

**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. 13-0890-MDS
) Agency No.
)
_____)

DECISION

I. Introduction

E N was receiving 30.5 hours per week of personal care assistance (PCA) services. The Division of Senior and Disabilities Services (Division) notified her on June 13, 2013 that her PCA services were being reduced to 22.00 hours per week. Ms. N requested a hearing.

Ms. N's hearing was held on August 21, 2013. Ms. N represented herself and testified on her own behalf. Shelly Boyer-Wood represented the Division.

The Division's assessment of and provision for Ms. N's PCA service needs correctly assessed those needs in the areas of transfers and laundry. However, the assessment did not fully take Ms. N's physical limitations and substantially impaired vision into account when it provided her PCA services in the areas of toileting, bathing, grocery shopping, light meal and main meal preparation, light housework, and routine housework. As a result, the reduction in hours is upheld in part and reversed in part, as discussed in detail below.

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

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

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 "supervision" as "observing and giving direction, as needed, so that the recipient can independently perform an ADL or IADL." *Id.*

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 housework, routine housework, grocery shopping, and laundry.¹⁰

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

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.

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. N is 55 years old.¹⁴ She has osteoarthritis in multiple sites, including her shoulder and lower leg. She has neck pain (cervicalgia), high blood pressure, is morbidly obese, and is subject to chronic pain.¹⁵ She is blind in one eye, and is losing the vision in her other eye. She cannot read due to her impaired vision. She wears hand braces due to her arthritis. She has been falling approximately once a month; her knees buckle on her despite both having been replaced.¹⁶ She also receives injections every three months to treat shoulder spasms.¹⁷

Ms. N was receiving 30.50 hours of PCA services in March 2013. Rae Norton, a Division employee, reassessed Ms. N's PCA service needs on March 14, 2013. The result of that assessment, as recorded in the Consumer Assessment Tool (CAT) resulted in a reduction of Ms. N's

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. 34 - 36.

¹⁴ Ex. E, p. 1.

¹⁵ Ex. E, p. 3.

¹⁶ Ms. N testimony; Ex. E, p. 3.

¹⁷ Ex. E, p. 3.

PCA services to 22.00 hours per week.¹⁸ Ms. N disagreed with the results of her reassessment with regard to three of her ADLs: transfers, toileting and bathing. She also disagreed with regard to six of her IADLs: specifically light meal preparation, main meal preparation, light housework, routine housework, grocery shopping, and laundry. Each area of disagreement is addressed below.

A. Transfers

Ms. N had previously been assessed as requiring a limited one-person physical assistance (self-performance code 2, assistance code 2) in transfers six times per day, seven days per week.¹⁹ In her new assessment, she was coded as requiring limited one-person assistance (self-performance code 2, assistance code 2), twice per day seven days per week.²⁰

Ms. N did not disagree with the number of transfers she was provided, as her testimony provided that she stayed in her room for most of the time. However, her testimony was that she requires physical assistance for transfers due to her bad knees, which buckle on her, *i.e.*, that she should be assessed as requiring extensive one-person physical assistance for transfers (self-performance code 3, assistance code 2). She testified that she has to be pulled up by her shoulders in order to transfer. The assessment, however, states that the assessor saw her stand up “independently from the couch” and that it appeared that she “would need assist at times [due to] degeneration of hip.”²¹

Given the assessor’s physical observation of Ms. N, it is more likely true than not true that Ms. N can transfer independently for the most part, but only occasionally requires physical weight bearing assistance for transfers. Consequently, the Division appropriately assessed Ms. N as needed limited one-person assistance (self-performance code 2, assistance code 2) with transfers.

B. Toileting

Ms. N had been previously assessed as requiring extensive one-person assistance (self-performance code 3, assistance code 2) five times per day, seven days per week in toileting.²² In her new assessment, she was coded as requiring limited one-person assistance (self-performance code 2, assistance code 2), four times per day seven days per week. That determination was based upon the assessor’s observation that Ms. N could transfer up off the couch by herself, and upon Ms. N’s statement to the assessor that she needed help cleaning herself after toileting. However, the

¹⁸ Ex. D.
¹⁹ Ex. D, p. 7.
²⁰ Ex. E, p. 6.
²¹ Ex. E, p. 6.
²² Ex. D, p. 8.

assessment also shows that Ms. N told her that she “needs help getting to toilet from low couch at times.”²³ As found above, Ms. N was appropriately coded as requiring limited one-person assistance (self-performance code 2, assistance code 2) in transfers. And Ms. N testified that she has a high toilet seat. She therefore does not require extensive one-person assistance to transfer on and off the toilet. Although she undisputedly requires assistance cleansing herself, that would not include weight-bearing support. It is therefore more likely true than not true that Ms. N was appropriately found to require limited one-person assistance with toileting, which was a decrease in her assistance need level.

Ms. N also disagreed with the number of times that she was provided toileting assistance. She testified that she needed to use the bathroom five to six times per day because she takes water pills. The assessment indicates that she takes the diuretic Furosemide.²⁴ There is no evidence in the record showing how the assessor arrived at the toileting frequency of four times per day versus the earlier frequency of five times per day. Given Ms. N’s testimony, her prescription for a diuretic, and the lack of any evidence showing how the assessor arrived at the figure of four times per day, it is more likely true than not true that Ms. N requires toileting assistance five times per day.

C. Bathing

Ms. N had previously been assessed as requiring extensive assistance from one-person (self-performance code 3, assistance code 2) once per day, seven days per week, in bathing.²⁵ In her new assessment, she was coded as requiring limited one-person assistance (self-performance code 2, assistance code 2), once per day.²⁶ The assessment indicated that Ms. N required “help getting inside the tub, sister may help washing back.”²⁷ Ms. N, however, testified that she could not wash the lower half of her body and needed help drying.

Given Ms. N’s testimony, the weight of the evidence supports a finding that Ms. N requires physical help with her actual bathing process, which includes washing her lower body and drying, not just help with transfers and washing her back. Accordingly, it is more likely than not that she should have been coded as requiring a one-person extensive assistance (self-performance code 3, assistance code 2) in bathing.

²³ Ex. E, p. 9.

²⁴ Ex. E, p. 20.

²⁵ Ex. D, pp. 2, 6.

²⁶ Ex. D, p. 7; Ex. E, p. 11.

²⁷ Ex. E, p. 11. The assessor did not testify.

Ms. N also disagreed with being only provided PCA assistance for bathing once per day. She argued that she bathed twice per day, and therefore required assistance each time, for bathing assistance twice per day. Ms. N did not demonstrate any heightened need for bathing other than her own preference. For instance, the assessment shows that Ms. N is fully continent, which she did not dispute.²⁸ It is therefore more likely true than not true that Ms. N does not require bathing assistance twice per day.²⁹

D. IADLS

Ms. N had been previously assessed as requiring assistance in grocery shopping (self-performance code 2), and being completely dependent upon others for light meal and main meal preparation, light and routine housework, and laundry (self-performance code 3).³⁰ Her new assessment found that she still required assistance with grocery shopping (self-performance code 2), that she could prepare a light meal without assistance (self-performance code 0), could prepare her main meal independently with difficulty (self-performance code 1), could do light housework independently with difficulty (self-performance code 1), and could perform both routine housework and laundry with assistance (self-performance code 2).³¹

Ms. N pointed out that she is blind in one eye, was losing vision in the other, and had functional limitations with regard her shoulders. She also wears hand braces. She testified that she could not shop, clean, or cook.³² The assessment notes that Ms. N has impaired vision: “2. Moderately impaired – limited vision; not able to see newspaper headlines, but can identify objects.”³³ The assessment also notes that Ms. N informed the assessor that she “can get very light snacks, cannot stand to cook or clean, can fold laundry if brought to her, [and] may go to shop with family.”³⁴

Given Ms. N’s undisputed vision problems, while she might be able to get very light snacks, she cannot cook or prepare a light meal or a main meal. Similarly, while she might be able to accompany family while grocery shopping, she cannot meaningfully participate in the physical activity of shopping. Her vision problems and physical problems also support a finding that she

²⁸ Ex. E, p. 23.

²⁹ It should be noted that PCA service time is set by regulation. The bathing time for a person with a self-performance code of 3 is set at 22.5 minutes per day. *See* 7 AAC 125.024(a)(1) and the Division's *Personal Care Assistance Service Level Computation* chart contained at Ex. B, p. 34.

³⁰ Ex. D, p. 8.

³¹ Ex. E, p. 26.

³² Ms. N testimony.

³³ Ex. E, p. 22.

³⁴ Ex. E, p. 9.

cannot clean house. Accordingly, it is more likely true than not true that she should have been assessed as being completely dependent in the categories of light meals, main meals, grocery shopping, and both light and routine housework (self-performance code 3).

Ms. N also cannot do the primary task of laundry on her own. She testified that she could fold clothes if they were brought to her. This is consistent with the assessment and shows that she can participate to some degree doing laundry. As a result, it is more likely true than not true that the assessment correctly found that she was not dependent in the area of laundry, but that she could assist in doing laundry (self-performance code 2).

IV. Discussion

The Division provided Ms. N a total of 22 hours per week in PCA services following her March 14, 2013 assessment. Ms. N challenged the amount of PCA services she was provided in nine separate tasks: transfers, toileting, bathing, light meal preparation, main meal preparation, grocery shopping, light housekeeping, routine housekeeping, and laundry.

All of these challenges were fact based. The factual findings with regard to each, as discussed above, results in the following:

- Transfers. The Division's finding that Ms. N requires limited one-person assistance (self-performance code 2, assistance code 2) twice per day is upheld.
- Toileting. The Division's finding that Ms. N requires limited one-person assistance (self-performance code 2, assistance code 2) is upheld. However, she requires this assistance five times per day, seven days per week, instead of the four times per day, seven days per week found in the assessment.
- Bathing. The evidence, however, shows that Ms. N requires extensive assistance with bathing (self-performance code 3, assistance code 2), rather than the limited assistance found by the Division. However, Ms. N is only entitled to receive this assistance once per day, seven days per week.
- Grocery Shopping. Ms. N is completely dependent (self-performance code 3), rather than only requiring assistance (self-performance code 2).
- Light Meal Preparation. Ms. N is completely dependent (self-performance code 3), rather than being independent (self-performance code 0).
- Main Meal Preparation. Ms. N is completely dependent (self-performance code 3), rather than being independent with difficulty (self-performance code 1).

- Light Housework. Ms. N is completely dependent (self-performance code 3), rather than being independent with difficulty (self-performance code 1).
- Routine Housework. Ms. N is completely dependent (self-performance code 3), rather than only requiring assistance (self-performance code 2).
- Laundry. Ms. N, as found in the assessment, requires only assistance with laundry (self-performance code 2). She is not completely dependent (self-performance code 3).

V. Conclusion

The Division’s assessment of Ms. N’s needs for PCA assistance, while correct in part, understated her needs for assistance in toileting, bathing, grocery shopping, light housekeeping, routine housekeeping, light meal preparation, and main meal preparation. It is therefore reversed in part and upheld in part. The Division is to recalculate Ms. N’s needs for PCA assistance consistent with this decision.

DATED this 13th day of September, 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 27th day of September, 2013.

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

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