

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

In the Matter of

M D

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OAH No. 13-0251-MDS  
Agency No.

**DECISION**

**I. Introduction**

The Division of Senior and Disabilities Services (the division) reassessed M D’ functional abilities on January 8, 2013. Based on that assessment, and after applying recent regulatory changes, the division reduced the amount of Personal Care Assistance (PCA) services from 64 hours per week to 27 hours per week. Ms. D contested that decision and requested a hearing. Based on the evidence presented, the division’s reduction of PCA services is partially affirmed and partially reversed.

**II. Facts**

Ms. D was 51 at the time of the assessment.<sup>1</sup> She has been diagnosed with diabetes, depressive disorder, somatoform disorder, and multiple sclerosis. These conditions manifest themselves through vertigo, cognitive challenges, pain and stiffness after periods of immobility, loss of strength, and difficulty with some daily skills, such as using knives in the kitchen. The morning of the assessment, Ms. D made sure she had been up and moving so that she would present herself in the best light possible. Because of this, Ms. D believes her assessment does not accurately reflect the amount of physical assistance she requires over the average week; rather, it is a single snapshot of her at her best and presents a skewed view of her physical abilities.

In February 2012, she moved into a new apartment. The new apartment is larger, making it easier for Ms. D to use her scooter and walker. Ms. D does not dispute that she is capable of getting out of bed on her own and using her scooter to locomote in the morning; but, by doing so she is not following her doctor’s order to walk rather than rely on her scooter.

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<sup>1</sup> Unless otherwise stated, these factual findings are based on the content of Exhibit E and the testimony present at hearing.

Ms. D testified, as did her PCA, G C. Ms. C has been Ms. D' PCA five days a week, 8 hours and 15 minutes per day, for the past four years.

The division presented the testimony of Nurse Sam Cornell and Health Program Manager Suzanne Mittlestadt. Mr. Cornell evaluated Ms. D on January 8, 2013 using the division's Consumer Assessment Tool (CAT). The division completed its assessment and issued a notice on February 19, 2013, informing Ms. D that her PCA services would be reduced.<sup>2</sup> The division does not challenge her description of symptoms.

### III. Discussion

#### A. *The PCA Program*

The purpose of the PCA program

is to provide a recipient 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[.<sup>3</sup>]

The division uses the CAT to help it assess the level of assistance needed.<sup>4</sup> The amount of time allotted for needed assistance is determined by the Personal Care Assistance Service Level Computation.<sup>5</sup> The Service Level Computation chart shows the amount of time allotted for each ADL or IADL depending on the level of assistance needed for each task. The amount and type of physical assistance for each ADL or IADL is captured by a scoring system.

The ADLs measured 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.<sup>6</sup> In addition, the CAT measures five other ADL-like activities. These are medication, vital signs/glucose levels, dressings/bandages/oxygen, sterile wound care, and documentation.

The CAT numerical coding system has two components. The first 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

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<sup>2</sup> Exhibit D.

<sup>3</sup> 7 AAC 125.010(a).

<sup>4</sup> 7 AAC 125.020(b).

<sup>5</sup> 7 AAC 125.024(1).

<sup>6</sup> See Division of Senior and Disability Services' *Personal Care Assistance Service Level Computation* (Exhibits B29 - B30).

or oversight); **1** (the person requires supervision); **2** (the person requires limited assistance<sup>7</sup>); **3** (the person requires extensive assistance<sup>8</sup>); **4** (the person is totally dependent<sup>9</sup>). 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).

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 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).

The CAT also codes certain activities known as “instrumental activities of daily living” (IADLs).<sup>10</sup> These are light meal preparation, main meal preparation, light housekeeping, laundry (in-home), laundry (out-of-home), and shopping. Finally, the CAT codes one other activity under IADL, oxygen maintenance.

The CAT codes IADLs slightly differently than ADLs.<sup>11</sup> 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); **3** (dependent / done by others - the person is not involved at all with the activity and the activity is fully performed by another person); and **8** (the activity did not occur).

The *support codes* for IADLs are also slightly different than the support codes for ADLs.<sup>12</sup> The support codes for IADLs are **0** (no support provided); **1** (supervision / cueing provided); **2** (set-up help only); **3** (physical assistance provided); and **4** (total dependence - the

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<sup>7</sup> 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.”

<sup>8</sup> 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.”

<sup>9</sup> 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.”

<sup>10</sup> Exhibit E26.

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

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

person was not involved at all when the activity was performed); and **8** (the activity did not occur).

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.<sup>13</sup> Thus, even were the Division to agree 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 increase the amounts specified by the formula.<sup>14</sup>

The division may change the number of hours of allotted PCA services if there has been a material change in condition.<sup>15</sup> New housing is considered a material change in condition.<sup>16</sup> When, as in this case, the division wishes to reduce the amount of allotted time, the division has the burden of proving the reduced time accurately reflects the recipient's needs as of the date of the decision.<sup>17</sup> Ms. D questioned the division's determinations in several areas, each of which is addressed below.<sup>18</sup>

### ***B. Transfers***

The ADL of transfers refers to moving between surfaces, such as moving to or from a bed or a chair.<sup>19</sup> The division determined that Ms. D had improved from needing extensive assistance with a one-person physical assist 56 times/week to needing only supervision and set-up help.<sup>20</sup> Mr. Cornell testified that he observed Ms. D transfer at least twice with no assistance. He also relied upon her statements that she transfers out of bed and to the toilet several times a night.

Ms. C provided extensive testimony regarding Ms. D' morning routine. What was described was extensive assistance with a one-person physical assist to get her out of bed

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<sup>13</sup> See 7 AAC 125.024(a)(1) and the Division's *Personal Care Assistance Service Level Computation*, revised as of August 12, 2011, provided at Exhibit B, pp. 29 - 30.

<sup>14</sup> See *Id.*

<sup>15</sup> 7 AAC 125.026(a).

<sup>16</sup> 7 AAC 125.026(d)(2).

<sup>17</sup> See *In re T.C.*, OAH Case No. 13-0204-MDS (Commissioner of Health and Social Services 2013), page 7 (notice sent to recipient is the decision under review), available at <http://aws.state.ak.us/officeofadminhearings/Documents/MDS/HCW/MDS130204.pdf>.

<sup>18</sup> Several areas were resolved by the parties outside of the hearing. Those items are not addressed in this decision.

<sup>19</sup> 7 AAC 125.030(b)(2).

<sup>20</sup> Exhibit D2; Exhibit E6.

and standing. When asked to reconcile her ability to get out of bed at night with her need for physical assistance in the morning, Ms. C and Ms. D testified that Ms. D' doctor wanted her to walk more and rely on the scooter less. Ms. D uses the scooter at night because, without assistance or the scooter, she could not get to the bathroom without soiling herself.

The explanation provided addresses the need to locomote to the bathroom, not transfer in and out of bed. It is undisputed that Ms. D becomes stiff and sore after sitting or lying too long, but the unchallenged testimony establishes that Ms. D transfers in and out of bed several times a night without assistance. She transfers independently throughout the day. She may need to stop and regain her balance, but she does transfer independently. Based on this testimony, Ms. D is independent with transfers or needs set-up assistance only. Accordingly, the division has established that a reduction in services for this ADL is appropriate.

### ***C. Locomotion***

The division determined that Ms. D improved from needing limited assistance 42 times per week to supervision only. Ms. D is stiff and sore after sitting for a period of time; however, once she starts moving her gait becomes smoother. Ms. D is independent when walking with her walker or using her scooter. She may require standby assistance, but that is not physical assistance. Accordingly, the division correctly scored this ADL.

### ***D. Dressing***

The parties only dispute frequency. Ms. D seeks an increase in her frequency score of 14 to add an additional 6 times per week. Because she seeks to increase the frequency of her dressing, she has the burden of proving she is eligible for the increase.

Ms. D seeks increased frequency because she swims three times a week and requires assistance dressing and undressing. Prior to the regulation change, the amount of time allotted for PCA services enabled Ms. D to receive assistance at the pool. The division has denied her request, reasoning that the pool time is not an ADL, and therefore, dressing and undressing for a non-ADL activity is not an authorized PCA service. Ms. D provided a medical order dated November 13, 2012 ordering pool therapy three times a week.<sup>21</sup> PCA recipients are encouraged to maintain physical activity and involvement. Ms. D' doctor has

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<sup>21</sup> Exhibit 10.

ordered pool therapy as a way of maintaining what physical ability she has left. The regulations do not prohibit assistance with dressing and undressing outside of the residence. Ms. D has established by a preponderance of the evidence that she requires assistance dressing and undressing three times a week so she can follow her doctor's orders. Accordingly, frequency should increase by 6 times per week.

***E. Toileting***

The ADL of toileting captures how a person uses the toilet, transfers on and off of the toilet, cleanses, etc.<sup>22</sup> Ms. D had previously been scored as requiring a one person physical assist seven times a day. Her recent CAT scored her as requiring set-up help only. Ms. D' testimony regarding her ability to toilet without physical assistance and clean herself, the ability to maneuver her walker and scooter in her new apartment, and the addition of assistive devices such as a raised toilet seat and grab bar support the division's scoring for this ADL.

***F. Meal Preparation, Light and Main***

Meal preparation includes the preparation, serving, and cleanup of one main meal per day and two light meals per day.<sup>23</sup> The division reduced Ms. D' score from total dependence (3/4) to being involved in the activity with physical assistance (2/3). Ms. D may not be able to chop and slice foods or lift pots and pans on and off of the stove, but she can perform some tasks associated with food preparation. A score of 2/3 accurately reflects the level of assistance required to complete these two IADLs.

***G. Shopping***

The division reduced Ms. D' scores from total dependence (3/4) to being involved in the activity with physical assistance (2/3). Ms. D accompanies her PCA to the store. The testimony established that she goes with her PCA because Ms. D uses that time to walk and tell her PCA what she wants for groceries. The role of a PCA is to provide physical assistance to a recipient so they can complete activities for daily living. Ms. D does accompany her PCA, but the division has failed to present evidence of her ability to physically assist with the shopping. The proper score based on the evidence presented is total dependence (3/4).

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<sup>22</sup> Exhibit E9.

<sup>23</sup> 7 AAC 125.030(c)(1), (2).

### ***H. Light Housework***

Light housework includes picking up, dusting, vacuuming, cleaning the kitchen and dishes, cleaning the bathroom, making the bed, and trash removal.<sup>24</sup> Ms. D testified that she is obsessive-compulsive and does not like to see her clothing on the floor or her house in disarray, so she keeps her clothing picked up and will sometimes take the trash out. She has an assistive device that helps her pick items up off of the floor.

Because of her vertigo, bending over and performing certain light housework duties are beyond her physical capabilities; however, she is not completely dependent upon her PCA to physically perform all of the light housework. She is involved but requires physical assistance. A score of 2/3 accurately reflects the level of assistance required to complete this IADL.

### ***I. Medication***

The division removed any PCA time for medication because the assessor marked the box indicating that Ms. D prepared and administered all of her own medications. The testimony of Ms. D and Ms. C establish that Ms. D requires her medications be placed in a mediset or she will have difficulty being compliant with her medications. The testimony also establishes that she cannot load the mediset because she lacks the fine motor skills to move the medications from pill bottles. Therefore, a score of 4 (person did not prepare but did self-administer all medications)<sup>25</sup> most accurately describes the type and amount of assistance Ms. D requires to complete this IADL.

## **IV. Conclusion**

The division's reduction of PCA services is partially upheld and partially reversed. The division should recalculate Ms. D' PCA time consistent with the discussion above. If Ms. D disputes the new calculation, she has appeal rights as to that limited issue.

Dated this 26<sup>th</sup> day of March, 2014.

*Signed*  
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Rebecca L. Pauli  
Administrative Law Judge

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<sup>24</sup> 7 AAC 125.030(c)(3).

<sup>25</sup> Exhibit E20 §G.1a.

## 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 8<sup>th</sup> day of May, 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.]