

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

In the Matter of: )  
 )  
 E T ) OAH No. 13-0708-MDS  
 ) Agency No.

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**DECISION**

**I. Introduction**

E T was previously receiving weekly personal care assistance (PCA) services. The Division of Senior and Disabilities Services (division) notified him on April 29, 2013 that his PCA services were being terminated because he no longer qualified. Mr. T requested a hearing.

Mr. T's hearing was held on August 8, 2013. Mr. T attended the hearing by telephone. Shelly Boyer-Wood represented the division. Suzanne Mittlestadt and Teresa Burnett testified on behalf of the division.

The division's assessment of Mr. T's PCA service needs was correct. The division's determination that Mr. T no longer qualifies 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 . . . ." <sup>1</sup> 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." <sup>2</sup>

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. <sup>3</sup> The

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<sup>1</sup> 7 AAC 125.010(a) [emphasis added].

<sup>2</sup> 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.*

<sup>3</sup> 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.<sup>4</sup>

The CAT numerical coding system 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 possible codes are:

- 0** the person is independent and requires no help or oversight;<sup>6</sup>
- 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 possible codes are:

- 0** no setup or physical help required;<sup>11</sup>
- 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

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<sup>4</sup> Exh. D, pp. 5-6; *see also* Exh. E, pp. 6 – 11.

<sup>5</sup> Exh. D, pp. 5-6.

<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). *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> Exh. D, p. 6.

<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). *Id.*

(out-of-home), and shopping.<sup>12</sup> 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;
- 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. 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.<sup>15</sup> 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.

Mr. T is a 63 year-old man who lives alone in a second story apartment in the Anchorage area. The record does not indicate when he was first assessed for PCA services, but he had a

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<sup>12</sup> Exh. D, pp. 5-6; *see also* Exh. E, p. 26.

<sup>13</sup> Exh. D, pp. 5-6.

<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) and the division's *Personal Care Assistance Service Level Computation* chart contained at Exh. B, pp. 34 - 36.

reassessment in 2011,<sup>16</sup> so his initial assessment must have been prior to that date. His primary diagnoses include diabetes, hypertension, Hepatitis C, hyperlipidemia and depression.<sup>17</sup> These were the same in 2011, although in the prior assessment he also complained of suffering from arthritis, with pain in his lower back and knees.<sup>18</sup> Mr. T was hospitalized for pneumonia in November 2012 and stated he was short of breath at times. For the current assessment, he also reported he had several surgeries for intestinal problems in 2006.<sup>19</sup>

Rae Norton, a division employee, conducted the current assessment on February 26, 2013.<sup>20</sup> As a result of that assessment, the division determined Mr. T no longer qualifies for PCA services and terminated his participation in the program.<sup>21</sup> The following is a summary of Mr. T's 2013 CAT scoring:

*A. Bed Mobility*

Mr. T was coded as requiring no setup or physical supervision from staff (self-performance code 0, assistance code 0), which resulted in him not receiving any PCA assistance for the activity. The assessor's determination was based on Mr. T's report that he can reposition his body and can walk, and upon the assessor's visual observation of Mr. T repositioning his body while he was sitting on a chair.<sup>22</sup> Thus, it is more likely than not true that Mr. T does not require physical assistance for this activity. The assessor's scoring was correct.

*B. Transfers*

Mr. T was coded as requiring no setup or physical help (self-performance code 0, assistance code 0), which resulted in him not receiving any PCA assistance for transfers. The assessor's determination was based on Mr. T's report that he can stand and sit independently, but that he may use a cane at times if he's in pain, and also upon the assessor's observation. Ms. Norton observed Mr. T stand about five times to get water, to plug in (her) laptop, answer the door for the PCA, and after the assessment, that he appeared to have good balance.<sup>23</sup> Thus, it is more likely than not true that Mr. T does not require physical assistance for transfers. The assessor's scoring was correct.

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<sup>16</sup> Exh. F.  
<sup>17</sup> Exh. E, p. 3.  
<sup>18</sup> Exh. F, p. 3.  
<sup>19</sup> Exh. E, p. 3.  
<sup>20</sup> Exh. E.  
<sup>21</sup> Exh. D, p. 1.  
<sup>22</sup> Exh. E, p. 6.  
<sup>23</sup> Exh. E, p. 6.

*C. Locomotion*

Mr. T was coded as requiring no setup or physical supervision from staff for getting around inside his apartment (self-performance code 0, assistance code 0), which resulted in him not receiving any PCA assistance for the activity. The assessor's determination was based on Mr. T's report that he walks inside independently or uses a cane if he is feeling poorly.<sup>24</sup> The score was also based on the assessor's visual observation that although Mr. T reported he had fallen three times this year, he walked all through this home with a normal gait and posture, bent to plug in (her) laptop cord, and walked to the kitchen to get water, and to the door.<sup>25</sup> As to outdoors locomotion, Mr. T reported that he takes his own trash out, although he gets short of breath when doing so, and that he rides the bus independently when going to appointments or gets rides from friends.<sup>26</sup> Thus, it is more likely than not true that Mr. T does not require physical assistance for inside or outside locomotion. The assessor's scoring was correct.

*D. Dressing*

Mr. T was coded as requiring no setup or physical help (self-performance code 2, assistance code 2), which resulted in him receiving no PCA assistance for this activity. The assessor's determination was based on Mr. T's report that he leans against a dresser to pull his pants up, and that his left arm hurts when he puts his shirt on, but that he can zip and button his clothes.<sup>27</sup> The score was also based on the assessor's observation that Mr. T had good range of motion and was able to bend from a standing position to plug in her laptop cord.<sup>28</sup> Thus, it is more likely than not true that Mr. T does not require physical assistance for dressing. The assessor's scoring was correct.

*E. Eating*

Mr. T was coded as requiring no setup or physical supervision (self-performance code 0, assistance code 0), which resulted in him not receiving any PCA assistance for eating. The assessor's determination was based on Mr. T's report that he can feed himself, can make light snacks, cook and use the microwave, carry light to medium-sized items such as small trash bags and the laundry. Mr. T also reported that he takes the bus independently to go to the food bank and carries items home in his backpack, and that his doctor wants him to exercise by going up

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<sup>24</sup> Exh. E, p. 7.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Exh. E, p. 8.

<sup>28</sup> *Id.*

and down the stairs in his building.<sup>29</sup> Thus, it is more likely than not true that Mr. T does not require physical assistance for this activity. The assessor's scoring was correct.

*F. Toileting*

Mr. T was coded as requiring no setup or physical help (self-performance code 0, assistance code 0), which resulted in him not receiving any PCA assistance for toileting. The assessor's determination was based on Mr. T's report that he is able to walk to the toilet, cleanse himself, and that he does not have any incontinence. The assessor noted that Mr. T appeared able to perform toileting tasks.<sup>30</sup> Thus, it is more likely than not true that Mr. T does not require physical assistance for toileting. The assessor's scoring was correct.

*G. Personal Hygiene*

Mr. T was coded as requiring no setup or physical help (self-performance code 0, assistance code 0), which resulted in him not receiving any PCA assistance for personal hygiene. The assessor's determination was based on Mr. T's report that he can groom himself independently and also on the assessor's observation that Mr. T appears able to perform all of his hygiene tasks and that he appeared to have "ok" range of motion to complete them.<sup>31</sup> Thus, it is more likely than not true that Mr. T does not require physical assistance for personal hygiene. The assessor's scoring was correct.

*H. Bathing*

Mr. T was coded as requiring no setup or physical assistance for transfers into and out of the tub (self-performance code 0, assistance code 0), which resulted in him not receiving any PCA assistance for this activity. The assessor's determination was based on Mr. T's report that he can get in the tub, but when transferring in or out of it, sometimes he gets down on his knees and uses a soap dish or holds onto the walls.<sup>32</sup> The score was also based on the assessor's observation that Mr. T does not have grab bars or a shower chair.<sup>33</sup> Thus, it is more likely than not true that Mr. T does not require physical assistance for bathing. The assessor's scoring was correct.

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<sup>29</sup> Exh. E, p. 9.

<sup>30</sup> *Id.*

<sup>31</sup> Exh. E, p. 10.

<sup>32</sup> Exh. E, p. 11.

<sup>33</sup> *Id.*

*I. Light Meals*

Mr. T was coded as being independent (self-performance code 0, assistance code 0) for light meal preparation, which resulted in him not receiving PCA assistance.<sup>34</sup> The assessor did not make any comments about this activity other than the score she reported, but based on Mr. T's earlier report and the assessor's observation that he could move around inside the apartment independently,<sup>35</sup> it is more likely than not true that Mr. T can prepare a light meal. Thus, he was correctly scored as being independent in this area.

*J. Main Meals, Shopping, Light & Routine Housekeeping and Laundry*

Mr. T was coded as independent with difficulty and requiring setup help only (self-performance code 1, assistance code 2), for main meal preparation, shopping, light housekeeping such as doing the dishes, routine housework such as vacuuming, and laundry done in the home.<sup>36</sup> As a result, he received no physical assistance for any of these tasks.<sup>37</sup> Again, the assessor did not make any comments about these activities other than the scores she reported, but based on Mr. T's earlier reports and the assessor's observation that he could move around inside the apartment independently,<sup>38</sup> it is more likely than not true that Mr. T can perform these activities without physical assistance. Thus, he was correctly scored in these areas. 1

**IV. Discussion**

Mr. T objected to the current assessment and claimed that he needs PCA help. He testified that he has gangrene and a broken shoulder in addition to his diabetes and other diagnoses, and he argued that the assessor did not address these conditions. He also claimed that, contrary to a prior assessment done by a male assessor,<sup>39</sup> Ms. Norton did not ask him to perform any of the physical tasks she indicated she observed throughout the assessment. Mr. T added that during that prior assessment, the gentleman accompanied him throughout the apartment and observed Mr. T perform the physical tasks listed.

When asked about the other conditions he mentioned, Mr. T said he had gangrene at the time of the assessment and that he told the assessor about it. He also said he had four surgeries in 2006-2007 for the gangrene, and that he takes pain pills for it. Regarding his shoulder, Mr. T

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<sup>34</sup> Exh. E, p. 26.

<sup>35</sup> *Id.*

<sup>36</sup> Exh. D, p. 6.

<sup>37</sup> Exh. D, p. 9.

<sup>38</sup> *Id.*

<sup>39</sup> This was possibly the 2011 assessment, which was done by Peter Ndenderoh. *See* Exh. F, p. 1.

said it was broken in 2009 but that it had not healed. Mr. T's list of diagnoses refers to him having "abdominal pain," in both his 2013 and 2011 assessments.<sup>40</sup> However, Mr. T's ability to perform the physical tasks in the assessment does not appear to be affected by this reported abdominal pain. As to the shoulder, Mr. T reported to the assessor that his left shoulder hurt when he performed certain tasks such as dressing, but the assessor's comments indicate he was able to physically perform the indicated tasks.

The evidence in this appeal shows that the division was factually correct in its assessment of how Mr. T's physical condition affected his 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.<sup>41</sup> 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 Mr. T's need for physical assistance, as reflected in the self-performance and support codes, and the frequency of the assistance needed, was correct.<sup>42</sup>

## **V. Conclusion**

The division's scoring of Mr. T's needs for physical assistance was correct. The determination that Mr. T does not currently qualify for PCA assistance is therefore upheld.

DATED this 13<sup>th</sup> day of September, 2013.

*Signed*

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Kay L. Howard  
Administrative Law Judge

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<sup>40</sup> See Exh. E, p. 3; Exh. 7, p. 3.

<sup>41</sup> 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.

<sup>42</sup> 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 25<sup>th</sup> day of September, 2013.

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