

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

In the Matter of:)
)
 E K) OAH No. 13-1148-MDS
) Agency No.
_____)

DECISION

I. Introduction

E K was receiving 35.25 hours per week of personal care assistance (PCA) services. The Division of Senior and Disabilities Services (Division) notified her on July 19, 2013 that her PCA services were being reduced to 2 hours per week. Ms. K requested a hearing.

Ms. K's hearing was held on September 19, 2013. Ms. K represented herself and testified on her own behalf. Angela Ybarra represented the Division.

The Division's assessment of and provision for Ms. K's PCA service needs correctly assessed those needs for the most part. However, the assessment did not fully take Ms. K's physical limitations into account when it determined her need for PCA services in the areas of locomotion to access medical appointments/escort and laundry. 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 IADLs.³ The ADLs measured by the CAT are bed mobility, transfers (non-mechanical), transfers

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.*

³ See 7 AAC 125.020(a) and (b).

(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 independent⁵ and requires no help or oversight); **1** (the person requires supervision); **2** (the person requires limited assistance⁶); **3** (the person requires extensive assistance⁷); **4** (the person is totally dependent⁸). 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).⁹

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).¹⁰

The CAT also codes certain activities known as "instrumental activities of daily living" (IADLs). These are light meal preparation, main meal preparation, housework, grocery shopping, and laundry.¹¹

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

⁴ Ex. E, pp. 6 – 11.

⁵ A self-performance code of 0 is classified as "[I]ndependent – No help or oversight – or – Help/oversight provided only 1 or 2 times during the last 7 days." See Ex. E, p. 6.

⁶ 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."

⁷ 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."

⁸ 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."

⁹ Ex. E, p. 18.

¹⁰ Ex. E, p. 18.

¹¹ 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).¹²

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).¹³

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.¹⁴ 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. K is 58 years old.¹⁵ Her diagnoses include chronic obstructive pulmonary disease (COPD) and is on oxygen, asthma, obstructive sleep apnea, and hypertension.¹⁶ She is approximately 5'2" and weighed 383 lbs. in March 2011; she subsequently had a gastric bypass and weighed 251 lbs. in April 2013.¹⁷ She has bilateral osteoarthritis in her knees, receives lidocaine injections for the knee pain, and is waiting on a total knee replacement pending further weight loss.¹⁸ She has a walker.

Ms. K was receiving 35.25 hours of PCA services in April 2013 based upon her 2011 assessment. Denise Kichura, R.N., a Division employee, reassessed Ms. K's PCA service needs on April 4, 2013, when Ms. K had lost 130 lbs. since her 2011 assessment. The result of that

¹² Ex. E, p. 26.

¹³ Ex. E, p. 26.

¹⁴ 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.

¹⁵ Ex. E, p. 1.

¹⁶ Ex. E, p. 3.

¹⁷ Ex. E, pp. 9, 21; Ex. F, p. 9.

¹⁸ Ex. 1, pp. 30 - 31.

assessment, as recorded in the Consumer Assessment Tool (CAT), resulted in a reduction of Ms. K's PCA services to 2 hours per week.¹⁹ Ms. K disagreed with the results of her reassessment for the following ADLs: transfers, locomotion in home, locomotion multi-level, locomotion medical/escort, supervised exercise, dressing, and toileting.²⁰ She also disagreed regarding the IADLs of housework, grocery shopping, and laundry. Each area of disagreement is addressed below.

A. *Transfers*

Ms. K had previously been assessed as requiring extensive one-person physical assistance (self-performance code 3, assistance code 2) in transfers six times per day, seven days per week.²¹ In her new assessment, she was coded as being independent with transfers (self-performance code 0 assistance code 0).²² The assessment's evaluation of her transferring ability was based upon the assessor's observation of her being able to get up from the kitchen chair, sit on the toilet seat and the bath bench.²³

Ms. K disagreed with the assessment. She testified that she is able to transfer from hard surfaced furniture such as the kitchen chair, but that she could not transfer unassisted from softer surfaced furniture such as the couch or recliner.²⁴ The medical notes in the record show that as of August 23, 2013, at the time she received lidocaine injections in both knees, she had a normal gait, normal range of motion, and full active range of motion in both knees.²⁵ There is no indication in the record that Ms. K has an impaired upper body range of motion.²⁶ The assessor's finding of an improvement in Ms. K's ability to transfer as compared to her previous assessment is consistent with Ms. K's dramatic weight loss. Given the assessor's physical observation of Ms. K, and the doctor's August 23, 2013 observations regarding Ms. K's range of motion in her knees, it is more likely true than not true that Ms. K's knees do not interfere with her ability to transfer independently for the most part, but only occasionally.

¹⁹ Ex. D.

²⁰ Ms. K challenged the underlying validity of Ms. Kichura's assessment as a whole, based upon her disagreement with a number of items testified to by Ms. Kichura, such as Ms. Kichura's statement that Ms. K had an exercise bike and that Ms. K went outside to smoke. Ms. K testified that she did not have an exercise bike and that she has not smoked in 15 years. These factual disputes have been taken into account when assessing the evidence.

²¹ Ex. F, p. 6.

²² Ex. E, p. 6; Kichura testimony.

²³ Ex. E, p. 6.

²⁴ K testimony.

²⁵ Ex. E, p. 30.

²⁶ Although Ms. K's written statement (Ex. 1, p. 2) refers to her having wrist and shoulder pain and she testified that she has arthritis, there are no medical records/diagnosis in the record corroborating these statements.

Consequently, the Division appropriately assessed Ms. K as independent with transfers (which includes “[h]elp/oversight assistance (self-performance code 0, assistance code 0). At the most, Ms. K requires supervision/oversight (self-performance code 1). Neither of these codings allow for her to receive PCA services for transfers.²⁷

B. Locomotion

1. Within Home and Multi-level

Ms. K had been previously assessed as requiring supervision/oversight (self-performance code 1, assistance code 1) in locomotion within her home, and had not received PCA services as a result.²⁸ In her new assessment, she was coded as being independent with locomotion both in the home and multi-level at home (self-performance code 0 assistance code 0). The assessment’s evaluation of her transferring ability was based upon the assessor’s observation of her walking in the home unassisted while taking her oxygen tank (on a wheeled cart) with her.²⁹

Ms. K disagreed. Her written statement said that she used her walker in her home, that she couldn’t make it up the stairs, and that she had an unsteady gait and balance problems.³⁰ However, her doctor’s notes from August 23 and 28, 2013 state that she told the doctor that she did not normally use the walker in her home, that she could climb the stairs, and that she had a normal gait, normal range of motion, and full active range of motion in both knees.³¹

Based upon Ms. K’s doctor’s notes, the assessor’s observations, and Ms. K’s previously noted dramatic weight loss which can only have improved her mobility, it is more likely true than not true that Ms. K is independent in locomotion within the home, and is also independent with regard to multi-level locomotion.

2. Access Medical Appointments/Escort.

Ms. K had been previously assessed as being totally dependent (self-performance code 4) for locomotion to access medical appointments and required escort.³² The new assessment found that she required supervision (self-performance code 1).³³ Ms. K provided a written statement and testimony that she has medical appointments twice per week, and needs locomotion assistance in order to access medical appointments. She pointed out that she receives oxygen and that exertion

²⁷ See Ex. D, p. 8.

²⁸ Ex. D, p. 8; Ex. F, p. 7.

²⁹ Ex. E, p. 7; Kichura testimony.

³⁰ Ex. 1, pp. 1 – 2.

³¹ Ex. E, pp. 25, 30.

³² Ex. D, p. 8.

³³ Ex. E, p. 7.

causes her oxygen levels to become depleted. As a result, when she has medical appointments and needs to maintain her oxygen levels for those appointments, it is necessary for her to be pushed in a wheelchair to those appointments when she reaches the clinic or hospital. Otherwise, the physical exertion involved in getting to the appointment results in her oxygen levels being depleted.³⁴ Ms. K's statements are consistent with her diagnosis of COPD and the fact that she is receiving oxygen. As a result, due to her need to be pushed in a wheelchair, it is more likely true than not true that she is totally dependent (self-performance code 4) in the activity of locomotion to access medical appointments, and requires locomotion assistance/escort assistance twice per week for that activity.

C. *Toileting*

Ms. K's prior assessment found that she was frequently incontinent of both bowel and bladder and that she required extensive one-person assistance (self-performance code 3, assistance code 2) four times per day, seven days per week in toileting.³⁵ The new assessment states that she is continent as to bowels, and usually continent as to her bladder, and coded her being independent with toileting.³⁶ Ms. K, however, stated that she is frequently incontinent as to her bowels, and that statement is corroborated by her August 28, 2013 statement to her doctor that "she has a lot of diarrhea."³⁷ Ms. K stated that she needs toileting assistance because she wears support garments that she needs assistance with after toileting. The record is devoid of any information that corroborates her testimony. In addition, the assessor saw Ms. K pull her oxygen cart, saw her grasp her feet, and pick something off the floor.³⁸ It is therefore more likely true than not true that Ms. K has the range of motion to adjust her support garments without assistance, and therefore does not require assistance for toileting.

D. *Dressing*

Ms. K's prior assessment found that she required extensive one-person assistance (self-performance code 3, assistance code 2) twice per day, seven days per week, with dressing.³⁹ The new assessment states that she is independent in this activity.⁴⁰ As discussed immediately above, the record shows that it is more likely true than not true that Ms. K has the physical abilities to dress without assistance, and therefore does not require assistance for dressing.

³⁴ Ex. 1, p. 2; K testimony.

³⁵ Ex. D, p. 8; Ex. F, pp. 9, 23.

³⁶ Ex. E, pp. 9, 23.

³⁷ K testimony; Ex. 1, p. 25.

³⁸ Ex. E, pp. 7 – 8.

³⁹ Ex. D, p. 8; Ex. F, p. 8.

⁴⁰ Ex. E, p. 8.

E. Supervised Exercises

Ms. K has a six month prescription for supervised exercise, 30 minutes 3 times per week, dated January 17, 2013.⁴¹ Her new assessment did not provide her with any PCA time for prescribed exercise.⁴² The “PCA Program – Prescribed Task Form” which was completed by the prescriber has a box on it where the prescriber is to indicate whether the patient requires physical assistance. The prescriber did not indicate that Ms. K required physical assistance with her supervised exercise.⁴³ The PCA program does not provide supervision, monitoring, or cueing.⁴⁴ Because Ms. K’s prescription stated it was for “supervised” exercise, and because there was no statement from the prescriber that she required physical assistance with her exercise, Ms. K was not entitled to receive PCA time for this activity.

F. IADLS

Ms. K had been previously assessed as being completely dependent upon others for grocery shopping, routine housework, and laundry (self-performance code 3).⁴⁵ Her new assessment found that she still required assistance with grocery shopping and routine housework (self-performance code 2), and that she could do her laundry independently with difficulty (self-performance code 1).⁴⁶ Ms. K testified that she could not perform these activities because she could not bend her knees and could not reach.⁴⁷ Each of these would affect her ability to do routine housework, go grocery shopping, and do laundry.

As discussed above, Ms. K is capable of locomotion on her own inside the home. There is no medical indication in the record that she is limited in her ability to reach or grab things. In addition, the assessor saw her grab her feet and bend down and pick something off the floor. Regardless, Ms. K is on oxygen. She has to continually haul an oxygen cart with her, and has a nasal canula. This would certainly impact her ability to shop, especially if she is also using a walker at the time, and her ability to perform routine housework. It would also impact her ability to carry laundry to and from the washer and dryer. However, it would not make her incapable of completely performing these tasks, a prerequisite for finding that she is completely dependent. In addition, As a result, it is more likely true than not true that her new assessment correctly found that

⁴¹ Ex. 2, p. 5.

⁴² Ex. D, p. 7.

⁴³ Ex. 2, p. 6.

⁴⁴ 7 AAC 125.040(a)(11).

⁴⁵ Ex. D, p. 7; Ex. F, p. 26.

⁴⁶ Ex. E, p. 26.

⁴⁷ K testimony.

she is no longer dependent in her activities of routine housework, shopping, and now requires assistance. However, the new assessment underrated her need for laundry assistance. That activity should not have been coded as independent with difficulty, but rather should have been coded as requiring assistance. In addition, the time allotted for laundry should take Ms. K's incontinence into account.

IV. Discussion

The Division provided Ms. K a total of 2 hours per week in PCA services following her April 4, 2013 assessment. Ms. K challenged the amount of PCA services she was provided in ten separate tasks: transfers, locomotion in home, locomotion multi-level, locomotion medical/escort, walking exercises, dressing, toileting, routine housework, grocery shopping, 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. K was independent (self-performance code 0, assistance code 0) is upheld.
- Locomotion – in home and multi-level. The Division's finding that Ms. K was independent (self-performance code 0, assistance code 0) is upheld.
- Locomotion – Access Medical/Escort. The evidence shows that Ms. K is dependent (self-performance code 4) rather than only requiring supervision (self-performance code 1).
- Walking exercises. The Division's finding that Ms. K should not receive any time for this activity is upheld.
- Dressing. The Division's finding that Ms. K was independent (self-performance code 0, assistance code 0) is upheld.
- Toileting. The Division's finding that Ms. K was independent (self-performance code 0, assistance code 0) is upheld.
- Grocery Shopping. The Division's finding that Ms. K requires assistance (self-performance code 2,) is upheld.
- Routine Housework. The Division's finding that Ms. K requires assistance (self-performance code 2) is upheld.
- Laundry. The evidence shows that Ms. K requires assistance (self-performance code 2) rather than being independent with difficulty. In addition, the time allotted for her PCA services should reflect her increased laundry needs due to incontinence.

V. Conclusion

The Division’s assessment of Ms. K’s needs for PCA assistance, while correct for the most part, understated her needs for assistance with laundry and with locomotion to access medical appointments/medical escort. The Division is to recalculate Ms. K’s needs for PCA assistance consistent with this decision.

DATED this 17th day of October, 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 31st day of October, 2013.

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

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