

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

In the Matter of:)
)
 C L) OAH No. 13-1323-MDS
) Agency No.
_____)

DECISION

I. Introduction

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

Mr. L's hearing was held on October 31, 2013. Mr. L was represented by his father/power of attorney P L, who testified on his son's behalf. Shelly Boyer-Wood represented the Division. Olga Ipatova and Peter Ndenderoh testified on behalf of the Division.

This decision concludes that although Mr. L's mental illness affects his abilities to perform his Instrumental Activities of Daily Living (IADLS), his need for assistance is not sufficiently acute to qualify him for PCA services. The Division's termination of those services is therefore affirmed.

II. Facts

Mr. L is 29 years old.² He is schizophrenic.³ He lives with his parents.⁴ It is undisputed that he can physically perform all of his measured activities of daily living (transfers, locomotion, eating, toilet use, dressing, and bathing) without any assistance.⁵

Mr. L was receiving 9 hours of PCA services for his IADLS based upon a 2010 assessment that found he was totally dependent upon others (self-performance code of 3, support code of 4) for his light meal preparation, main meal preparation, shopping, light housework, and laundry. He also received medical escort PCA services.⁶

¹ Ex. D.
² Ex. E, p. 1.
³ Ex. E, p. 3.
⁴ Ex. E, p. 1.
⁵ P L testimony; Ndenderoh testimony; Ex. 1, p. 1.
⁶ Ndenderoh testimony; Ex. D, p. 5.

On May 14, 2013, Mr. L was reassessed to determine whether he continued to qualify for PCA services. That assessment was performed by Peter Ndenderoh of DSDS.⁷ Mr. Ndenderoh's assessment is recorded and scored on the Consumer Assessment Tool or "CAT." Mr. Ndenderoh found that Mr. L was able to perform the IADLs of light meal preparation, main meal preparation, shopping, light housework, routine housework, and laundry independently, with difficulty, while receiving setup help (self-performance code of 1, assistance code of 2).⁸ The Division determined, based upon the May 14, 2013 CAT, that Mr. L did not qualify for continued PCA services.⁹

Mr. L's mental illness and the medications that he takes to control it affect his functional abilities. It is difficult for him to focus. He is drowsy, forgetful, and falls asleep easily. He has to be reminded to take his medications. He has to be supervised while cooking because he will leave while cooking or fall asleep, and has burnt the meal. He needs help shopping because his medications make him unable to drive at times and he loses money. He won't clean his room despite being reminded to, and while he will help with laundry, he continues to need assistance due to sleepiness and being unfocused. His parents take him to the doctor for every medical appointment, which includes meeting with the doctor.¹⁰

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" ¹¹ [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." ¹²

⁷ Ex. E.

⁸ Ex. E, p. 26.

⁹ Ex. D; Ex. E, p. 31.

¹⁰ Ex. 1; P L testimony.

¹¹ 7 AAC 125.010(a).

¹² 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.*

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."¹³ The goal of the assessment process is to determine the level of physical assistance that an applicant or recipient requires in order to perform his or her activities of daily living (ADLs) and instrumental activities of daily living (IADLs).¹⁴ The CAT seeks to make the assessment process more objective by attempting to standardize the assessment of an applicant or recipient's functional impairment.¹⁵

The CAT codes or scores certain activities known as "instrumental activities of daily living" (IADLs).¹⁶ These are light meal preparation, main meal preparation, light housework, routine housework, laundry, and shopping.¹⁷ 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).

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 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.¹⁸

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

¹⁴ See 7 AAC 125.010(a).

¹⁵ Ex. E.

¹⁶ This decision will not discuss the scoring requirements for ADLs, because it is undisputed that Mr. L is physically capable of performing them without assistance.

¹⁷ Ex. E, p. 26.

¹⁸ *Id.*

A person's need for medical escort services is not a factor that is taken into account when determining eligibility for PCA services.¹⁹

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

Mr. L's mental illness and his medications make him forgetful, drowsy, and unfocused. He will fall asleep in the middle of tasks. However, he can physically perform all of his IADLs. It is therefore more likely true than not true that Mr. L does not need hands on assistance with his IADLs but requires supervision and cueing with them. This would result in him receiving a code of 2/1 (assistance consisting of supervision/cueing) rather than the code of 1/2 (independent with difficulty – setup help provided) on the CAT for all of his IADLs.

The scores for Mr. L's IADLs on the CAT are therefore changed to a 2/1 for each. These score changes, however, do not result in a finding of continued PCA eligibility for Mr. L. 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.

Mr. L argued that regardless of the scoring on the CAT, he should receive PCA services for his IADLs because he was previously approved for them and his condition has not changed since he was approved. Mr. L's argument makes practical sense. However, the PCA regulations have changed since Mr. L was approved for PCA services in 2010. In 2010, the regulations allowed a person to receive PCA services for IADLs if he or she required "assistance."²⁰ In January 2012, the PCA regulations were changed to explicitly state that PCA services would not be authorized to a recipient who "only needs assistance with supervision, cueing, and setup in order to independently perform an . . . IADL."²¹ Because the regulations changed how eligibility for PCA services were determined, Mr. L's eligibility must be reviewed under the current regulations. Regardless of the fact that he was approved for PCA services in the past, he does not qualify under the current regulations.

¹⁹ *Id.*

²⁰ 7 AAC 125.030(a)(2) (Effective 2/1/2010, Register 193).

²¹ 7 AAC 125.020(e) (Effective 1/26/2012, Register 201).

IV. Conclusion

Mr. L's mental illness and the side effects of his medications undoubtedly affect 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 5th day of November, 2013.

Signed

Lawrence A. Pederson
Administrative Law Judge

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 10th day of December, 2013.

By: *Signed*

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

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