

**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. 13-0569-MDS  
 ) Agency No.  
\_\_\_\_\_)

**DECISION**

**I. Introduction**

D T was receiving personal care assistance (PCA) services on the basis of an assessment done in early 2012, when she was recovering from back surgery. Based on a reassessment conducted on February 12, 2013, the Division of Senior and Disabilities Services (Division) decided on April 11, 2013 that her PCA services should be terminated. Ms. T requested a hearing.

Ms. T’s hearing was held by telephone on July 3, 2013. The case had originally been assigned to Administrative Law Judge Jeffrey Friedman, but he was unavailable due to an emergency and, with consent of all parties, the undersigned conducted the hearing. Ms. T represented herself. Shelly Boyer-Wood represented the Division. Division employees Darlene Day, Olga Levy, Barbara Popkin, and Rodney George gave testimony in support of the decision to terminate, while Ms. T herself and U E of No Name testified on Ms. T’s behalf.

This decision concludes that Ms. T is, in fact, no longer eligible for PCA services.

**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 . . . .”<sup>1</sup> By regulation, the Department of Health and Social Services is committed to use the Consumer Assessment Tool (CAT) to determine whether people are eligible for the program and, if so, the level of physical assistance that recipients require in order to perform their ADLs and their IADLs.<sup>2</sup>

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<sup>1</sup> 7 AAC 125.010(a).  
<sup>2</sup> See 7 AAC 125.020(b).

The activities of daily living measured by the CAT are bed mobility, transfers, locomotion, dressing, eating, toilet use, personal hygiene, and bathing.<sup>3</sup> Of these eight, only six—all except bed mobility and personal hygiene—are used to determine basic eligibility.<sup>4</sup> The CAT numerical coding system for ADLs has two components. The first component is the *self-performance code*.<sup>5</sup> These codes rate how capable a person is of performing a particular activity of daily living. The codes used to calculate service level<sup>6</sup> are:

- 0 the person is independent and requires no help 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>

The second component of the CAT scoring system is the *support code*.<sup>10</sup> These codes rate the degree of assistance that a person requires for a particular ADL. The codes used to calculate service level<sup>11</sup> for ADLs 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.

Turning to instrumental activities of daily living, the CAT measures six: meal preparation, main meal preparation, light housework, routine housework, grocery shopping, and

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<sup>3</sup> Ex. D, p. 6; Ex. E, pp. 6 – 12.

<sup>4</sup> Ex. E, p. 31.

<sup>5</sup> Ex. D, p. 7.

<sup>6</sup> 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.*

<sup>7</sup> 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."

<sup>8</sup> 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."

<sup>9</sup> 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."

<sup>10</sup> Ex. D, p. 8.

<sup>11</sup> 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.*

laundry.<sup>12</sup> All six are used in a determining basic eligibility. 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).<sup>13</sup>

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 only;
- 3** physical assistance provided; and
- 4** total dependence.<sup>14</sup>

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, with fixed numbers of minutes assigned to each task.<sup>15</sup> At a more basic level, in a termination case such as this one the question is whether the person is eligible for PCA services in the first place: To have basic eligibility a person needs certain codes in listed ADLs or IADLs.<sup>16</sup>

In this case, in which the Division is seeking to end a benefit a citizen is already receiving, the Division has the burden to prove facts that show the citizen is now ineligible for the program.<sup>17</sup>

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<sup>12</sup> Ex. D, p. 6; Ex. E, pp. 26, 31.

<sup>13</sup> Ex. D, p. 8.

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

<sup>15</sup> See 7 AAC 125.024(a)(1); Ex. B, pp. 34 – 36; Ex. D, p. 7.

<sup>16</sup> See Ex. E, p. 31.

<sup>17</sup> 7 AAC 49.135.

### III. Factual Background

D T is a 41-year-old woman who lives in a bus in a remote location that can be difficult to access by ordinary vehicle. The bus has no running water or indoor sanitation, and is heated by means of a wood stove.<sup>18</sup>

Ms. T has had significant difficulties with nerve impingement and back pain, both before and after back surgery in late 2011.<sup>19</sup> Other health challenges include HIV disease and shortness of breath.<sup>20</sup> She has a seizure disorder that prevents her from holding a driver's license, although she does drive on the private road leading to her home.<sup>21</sup> Recently, she has experienced some knee pain and swelling, but no major defect has been diagnosed.<sup>22</sup> Since the 2011 back surgery, she has been receiving PCA services which, according to her primary physician, have provided useful assistance with "housecleaning, splitting and carrying firewood, getting to Dr. appointments and [doing] stretching exercises."<sup>23</sup> Some of these activities are outside the scope of the PCA program.

Olga Levy, a Health Program Manager with the Division, reassessed Ms. T's PCA needs in a visit to her bus on February 12, 2013. The visit seems to have been quite memorable due to the unusual living circumstances and the need to get help from Ms. T when the agency car would go no farther on the difficult access road. Ms. Levy appears to remember it well. She summarized her observations on the CAT, and on the basis of these observations the Division has concluded that Ms. T is no longer eligible for PCA services.

### IV. Review of Eligibility

The discussion below tracks Ms. Levy's CAT assessment and reevaluates the various components of eligibility.

#### A. ADLs

One way to qualify for PCA services is to qualify for a CAT score of 2, 3, or 4 in both the self performance and support components of one or more of the six ADLs listed below.<sup>24</sup>

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<sup>18</sup> Ex. E, p. 1; testimony of Olga Levy.

<sup>19</sup> Testimony of Ms. T; Ex. F, p. 3.

<sup>20</sup> Testimony of Ms. T; Ex. E, p. 3.

<sup>21</sup> Testimony of U E.

<sup>22</sup> Testimony of Ms. T; Ex. 1.

<sup>23</sup> Ex. 1.

<sup>24</sup> See Ex. E, p. 31.

1. Transfers

Transfers are movements between surfaces, such as from a bed to a chair. In both the prior assessment and the 2013 assessment, she was scored 0 for both self-performance and support (“0/0”) in this category. There is no dispute that Ms. T does transfers independently (though sometimes with discomfort), and hence she cannot receive a qualifying score of 2 or higher for this activity.

2. Locomotion

Locomotion is the ability to move around a single floor, with or without assistive devices. Ms. T is able to do this independently, sometimes using a wall or railing to steady herself.<sup>25</sup> Indeed, she is able to walk independently outside the home, and she does so to chop wood, shovel snow, fetch small buckets of water, and walk a dog.<sup>26</sup> These latter activities are painful and take a toll on her, but there is no evidence that simple locomotion within her dwelling is significantly problematic. She cannot receive a qualifying score of 2 or higher for either self-performance or support with respect to this activity.

3. Dressing

There is no dispute that Ms. T can dress and undress independently, and both her prior assessment and current assessment scored her 0/0 in this category.<sup>27</sup> The assessor’s scoring was correct.

4. Eating

There is likewise no dispute that Ms. T eats independently, and both her prior assessment and current assessment scored her 0/0.<sup>28</sup> The assessor’s scoring was correct.

5. Toileting

When she was assessed right after her surgery, Ms. T needed limited assistance from one person with toileting, and received a score of 2/2.<sup>29</sup> Now, however, she reports that she can use

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<sup>25</sup> Testimony of Ms. T.  
<sup>26</sup> *Id.*; testimony of Ms. Levy; Ex. E, p. 7.  
<sup>27</sup> Ex. E, p. 8; Ex. F, p. 8.  
<sup>28</sup> Ex. E, p. 9; Ex. F, p. 9.  
<sup>29</sup> Ex. F, p. 9.

her outhouse without assistance.<sup>30</sup> This is consistent with her other observed physical capabilities, and the 2013 assessor's score of 0/0 was appropriate.

## 6. Bathing

Bathing is assessed for how a person gets in and out of a bath or shower and how she washes her body (other than back and hair) while bathing.<sup>31</sup> Right after her surgery, Ms. T was scored 2/2 for this activity, on the basis that she "need[ed] assistance with hauling water for her bath."<sup>32</sup> This score may have been erroneous, since the CAT is not designed to measure (and PCA services may not be intended to cover<sup>33</sup>) how a person gets water from the water supply to the bath location, whether by conventional plumbing or otherwise; the activity being assessed is the actual bathing. In any event, Ms. T apparently no longer takes baths this way; she instead gets driven to a bath house, where she showers with no physical assistance.<sup>34</sup> The current score of 0/0 is appropriate.

### B. IADLs

Even though Ms. T does not have any ADLs scored at the qualifying level, she could still be eligible for PCA services if, for any of the six listed IADLs, she merits a score of 1, 2, or 3 for self-performance and 3 or 4 for support.<sup>35</sup>

#### 1. Meal Preparation

The IADL of meal preparation encompasses preparing "breakfast and light meals,"<sup>36</sup> that is, all essential meals other than "the main meal of the day."<sup>37</sup> Ms. T was fully independent with this activity even immediately following her surgery,<sup>38</sup> and she remains so at this time. She has been able to give baking lessons to a neighbor child.<sup>39</sup> The assessor gave her a qualifying score of 1 in self-performance (meaning that she works independently but has some difficulty), but

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<sup>30</sup> Ex. E, p. 9; testimony of Ms. Levy.

<sup>31</sup> Ex. E, p. 11; 7 AAC 125.030(b)(8).

<sup>32</sup> Ex. F, p. 11.

<sup>33</sup> *But cf.* Alaska Dep't of Health & Soc. Serv., State Plan for Senior Services Approval (adopted May 17, 2011), p. 31 (PCA in village has to haul and heat water for bath) ([http://www.nasuad.org/documentation/tasc/state\\_plans/Alaska\\_State\\_Plan.pdf](http://www.nasuad.org/documentation/tasc/state_plans/Alaska_State_Plan.pdf)).

<sup>34</sup> Ex. E, p. 11.

<sup>35</sup> *See* Ex. E, p. 31.

<sup>36</sup> Ex. E, p. 26.

<sup>37</sup> 7 AAC 125.030(c)(1).

<sup>38</sup> Ex. F, p. 26.

<sup>39</sup> Testimony of Ms. Levy.

noted that she does not need physical assistance and thus cannot receive the qualifying *support* score of 3 or 4.<sup>40</sup> This assessment was accurate.

## 2. Main Meal Preparation

Main meal preparation is similar to the above, but it encompasses preparation, serving, and cleanup of one main meal per day.<sup>41</sup> The assessor noted that this is somewhat difficult for Ms. T, but she can do it without physical assistance because the bus is so compact that she can sit while preparing the meal.<sup>42</sup> No other evidence called this observation into question, and hence a qualifying support score of 3 or 4 is unavailable.

## 3. Light Housework

The light housework assessment category includes such activities as washing dishes and making one's own bed.<sup>43</sup> The 2013 assessment noted that she needed some set-up help with this, but recorded no need for physical assistance, and this is consistent with the other evidence of Ms. T's physical capabilities. She cannot achieve the requisite support score of 3 or 4.

## 4. Routine Housework

The routine housework category encompasses potentially heavier tasks such as vacuuming, cleaning floors, and taking out trash.<sup>44</sup> In the context of Ms. T's very small home, these are not large tasks and the assessor noted she can do them without physical assistance, just as she chops wood and shovels snow on her own.<sup>45</sup> She was observed to bend over several times to look for a dropped cell phone in the snow, and hence is able to reach low places in her home. The support score the assessor gave her (a score of 2, for set-up only) is appropriate and is not a qualifying score for an IADL.

## 5. Grocery Shopping

The IADL of grocery shopping encompasses the shopping function but not the transportation to and from the store.<sup>46</sup> The assessor scored this as 1/2, noting that Ms. T clearly needs transportation but she is able to manage the groceries physically, apart from the bags of

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<sup>40</sup> Ex. E, p. 26; testimony of Ms. Levy.

<sup>41</sup> 7 AAC 125.030(c)(2).

<sup>42</sup> Ex. E, p. 26; testimony of Ms. Levy.

<sup>43</sup> Ex. E, p. 26. This is a subset of the broader "light housekeeping" category in 7 AAC 125.030(c)(3).

<sup>44</sup> Ex. E, p. 26.

<sup>45</sup> *Id.*; testimony of Ms. Levy.

<sup>46</sup> Ex. E, p. 26.

dog food for her very large dog. Since the dog is not a service animal, getting groceries for him is not part of the grocery shopping IADL, which is restricted to items “required for the health and maintenance” of household members.<sup>47</sup> The assessor’s reasoning is correct and the non-qualifying score in this category is justified.

6. Laundry

The reasoning and scoring for laundry was the same as for light and routine housework, and the non-qualifying support score of 2 (set-up only) was appropriate.

C. *Eligibility*

A person who does not achieve a qualifying score in any of the twelve areas discussed above is not eligible for PCA services.<sup>48</sup> While the CAT (and testimony from Ms. T’s hearing) encompasses other areas that bear on the amount of PCA time an approved person might receive, these other areas are not relevant if the person is not eligible for PCA services to begin with.

In general, Ms. T is a person with significant health challenges living quite an arduous lifestyle. There is no question that she needs help with transportation, nor any question that help with other aspects of her life would ease her burdens and be useful to her. She does not, however, qualify for publicly funded PCA services under the narrowly-tailored requirements of that program.

**V. Conclusion**

The Division’s scoring of Ms. T’s eligibility for PCA assistance was correct. The Division’s determination that she is ineligible is upheld.

DATED this 7<sup>th</sup> day of August, 2013.

Signed  
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Christopher Kennedy  
Administrative Law Judge

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<sup>47</sup> 7 AAC 125.030(c)(5); cf. 7 AAC 125.030(c)(3)(F) (provision for service animals).

<sup>48</sup> Ex. E, p. 31 (“If PCA.1.A and PCA.1.B are both answered as “No”, recipient is not functionally eligible for Personal Care Assistant Services”).

## **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 21<sup>st</sup> day of August, 2013.

By: Signed  
Name: Christopher M. Kennedy  
Title: Administrative Law Judge

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