

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

In the Matter of:)
)
 H V) OAH No. 12-0991-MDS
) Agency No.
)
_____)

DECISION

I. Introduction

H V was receiving 34.25 hours per week of personal care assistance (PCA) services. The Division of Senior and Disabilities Services (Division) notified her on December 6, 2012 that her PCA services were being reduced to 30.5 hours per week. Ms. V requested a hearing.

Ms. V's hearing was held on January 15, 2013. Ms. V attended the hearing but did not testify. Ms. V's father, U V, represented Ms. V and testified on her behalf. G Z, who is employed by Ms. V's PCA agency, also attended the hearing and assisted in Ms. V's representation.

Shelly Boyer-Wood represented the Division. Rae Norton and Tammy Smith testified on behalf of the Division.

The Division's assessment of and provision for Ms. V's PCA service needs was mostly correct. The evidence shows, however, that she does require PCA assistance for laundry twice per week rather than the one time allowed by the Division. This is because Ms. V is, as noted on the assessment, occasionally incontinent, which generates additional laundry needs. The Division's determination of Ms. V's needs for PCA assistance is therefore upheld for the most part, and reversed only with regard to laundry, where she requires assistance twice per week.

II. The PCA Service Determination Process

The Medicaid program authorizes PCA 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" ¹ Accordingly, "[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

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

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 ADLs and their IADLs.³ The ADLs 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*. 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 assistance⁵); **3** (the person requires extensive assistance⁶); **4** (the person is totally dependent⁷). There are also 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).⁸

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 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 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).⁹

The CAT also codes certain 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.¹⁰

"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).

⁴ Ex. E, pp. 6 – 11.

⁵ 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."

⁶ 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."

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

⁸ Ex. E, p. 18.

⁹ Ex. E, p. 18.

¹⁰ Ex. E, p. 26.

The CAT codes IADLs slightly 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). There is also a code that is not used to arrive at a service level: **8** (the activity did not occur).¹¹

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 - the person was not involved at all when the activity was performed). Again, there is an additional code that is not used to arrive at a service level: **8** (the activity did not occur).¹²

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 as requiring extensive assistance (code of 3) with bathing, she would receive 22.5 minutes of PCA service time each time she was bathed.¹³ 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.

Ms. V is 20 years old.¹⁴ She is paralyzed in her lower extremities from polio. Her paralysis starts at her hip area and is more severe on her left leg. She cannot stand or walk and uses a wheelchair for mobility.¹⁵ Her upper body is not paralyzed; she can use her upper extremities to touch her feet and straighten out her legs. However, her upper body range of motion is somewhat limited because she is substantially overweight.¹⁶ She is capable of propelling her wheelchair without assistance but prefers not to. Ms. V's medical provider has written a prescription that she

¹¹ Ex. E, p. 26.

¹² Ex. E, p. 26.

¹³ 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.

¹⁴ Ex. E, p. 1.

¹⁵ Ex. E, p. 3.

¹⁶ Ex. E, p. 4; Rae Norton testimony.

engage in range of motion exercises, with physical assistance, and that she exercise, without physical assistance, in her wheelchair.¹⁷ It is undisputed that Ms. V's doctor wants her to propel herself in her wheelchair.

Ms. V lives in a trailer that is not completely wheelchair accessible. The hallway is too narrow for her to propel her wheelchair by herself. The bathroom door is too narrow to allow her wheelchair into the bathroom, which means that she has to be lifted out of her wheelchair and carried in and out of the bathroom when she needs to use the toilet or be bathed. However, the area between the living room and kitchen/dining room is open and she can move her wheelchair by herself in those areas. At the time of the assessment, she self-propelled her wheelchair from the living room into the kitchen at the assessor's request.¹⁸

Ms. V was receiving 34.25 hours of PCA services prior to September 30, 2012. Rae Norton, a Division employee, reassessed Ms. V's PCA service needs on September 13, 2012. The result of that assessment, as recorded in the Consumer Assessment Tool (CAT) resulted in a reduction of Ms. V's PCA services to 30.5 hours per week.¹⁹ Ms. V disagreed with results of her reassessment with regard to four of her ADLs, specifically body mobility,²⁰ transfers, locomotion, and toileting, and with regard to five of her IADLs, specifically light meal preparation, main meal preparation, shopping, light housekeeping, and laundry.²¹ Each area of disagreement is addressed below.

A. *Bed Mobility*

Ms. V had previously been assessed as requiring limited assistance from one person (self-performance code 2, assistance code 2) two times per day, seven days per week, in bed mobility.²² In her new assessment, she was coded as requiring setup supervision only (self-performance code 1, assistance code 1), which resulted in her not receiving any PCA assistance for the ADL. The assessor's determination was based on her visual observation of Ms. V. She saw Ms. V change from sitting in a cross-legged position on the couch to sitting in a straight-legged position, by touching both feet and straightening her legs. The assessor also saw her reposition herself in her wheelchair. Based upon these observations and the fact that Ms. V had no evidence of skin breakdown (from remaining in one position for a prolonged period of time), the assessor concluded

¹⁷ Ex. F, p. 2.

¹⁸ Ex. E, pp. 7, 9; Rae Norton testimony.

¹⁹ Ex. D.

²⁰ Body mobility is coded on the CAT under the category of bed mobility. It refers to the ability of a person to move and reposition herself while in bed. (Ex. E, p. 6)

²¹ At hearing, Ms. V presented a handwritten list of her areas of disagreement with the CAT. (Ex. 1)

²² Ex. D, pp. 2, 6.

that Ms. V could reposition herself in her bed without physical assistance, and that she just needed occasional supervision.²³

Mr. V disagreed with the assessor's conclusion that Ms. V did not require physical assistance with her bed mobility. He stated she required the maximum assistance available in this area, seven times per day, seven days per week.²⁴ Maximum assistance is equivalent to total dependence (code of 4), which would result in her receiving 5 minutes of PCA service time for each time she was assisted with bed mobility.²⁵ Mr. V agreed that Ms. V could use her arms and rearrange her upper body; however, he testified that she could not move her lower body without help.²⁶

Mr. V's testimony is contrary to the assessor's observations and is not supported by the evidence. While Ms. V does have some range of motion limitations, which are due to her weight, there is no indication that she is unable to turn her back or use her arms to reposition her lower trunk and legs. As a result, it is more likely true than not true that Ms. V does not require physical assistance to reposition herself in bed. The assessor's scoring of setup supervision only (self-performance code 1, assistance code 1) was appropriate.

B. Transfers

Ms. V had previously been assessed as requiring extensive one-person physical assistance (self-performance code 3, assistance code 2) in transfers six times per day, seven days per week.²⁷ The new assessment did not change the result.

Mr. V disagreed with the assessment. He asserted that Ms. V required the maximum time for assistance with each transfer which is equivalent to total dependence (code of 4).²⁸ A total dependence code would result in Ms. V receiving 5 minutes of PCA service time for each time she was assisted with a transfer. He also stated she required transfers 20 times per day instead of the six times per day provided for in the assessment.²⁹

Because Ms. V has upper body strength and the use of her arms, as shown by her ability to move her wheelchair independently, she can assist in transfers. The CAT was appropriately coded as her requiring extensive assistance (self-performance code of 3), because even though she requires

²³ Ex. D, pp. 2, 6; Ex. E, pp. 4, 6; Rae Norton testimony.

²⁴ Ex. 1.

²⁵ Ex. B, p. 29.

²⁶ U V testimony.

²⁷ Ex. D, p. 6.

²⁸ Ex. 1.

²⁹ Ex. 1; U V testimony.

weight-bearing assistance, she can use her arms to help assist in the transfer. Mr. V testified that due to Ms. V's weight, she required two persons for a transfer. His testimony was credible given his daughter's size, however, there is no increase in PCA service time when an activity requires a two person assist instead of a one person assist.³⁰ Mr. V's disagreement with the number of transfers allowed was not supported by the evidence. His argument was simply one that his daughter preferred frequent transfers, not that she required them.

Consequently, it is more likely true than not true that the Division appropriately provided Ms. V with PCA service time for extensive assistance (self-performance code of 3) in transfers, six times per day, seven days per week.

C. Locomotion

Ms. V had previously been assessed as requiring limited assistance from one person (self-performance code 2, assistance code 2) six times per day, seven days per week, in locomotion.³¹ Her new assessment again found that she required limited assistance from one person (self-performance code 2, assistance code 2), but reduced the amount of locomotion assists from six times per day to four times per day, seven days per week.³² The reduction was based upon the assessor's observation that Ms. V could self-propel the wheelchair in the living room area and that Ms. V's doctor wanted her to exercise her arms.³³

Mr. V disagreed with the assessment. He asserted that Ms. V required the maximum time for each locomotion event, which is equivalent to total dependence (code of 4).³⁴ A total dependence code would result in Ms. V receiving 5 minutes of PCA service time for each time she was assisted with locomotion.³⁵ He also stated that she needed 20 locomotions each day because she needed to move around the house and that as a young person she should not be limited to staying in one place. He later reduced the request amount to 10 times per day. He said his daughter did not want to push her wheelchair herself, because it hurt her arms and she should not be required to do something that she did not want to do.³⁶

The evidence shows that it is more likely true than not true that Ms. V was correctly assessed at requiring only limited assistance (code of 2). She is capable of pushing her wheelchair

³⁰ Ex. B., p. 29.

³¹ Ex. D, p. 6; Ex. E, p. 6; Rae Norton testimony.

³² Ex. D, pp. 2, 6.

³³ Ex. E, p. 7.

³⁴ Ex. 1.

³⁵ Ex. B, p. 29.

³⁶ Ex. 1; U V testimony.

herself as shown both by the assessor witnessing her pushing the wheelchair, and by the prescription stating that she should independently (*i.e.*, without any assistance) perform wheelchair exercises. While she may not want to do this, she is physically capable of pushing her wheelchair. The physical layout of the home, however, does limit her ability to push the wheelchair. The time allotted of four times per day is therefore also appropriate.

D. Toileting

Ms. V had previously been assessed as requiring extensive assistance from one person (self-performance code 3, assistance code 2) six times per day, seven days per week, in toileting.³⁷ Her new assessment coded her again as requiring extensive assistance from one person (self-performance code 3, assistance code 2), but increased the amount of toileting assistance to eight times per day, seven days per week.³⁸

Mr. V disagreed with the assessment. He asserted that Ms. V required the maximum time for each toileting event, which is equivalent to total dependence (code of 4).³⁹ A total dependence code would result in Ms. V receiving 12 minutes of PCA service time for each time she was assisted with toileting.⁴⁰ He also stated that she should receive toileting assistance nine times per day instead of the eight times allotted by the Division, because she uses the bathroom often. He, however, did not explain how many times per day she needed to use the bathroom.⁴¹ The evidence shows that it is more likely true than not true that Ms. V was correctly assessed as requiring extensive assistance (code of 3). She does have upper body strength so that she is capable of performing some of the toileting process herself, such as helping transfer off and on the toilet. Although she has some range of motion limitations due to her size, she can also help with self-cleansing after toileting. The number of times that toileting assistance is required per day is a more difficult question. The Division allotted six times per day in the previous assessment. The Division increased this amount to eight times per day in the new assessment. The request for an increase to nine times per day appears to have simply been a figure picked by Mr. V as an attempt to increase his daughter's PCA service time, similar to his requests for maximum assistance 20 times per day for transfers and locomotion. Consequently, it is more likely true than not true that the Division's increase of Ms. V's toileting assistance from six times per day to eight times per day is appropriate.

³⁷ Ex. D, p. 6; Ex. E, p. 6; Rae Norton testimony.

³⁸ Ex. D, p. 6.

³⁹ Ex. 1.

⁴⁰ Ex. B, p. 29.

⁴¹ Ex. 9; U V testimony.

E. Light Meals

Ms. V had previously been assessed as being completely dependent for light meal preparation (self-performance code 3, assistance code 4).⁴² Her new assessment found that she was independent with difficulty (self-performance code 1, assistance code 3) in this area.⁴³ The assessor concluded, based upon Ms. V's ability to self-propel her wheelchair and the fact that she had a good range of motion, that she could prepare a light meal, such as a sandwich or piece of fruit.⁴⁴

Mr. V disagreed with the assessment. He asserted that Ms. V required the maximum time for assistance with each light meal, which is equivalent to total dependence (code of 3).⁴⁵ A total dependence code would result in Ms. V receiving 15 minutes of PCA service time for each time she was assisted with a light meal.⁴⁶ Mr. V did state that Ms. V could perform such activities as opening the refrigerator door and pulling items from it.⁴⁷

Given Ms. V's ability to self-propel her wheelchair and her ability to open a refrigerator door and obtain items out of the refrigerator, it is more likely true than not true that Ms. V can prepare a light meal. Consequently, she was appropriately assessed as being independent with difficulty in this area.

F. Main Meal Preparation

Ms. V had previously been assessed as being completely dependent for main meal preparation (self-performance code 3, assistance code 4).⁴⁸ Her new assessment found that she required physical assistance with main meal preparation (self-performance code 2, assistance code 3).⁴⁹ The assessor concluded, based upon Ms. V's ability to self-propel her wheelchair and the fact that she had a good range of motion, that she could help prepare a meal.

Mr. V asserted that Ms. V required the maximum time for assistance with each main meal, which is equivalent to total dependence (self-performance code 3).⁵⁰ A total dependence code would result in Ms. V receiving 24 minutes of PCA service time for each main meal.⁵¹ Mr. V did

⁴² Ex. D, p. 6.

⁴³ Ex. D, pp. 3, 6; Ex. E, p. 26.

⁴⁴ Rae Norton testimony.

⁴⁵ Ex. 1.

⁴⁶ Ex. B, p. 29.

⁴⁷ Apparently Ms. V does not like to open the refrigerator but she is physically capable of opening it. U V testimony.

⁴⁸ Ex. D, p. 6.

⁴⁹ Ex. D, pp. 3, 6.

⁵⁰ Ex. 1.

⁵¹ Ex. B, p. 29.

state that Ms. V could perform such activities as opening the refrigerator door and pulling items from it.⁵²

Given Ms. V's ability to use her arms, self-propel her wheelchair, and her ability to open a refrigerator door and obtain items out of the refrigerator, it is more likely true than not true that Ms. V was appropriately assessed as being able to assist with her main meal preparation.

G. Shopping

Ms. V had previously been assessed as being completely dependent for shopping (self-performance code 3, assistance code 4).⁵³ Her new assessment found that she required physical assistance with shopping (self-performance code 2, assistance code 3).⁵⁴ The assessor concluded, based upon Ms. V's ability to self-propel her wheelchair and the fact that she had a good range of motion, that she could assist with shopping.

Mr. V disagreed with the assessment. He asserted that Ms. V required the maximum time for assistance for shopping, which is equivalent to total dependence (code of 3).⁵⁵ A total dependence code would result in Ms. V receiving 60 minutes of PCA service time each week for shopping.⁵⁶

Given Ms. V's ability to use her arms, self-propel her wheelchair, and her ability to open a refrigerator door and obtain items out of the refrigerator, she is also capable of going shopping and physically assisting in it, by doing such things as taking items from the shelves (that are within the reach of her arms). It is therefore more likely true than not true that Ms. V was appropriately assessed as requiring physical assistance with her shopping, rather than being completely dependent.

H. Light Housekeeping

Ms. V had previously been assessed as being completely dependent for light housekeeping (self-performance code 3, assistance code 4).⁵⁷ Her new assessment did not change that result; it found that she was again dependent and required physical assistance (self-performance code 3,

⁵² Apparently Ms. V does not like to open the refrigerator but she is physically capable of opening it. U V testimony.

⁵³ Ex. D, p. 6.

⁵⁴ Ex. D, pp. 3, 6.

⁵⁵ Ex. 1.

⁵⁶ Ex. B, p. 29.

⁵⁷ Ex. D, p. 6.

assistance code 3). She received 90 minutes per week of PCA time for light housekeeping assistance.⁵⁸

Mr. V asserted that Ms. V required the maximum time for assistance for housekeeping, which is equivalent to total dependence (self-performance code of 3).⁵⁹ However, the maximum amount of time Ms. V could receive for light housekeeping assistance is 90 minutes per week.⁶⁰ Mr. V therefore has no reason to object, because Ms. V already receives the maximum amount of time available for light housekeeping assistance. The Division's assessment is therefore found to be correct on this point.

I. Laundry (Outside of the home)

Ms. V had previously been assessed as being completely dependent for laundry (self-performance code 3, assistance code 4) and the laundry was allowed twice per week.⁶¹ Her new assessment found that she required physical assistance with laundry (self-performance code 2, assistance code 3) once per week.⁶² The assessor concluded that Ms. V could assist with laundry, doing such things as folding clothes.⁶³

Mr. V disagreed with the assessment. He asserted that Ms. V required the maximum time for assistance for laundry, which is equivalent to total dependence (self-performance code of 3), and that she should receive laundry assistance twice per week.⁶⁴ A total dependence code would result in Ms. V receiving 60 minutes of PCA service time every time laundry assistance is provided.⁶⁵

Given Ms. V's ability to use her arms and self-propel her wheelchair, she is capable of participating in part of the laundry activity, such as folding clothes (self-performance code 2, assistance code 3). This would result in her receiving 45 minutes of PCA service time every time laundry assistance is provided.⁶⁶ Mr. V stated that he washed Ms. V's laundry three or four times per week.⁶⁷ The assessment shows that Ms. V experiences bladder incontinence two or more times per week, but that she is not incontinent on a daily basis.⁶⁸

⁵⁸ Ex. D, pp. 3, 6; Ex. E, p. 26.

⁵⁹ Ex. 1.

⁶⁰ Ex. B, p. 29.

⁶¹ Ex. D, p. 6.

⁶² Ex. D, pp. 3, 6.

⁶³ Rae Norton testimony.

⁶⁴ Ex. 1.

⁶⁵ Ex. B, p. 29.

⁶⁶ Ex. B, p. 29.

⁶⁷ U V testimony.

⁶⁸ Ex. E, p. 23.

Because Ms. V can help participate in a portion of laundry, such as folding clothes, it is more likely true than not true that the assessment appropriately found that she only requires partial physical assistance with the laundry, which would result in her receiving 45 minutes of PCA assistance each time laundry is done. However, because she is incontinent, which generates a greater need for laundry, it is more likely true than not true that she should receive PCA laundry time twice per week rather than the one time per week allotted by the assessment.

IV. Discussion

The Division provided Ms. V a total of 30.5 hours per week in PCA services as a result of her September 13, 2012 assessment. Ms. V challenged the amount of PCA services she was provided in nine separate tasks: body mobility, transfers, locomotion, toileting, light meal preparation, main meal preparation, shopping, light housekeeping, and laundry.

All of these challenges were fact based. As discussed above, the facts of this case show that the Division was factually correct in its assessment of how Ms. V's physical condition affected her need for assistance in each of the following areas:

- Body Mobility⁶⁹
- Transfers
- Locomotion
- Toileting
- Light Meal Preparation
- Main Meal Preparation
- Shopping
- Light Housekeeping

As a result, the Division's assessment with regard to its assessment of Ms. V's need for assistance (self-performance codes and support codes) and the frequency of the assistance needed were more likely true than not true correct with regard to each of these areas.

There is, however, show one item of difference. While Ms. V was correctly assessed as being able to physically assist with laundry, she requires laundry assistance twice per week instead of once per week. This is due to her occasional incontinence, as noted on the assessment.

⁶⁹ The Division argued that Ms. V was ambulatory once in her wheelchair, which affected her need for body mobility assistance. *See* Tammy Smith testimony. However, because this decision finds that Ms. V has the upper body strength to perform such body mobility activities as movement in bed, it is not necessary to discuss whether Ms. V's ambulatory status, while in her wheelchair, limits or precludes her eligibility for PCA services for body mobility.

V. Conclusion

The Division's scoring of Ms. V's needs for PCA assistance was correct. However, she requires PCA assistance for laundry twice per week rather than the one time allowed by the Division. The Division's determination of Ms. V's needs for PCA assistance is therefore upheld for the most part, and reversed only with regard to laundry, where she requires assistance twice per week.

DATED this 11th day of February, 2013.

Signed _____
Lawrence A. Pederson
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 26th day of February, 2013.

By: *Signed* _____
Name: Lawrence A. Pederson
Title: Administrative Law Judge

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