

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

In the Matter of:)
)
 E N) OAH No. 13-0857-MDS
) Agency No.

DECISION

I. Introduction

E N was receiving Medicaid PCA services. The Division of Senior and Disabilities Services (Division) notified him that his PCA services were being terminated.¹ Mr. N requested a hearing.

Mr. N’s hearing was held on July 23, 2013. Mr. N represented himself and testified on his own behalf. B T of No Name testified on his behalf. Shelly Boyer-Wood represented the Division. Susan Mittlestadt testified on behalf of the Division.

This decision concludes that although Mr. N’s physical condition and pain limit his ability to perform basic care needs, those care needs, as measured by the Consumer Assessment Tool, are not sufficiently acute to qualify him for PCA services. The Division’s termination of those services is therefore affirmed.

II. Facts

Mr. N is 51 years old.² He lives alone.³ He has diagnoses of hypertension, hyperlipidemia, chronic airway obstruction, acute pancreatitis, degenerative disk disease, and lumbago.⁴ He does not drive and does not currently have transportation services.⁵

Mr. N had a left knee ACL reconstruction in 2007.⁶ In February 2011, he had back surgery, specifically an L3 to S1 decompression.⁷ January 16, 2013 notes from Orthopedic Physicians Anchorage state that he was complaining of low back pain and that he “has known multi-level degenerative changes . . . His knee is doing reasonably well.” Those same notes state that he was “able to ambulate with a largely normal gait. He was able to heel- and toe-walk with

¹ Ex. D.

² Ex. E, p. 1.

³ Ex. E, p. 1.

⁴ Ex. E, p. 3. Mr. N also suffers from attention deficit disorder, posttraumatic stress disorder, and unsocialized conduct disorder, aggressive type. Ex. E, p. 3.

⁵ N testimony.

⁶ Ex. 1, p. 12.

⁷ Ex. 1, p. 12.

mild difficulty. He has had amputation of toes on the left foot. There are no new deficits identified with testing of strength and sensation.”⁸

Mr. N had a physical therapy evaluation on July 15, 2013. The evaluation notes state that he was independent with difficulty on ambulation, and that he was independent with his transfer to and from the treatment bed, but he had “poor control of his descent” and complained of pain.⁹ The examination also found that he had limited flexion, extension, and limited lateral flexion (both right and left) in his lumbar spine, while wearing his semi-rigid back brace.¹⁰

Mr. N has a great deal of pain when performing activities of daily living such as bending, walking, and lifting items. This pain limits his ability to perform basic activities of daily living. He is able to walk, transfer to and from bed/chairs/couches, dress, eat, toilet, perform personal hygiene tasks, and bathe, all without assistance. However, self-care tasks such as dressing and toileting are difficult and painful for him. He has concerns about slipping and falling while in the shower. He does not use an assistive device (cane or walker) for walking. He has a companion animal, a dog, upon whom he will occasionally lean for stability when walking, such as when he is walking on ice.¹¹

Mr. N’s pain and difficulty in bending make it difficult for him to perform instrumental activities of daily living, such as basic housework. He testified unless it involves bending, he can shop for himself, do his own laundry, vacuum and do routine housework. He feeds his dog by pouring food into the bowl from a distance, since he cannot bend easily. He can cook for himself. However, he has memory problems and will forget that he has left the burner on.¹²

B T is the consumer support supervisor at No Name. Mr. N is one of her clients. She speaks to him frequently on the phone. She has been at his home at least twice in the past year. She has personally observed that he has difficulty bending over. He can’t clean his floor. His home needs cleaning. She has smelt burnt food in his home because he has forgotten he had food on the stove or in the oven. She has seen him have difficulty transferring and having to hold onto his dog and lean on furniture for transfers. He moves very slowly due to his pain.¹³

⁸ Ex. 1, p. 10.

⁹ Ex. 1, p. 4.

¹⁰ Ex. 1, p. 3.

¹¹ N testimony.

¹² N testimony.

¹³ T testimony.

Mr. N was receiving PCA services based upon a March 2012 assessment that found he needed physical assistance with his shopping, light housework, and laundry.¹⁴ On March 11, 2013, Mr. N was reassessed to determine whether he continued to qualify for PCA services. That assessment was performed by Rae Norton, R.N. of DSDS.¹⁵ Ms. Norton's assessment is recorded and scored on the Consumer Assessment Tool or "CAT." She did not testify. As reflected by the CAT, Ms. Norton found that Mr. N has short term memory problems and is disorganized.¹⁶ She found that he has the following abilities and limitations with regard to his Activities of Daily Living (ADLs):¹⁷

Transfers: Ms. Norton reported that while Mr. N might need to use furniture for support due to pain, he was able to transfer independently (scored 0/0).¹⁸

Locomotion: Ms. Norton reported that Mr. N was able to walk independently and did not use any assistive devices (scored 0/0).¹⁹

Dressing: Ms. Norton reported that Mr. N pulled his socks off with his feet, and was able to put his shoes on by himself that week. Ms. Norton found he was able to dress himself independently (scored 0/0).²⁰

Eating: The assessor reported that Mr. N is independent with regard to eating (scored 0/0).²¹

Toileting: The assessor reported that Mr. N could use the toilet independently (scored 0/0).²²

Bathing: The assessor reported that Mr. N could bathe independently (scored 0/0).²³

The March 11, 2013 CAT also scored Mr. N as follows with regard to his Instrumental Activities of Daily Living (IADLs): independent in light meal preparation (score 0/0); independent with main meal preparation (score 0/0); independent with light housework (score 0/0); independent with difficulty and requiring set up assistance with routine housework (score

¹⁴ Ex. D, pp.1 - 3.

¹⁵ Ex. E.

¹⁶ Ex. E, p. 4.

¹⁷ Ex. E, pp. 6 - 11; see 7 AAC 125.199(1).

¹⁸ Ex. E, p. 6.

¹⁹ Ex. E, p. 7.

²⁰ Ex. E, p. 8.

²¹ Ex. E, p. 9.

²² Ex. E, p. 9.

²³ Ex. E, p. 11.

1/2); independent with grocery shopping (score 0/0); and independent with laundry (score 0/0).²⁴ The Division determined, based upon the March 11, 2013 CAT, that Mr. N did not qualify for continued PCA services.²⁵

III. Discussion

A. *The PCA Program - Overview*

The Medicaid program provides personal care services (PCA) to eligible persons: "[t]he purpose of personal care services is to provide to 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" ²⁶ [emphasis added]. 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."²⁷

B. *Alaska's PCA Program - Use of the Consumer Assessment Tool (CAT)*

The Department conducts an assessment for PCA services using the Consumer Assessment Tool or "CAT."²⁸ The goal of the assessment process is to determine the level of physical assistance that an applicant or recipient requires in order to perform their activities of daily living (ADLs) and instrumental activities of daily living (IADLs).²⁹ The CAT seeks to make the assessment process more objective by attempting to standardize the assessment of an applicant or recipient's functional impairment.³⁰

The ADLs coded or scored 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.³¹

²⁴ Ex. E, p. 26.

²⁵ Ex. D, pp. 1 – 3; Ex. E, p. 31.

²⁶ 7 AAC 125.010(a).

²⁷ 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.*

²⁸ 7 AAC 125.020(b). The CAT has been adopted into DHSS regulations by reference. *See* 7 AAC 160.900(d)(6).

²⁹ *See* 7 AAC 125.010(a).

³⁰ Ex. E.

³¹ Ex. E, pp. 6 – 11.

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 assistance³²); **3** (the person requires extensive assistance³³); **4** (the person is totally dependent³⁴). There are also codes that are not treated as numerical scores for purposes of 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 that do not add to the service level: **5** (cueing required); and **8** (the activity did not occur during the past seven days).

The CAT also codes or scores certain activities known as "instrumental activities of daily living" (IADLs). These are light meal preparation, main meal preparation, light housework, routine housework, laundry, and shopping.³⁵ The CAT scores IADLs slightly differently than ADLs.³⁶ 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 treated as a numerical score for purposes of calculating a service level: **8** (the activity did not occur).

³² 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."

³³ 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."

³⁴ 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."

³⁵ Ex. E, p. 26.

³⁶ *Id.*

The *support codes* for IADLs are also slightly different than the support codes for ADLs.³⁷ 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 does not add to the service level: **8** (the activity did not occur).

If a person receives self-performance codes of 2, 3, or 4 and support codes of 2, 3, or 4 with regard to any of the ADLs of transfers, locomotion, eating, toilet use, dressing, or bathing, then the person is eligible to receive PCA services.³⁸ Alternatively, if a person receives self-performance codes of 1, 2, 3, or 4 and support codes of 3 or 4 with regard to any of the IADLs of light meal preparation, main meal preparation, light housework, routine housework, grocery shopping, or laundry, then the person is eligible to receive PCA services.³⁹

A person's need for transportation services is not a factor that is taken into account when determining eligibility for PCA services.⁴⁰

C. *Is Mr. N Eligible to Receive PCA Services Based Upon His Need for Assistance With Either His ADLs or his IADLs?*

1. ADLs

The evidence shows Mr. N has difficulty bending, and has pain that limits his activities. He is independent with his transfers, locomotion, and toileting, albeit with difficulty. While he requires occasional support with transfers (which are inherent in toileting) and locomotion, he does not require physical assistance from another person, but rather leans on furniture and his dog for that assistance. The evidence also shows that he is able to dress and bathe independently. Again these activities are not easy for him to do, but he can do them without assistance. He can eat without assistance. Because the evidence shows that he is independent in the six scored activities of daily living (transfers, locomotion, toileting, eating, dressing, and bathing), and does not require any physical or set up assistance with them, the CAT was correctly scored with a 0/0 for those activities. As a result, he does not qualify for PCA services based upon his need for assistance with his ADLs.

³⁷ *Id.*

³⁸ Ex. E, p. 31.

³⁹ *Id.*

⁴⁰ *Id.*

2. IADLS

Mr. N's pain and difficulty bending also affect his ability to perform the six scored IADLs (light meal preparation, main meal preparation, light housework, routine housework, grocery shopping, or laundry). The CAT scored him as being independent with all but one of the IADLs, routine housework, which it scored him as independent with difficulty and needing setup assistance (score 1/2).

Mr. N testified he could prepare meals but that he would forget he had left a burner on. This is consistent with Ms. T's testimony that she had smelled burnt food in his home because he had forgotten food on the stovetop or the oven. This is also consistent with the assessor's finding that he had short-term memory problems and was disorganized. It is therefore more likely true than not true that Mr. N does not require hands on assistance with his meal preparation, but requires supervision or cueing with his meal preparation, to avoid creating a fire hazard. This would result in him receiving a score of 2/1 (assistance consisting of supervision/cueing) rather than the 0/0 provided on the CAT for both light meal and main meal preparation.

Mr. N testified that he could shop, and do his laundry and housework independently. He, however, indicated that his ability to perform those tasks was limited due to his difficulty with bending. For instance, the effect of his limited bending ability is demonstrated by his statement that he feeds his dog by pouring the food into the dog's bowl from above. Mr. N testified that he could vacuum.

The CAT defines light housework as including "dishes, dusting (on daily basis), making own bed."⁴¹ It further defines routine housework as including "vacuuming, cleaning floors, trash removal, cleaning bathroom, as needed."⁴²

Mr. N's July 15, 2013 physical therapy evaluation indicates that he has limited lumbar flexion and extension range of motion, while wearing a back brace.⁴³ It, however, does not show that he cannot bend at all. His testimony that he can vacuum and was capable of shopping, laundry, and housework, demonstrates that it is more likely true than not true that he can perform these tasks, *i.e.*, he does not need assistance with them. However, because of his bending limitations, it is more likely true than not true that laundry, grocery shopping, and routine

⁴¹ Ex. E, p. 26.

⁴² Ex. E, p. 26.

⁴³ There was no evidence presented regarding whether the back brace helps or hinders Mr. N with bending.

housework activities⁴⁴ are difficult for him to perform, which would result in him receiving a self-performance score of 1 (independent with difficulty) with regard to these three tasks. The Division scored him with a self-performance score of 0 (independent) with regard to grocery shopping and laundry. Accordingly, that score should be changed to 1 (independent with difficulty). The Division scored Mr. N as independent with difficulty with regard to routine housework. That score remains unchanged.

The scores for Mr. N's IADLs on the CAT are therefore changed to a 2/1 for both light meal and main meal preparation. His self-performance scores for grocery shopping, and laundry should be changed to 1. His self-performance score for routine housework remains the same: 1.⁴⁵ These score changes, however, do not result in a finding of continued PCA eligibility for Mr. N. In order for him to qualify for PCA services based upon his IADLs, he would need a self-performance code of 1, 2, 3, or 4 and a support code of 3 or 4 with regard to at least one of the scored IADLs (light meal, main meal, light housework, routine housework, grocery shopping, and laundry). He did not.

IV. Conclusion

Mr. N's physical condition and accompanying pain undeniably affects his ability to do basic self-care activities. Regardless, his care needs do not satisfy the minimum threshold necessary to qualify him for PCA services. The Division's termination of his PCA services is affirmed.

DATED this 8th day of August, 2013.

Signed _____

Lawrence A. Pederson
Administrative Law Judge

⁴⁴ The evidence did not indicate that Mr. N was not able to perform light housework, such as dusting and dishes.

⁴⁵ It should be noted that Ms. Norton, the assessor, did not testify. Her testimony regarding her underlying observations and interaction with Mr. N might very well have resulted in a finding that the scoring on the CAT was completely accurate.

Adoption

The undersigned, by delegation from 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 30th day of August, 2013.

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

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