Dated this 1<sup>st</sup> day of February, 2013.

*Signed*  
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Jeffrey A. Friedman  
Administrative Law Judge

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<sup>39</sup> 7 AAC 125 030(d)(3).

<sup>40</sup> Exhibit D 4.

<sup>41</sup> Exhibits D 4, D 7, and D 9.

## 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 4<sup>th</sup> day of March, 2013.

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

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