

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

In the Matter of:)
)
 O S) OAH No. 12-0941-MDS
) Agency No.
_____)

DECISION

I. Introduction

O S was receiving 34.00 hours per week of personal care assistance (PCA) services. The Division of Senior and Disabilities Services (division) notified her on November 19, 2012 that her PCA services were being reduced to 6.25 hours per week. Ms. S requested a hearing.

Ms. S' hearing was held on January 30, 2013. Ms. S attended the hearing and testified on her behalf. Shelly Boyer-Wood represented the division. Rae Norton and Anita Halterman testified on behalf of the division.

The division's assessment of Ms. S' PCA service needs was correct. The division's determination of Ms. S's needs for PCA assistance is therefore upheld.

II. The PCA Service Determination Process

The Medicaid program authorizes personal care assistance (PCA) services to recipients for the purpose of providing "*physical assistance* with activities of daily living (ADL), . . . instrumental activities of daily living (IADL), and other services based on the *physical condition* of the recipient" ¹ Because the program authorizes only physical assistance, "[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." ²

The division uses the Consumer Assessment Tool (CAT) to determine the level of physical assistance that recipients require in order to perform their ADLs and their IADLs. ³ The

¹ 7 AAC 125.010(a) [emphasis added].

² 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.*

³ See 7 AAC 125.020(a) and (b).

activities of daily living measured 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.⁴

The CAT numerical coding system has two components. The first component is the *self-performance code*.⁵ These codes rate how capable a person is of performing a particular activity of daily living. The possible codes are:

- 0** the person is independent and requires no help or oversight;⁶
- 1** the person requires supervision;
- 2** the person requires limited assistance;⁷
- 3** the person requires extensive assistance;⁸
- 4** the person is totally dependent.⁹

The second component of the CAT scoring system is the *support code*.¹⁰ These codes rate the degree of assistance that a person requires for a particular ADL. The possible codes are:

- 0** no setup or physical help required;¹¹
- 1** only setup help required;
- 2** one person physical assist required;
- 3** two or more person physical assist required.

The CAT also measures the following "instrumental activities of daily living" (IADLs): light meal preparation, main meal preparation, light housekeeping, laundry (in-home), laundry

⁴ Exh. D, p. 7; *see also* Exh. E, pp. 6 – 11.

⁵ Exh. D, p. 7.

⁶ There are two codes which are not used in calculating a service level: **5** (the person requires cueing); and **8** (the activity did not occur during the past seven days). *Id.*

⁷ In 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."

⁸ In 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."

⁹ In 7 AAC 125.020(a)(3), dependent as to an ADL or an IADL, "means the recipient cannot perform any part of the activity, but must rely entirely upon another individual to perform the activity."

¹⁰ Exh. D, p. 8.

¹¹ Again, there are additional codes which are not used to arrive at a service level: **5** (cueing required); and **8** (the activity did not occur during the past seven days). *Id.*

(out-of-home), and shopping.¹² The CAT codes IADLs somewhat differently than it does ADLs. 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).¹³

The *support codes* for IADLs are also slightly different than the support codes for ADLs. 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.¹⁴

The codes assigned to a particular ADL or IADL determine how much PCA service time a person receives for each occurrence of a particular activity. For instance, if a person is coded at 3 for requiring extensive assistance with bathing, she would receive 22.5 minutes of PCA service time each time she was bathed.¹⁵ Even if the division agrees that the amount of time provided by the formula is insufficient for a particular PCA recipient's needs, the regulations do not provide the division with the discretion to change the amounts specified by the formula.

III. Facts

The following facts were proven by a preponderance of the evidence, which consists of the documentary record and witness testimony.

Ms. S is a 76 year old woman who lives in a second story apartment with a roommate who also receives PCA services. Ms. S was first assessed for PCA hours in 2009 following a

¹² Exh. D, p. 7; *see also* Exh. E, p. 26.

¹³ Exh. D, p. 8.

¹⁴ The code that is not used to arrive at a service level is **8** (the activity did not occur). *Id.*

¹⁵ *See* 7 AAC 125.024(a)(1) and the division's *Personal Care Assistance Service Level Computation* chart contained at Exh. B, pp. 29 - 30.

right knee replacement and multiple gall bladder and stomach surgeries.¹⁶ She required extensive PCA assistance and her initial CAT resulted in her receiving 34.0 hours per week of services.¹⁷ Ms. S had her left knee replaced in 2010.¹⁸ Since her last surgery, Ms. S' condition has progressively improved and her need for PCA services has steadily decreased.

In addition to her surgery history, Ms. S' diagnoses include sleep apnea, hypertension, cerebrovascular disease, osteoarthritis, gout, obesity and pre-diabetes.¹⁹ She did not have any hospitalizations or emergency room visits in the year between her 2011 and 2012 CAT assessments, but she has gout flare-ups about three times per year and experiences shortness of breath with exertion.²⁰ Ms. S is still driving.

Rae Norton, a division employee, reassessed Ms. S's PCA service needs on May 16, 2012. The result of that assessment, as recorded in the CAT, resulted in a reduction of Ms. S's PCA services to 6.25 hours per week.²¹ Ms. S acknowledged that her assessment was essentially correct and she did not challenge any specific results from the CAT. Rather, she testified that since the CAT was done in May 2012, she has gotten weaker and is often short of breath. She requested an increase of 5-6 hours of PCA services per week on that basis.²² The following is a summary of Ms. S' May 16, 2012 CAT scoring:

A. *Bed Mobility*

Ms. S was coded as requiring no setup or physical supervision from staff (self-performance code 0, assistance code 0), which resulted in her not receiving any PCA assistance for the activity. The assessor's determination was based on Ms. S's report that she can reposition her body and walk, and upon the assessor's visual observation of Ms. S repositioning her body while she was sitting on the couch.²³ Thus, it is more likely than not true that Ms. S does not require physical assistance for this activity. The assessor's scoring was correct.

¹⁶ Exh. D.

¹⁷ Exh. D, p. 1.

¹⁸ Testimony of O S.

¹⁹ Exh. E, p. 3.

²⁰ *Id.*

²¹ Exh. D, p. 1.

²² On January 10, 2013, Ms. S' doctor prescribed PCA services for range of motion activities, walking and foot care. This Service Plan Amendment, received on January 30, 2013 and marked by the undersigned as Exh. F, occurred after the CAT currently at issue in this appeal. Thus, Ms. S' need for these services cannot be addressed in this decision.

²³ Exh. E, p. 6.

B. Transfers

Ms. S was coded as requiring setup help only (self-performance code 1, assistance code 1), which resulted in her not receiving any PCA assistance for transfers. The assessor's determination was based on Ms. S's report that she can stand and may use a cane at times because of pain from a gout flare-up, and also upon the assessor's observation of Ms. S standing with her arms crossed from a sitting position and not using a cane during the assessment.²⁴ Thus, it is more likely than not true that Ms. S does not require physical assistance for transfers. The assessor's scoring was correct.

C. Locomotion

Ms. S was coded as requiring no setup or physical supervision from staff for getting around inside her apartment (self-performance code 0, assistance code 0), which resulted in her not receiving any PCA assistance for the activity. The assessor's determination was based on Ms. S's report that she can walk inside independently most of the time, except that she may use a cane if she is having a gout flare-up, and that she can drive herself to appointments.²⁵ The score was also based on the assessor's visual observation that Ms. S walked around inside independently, with only a slight limping gait, and without her cane.²⁶ Ms. S also reported that she may need assistance outside on stairs or terrain and she is short of breath after walking a long time.²⁷ As a result, she received PCA assistance two times per day, one day per week for accessing medical appointments.²⁸ Thus, it is more likely than not true that Ms. S does not require physical assistance for inside locomotion, but that she does require assistance outside for accessing medical appointments. The assessor's scoring was correct.

D. Dressing

Ms. S was coded as requiring limited assistance (self-performance code 2, assistance code 2), which resulted in her receiving PCA assistance two times per day, seven days per week. The assessor's determination was based on Ms. S's report that she wears slip-on shoes due to difficulty putting them on, and that she needs help threading her limbs and may need help with fastenings on the back of garments, and with putting on a coat due to shoulder pain.²⁹ The score

²⁴ Exh. E, p. 6.

²⁵ Exh. E, p. 7.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Exh. D, p. 9.

²⁹ Exh. E, p. 8.

was also based on the assessor's observation that Ms. S has pain and weakness in her left grip and that she appears to need some assistance.³⁰ Thus, it is more likely than not true that Ms. S does require limited physical assistance for dressing. The assessor's scoring was correct.

E. Eating

Ms. S was coded as requiring no setup or physical supervision from staff (self-performance code 0, assistance code 0), which resulted in her not receiving any PCA assistance for eating. The assessor's determination was based on Ms. S's report that she can feed herself and can warm things up in the microwave, but that she does need help planning meals and needs assistance with putting away groceries.³¹ Thus, it is more likely than not true that Ms. S does not require physical assistance for this activity. The assessor's scoring was correct.

F. Toileting

Ms. S was coded as requiring setup help only (self-performance code 1, assistance code 1), which resulted in her not receiving any PCA assistance for toileting. The assessor's determination was based on her observation of grab bars in the bathroom and on Ms. S's report that she can sit on the toilet and use the grab bars if necessary, and only needs supervision if she is having knee pain.³² Thus, it is more likely than not true that Ms. S does not require physical assistance for toileting. The assessor's scoring was correct.

G. Personal Hygiene

Ms. S was coded as requiring setup help only (self-performance code 1, assistance code 1), which resulted in her not receiving any PCA assistance for personal hygiene. The assessor's determination was based on Ms. S' report that she can comb her hair and care for her skin and nails, but may need supervision at times.³³ The coding was based also on the assessor's observation that Ms. S appears able to perform all of her hygiene tasks with supervision.³⁴ Thus, it is more likely than not true that Ms. S does not require physical assistance for personal hygiene. The assessor's scoring was correct.

³⁰

Id.

³¹

Exh. E, p. 9.

³²

Exh. E, p. 9.

³³

Exh. E, p. 10.

³⁴

Id.

H. Bathing

Ms. S was coded as requiring limited physical assistance for transfers into and out of the tub (self-performance code 2, assistance code 2), which resulted in her receiving PCA assistance once a day, seven days per week. The assessor's determination was based on Ms. S's report that she needs help getting in and out of the tub, but that she can wash herself independently.³⁵ The score was also based on the assessor's observation that Ms. S uses a shower chair, grab bars and a hand-held shower attachment.³⁶ Thus, it is more likely than not true that Ms. S requires limited physical assistance for bathing. The assessor's scoring was correct.

I. Light Meals

Ms. S was coded as being independent with difficulty (self-performance code 1, assistance code 3) in this area, which resulted in her not receiving PCA assistance.³⁷ The assessor concluded, based upon Ms. S' report that she could move around inside the apartment without her cane, and the assessor's observation of her doing so, that she could prepare breakfast or a light meal.³⁸ It is more likely than not true that Ms. S can prepare a light meal. Thus, she was correctly scored as being independent with difficulty in this area.

J. Main Meal Preparation

Ms. S' assessment found that she required physical assistance with main meal preparation (self-performance code 2, assistance code 3), which resulted in her receiving assistance seven times per week.³⁹ The assessor's conclusion is based upon Ms. S' self-report that she can stand and move around and prepare a light meal for herself but that she cannot stand for the prolonged period of time required to prepare a main meal completely on her own. Thus, it is more likely than not true that Ms. S was appropriately assessed as being able to assist with her main meal preparation.

K. Shopping, Light and Routine Housekeeping and Laundry

Ms. S' assessment found that she required physical assistance with shopping, light housekeeping such as doing the dishes, routine housework such as vacuuming, and laundry done out of the home (self-performance code 2, assistance code 3 for each activity).⁴⁰ As a result, she

³⁵ Exh. E, p. 11.

³⁶ *Id.*

³⁷ Exh. E, p. 26.

³⁸ Testimony of Rae Norton.

³⁹ Exh. E, p. 26.

⁴⁰ Exh. D, p. 6.

received physical assistance once per week for each task.⁴¹ It is therefore more likely than not true that Ms. S was correctly assessed as requiring physical assistance with these activities.

IV. Discussion

The division provided Ms. S a total of 6.25 hours per week in PCA services as a result of her May 16, 2012 assessment. Ms. S did not challenge the coding of her needs for assistance in the CAT; in fact, she acknowledged that the assessment was correct at the time it was done. However, Ms. S stated she is weaker than she was at that time and she requested an additional 5-6 hours of PCA services.

The evidence in this appeal shows that the division was factually correct in its assessment of how Ms. S' physical condition affected her need for assistance in each of the areas discussed above. The codes assigned to a particular ADL or IADL determine how much PCA service time a person receives for each occurrence of a particular activity.⁴² Even if the division agrees that the amount of time provided by the formula is insufficient for a particular PCA recipient's needs, the regulations do not provide the division with the discretion to change the amounts specified by the formula. As a result, the division's assessment with regard to Ms. S' need for physical assistance, as reflected in the self-performance and support codes, and the frequency of the assistance needed, was correct.⁴³

V. Conclusion

The division's scoring of Ms. S' needs for PCA assistance was correct. The division's determination of Ms. S' needs for PCA assistance is therefore upheld.

DATED this 26th day of March, 2013.

Signed _____
Kay L. Howard
Administrative Law Judge

⁴¹ Exh. D, p. 9.

⁴² See 7 AAC 125.024(a)(1) and the Division's *Personal Care Assistance Service Level Computation* chart contained at Ex. B, pp. 29 - 30.

⁴³ There is a mechanism for requesting an increase in PCA hours if there is a material change in a recipient's condition. However, that requires that a request first be made to and reviewed by the division. See 7 AAC 125.024(d) and 7 AAC 125.026.

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 4th day of April, 2013.

By: Signed
Name: Kay L. Howard
Title: Administrative Law Judge

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