

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

In the Matter of:)
)
 U L) OAH No. 13-1441-MDS
) Agency No.
_____)

DECISION

I. Introduction

U L was receiving Medicaid PCA services. The Division of Senior and Disabilities Services (Division) notified her that her PCA services were being terminated.¹ Ms. L requested a hearing.

Ms. L's hearing was held on January 3, 2014. Ms. L represented herself and testified on her own behalf. Angela Ybarra represented the Division.

This decision concludes that Ms. L's physical condition and functioning were not accurately measured by the Consumer Assessment Tool. As a result, the Division failed to meet its burden of proof and the Division's termination of Ms. L's PCA services is reversed.

II. Facts

Ms. L is 27 years old. She has one artificial eye and is legally blind in the other.² She was receiving 3.5 hours of PCA assistance based upon an April 2012 assessment that found she was fully independent with her activities of daily living and with light meal preparation (self-performance code 0, support code 0), but while she was capable of independently preparing main meals, light housework, routine housework, shopping, and laundry, it was very difficult for her to do so, and she received physical assistance with those tasks (self-performance code 1, support code 3).³

Peter Ndenderoh, a Division employee, reassessed Ms. L on June 25, 2013 to determine her continuing eligibility for PCA services.⁴ Mr. Ndenderoh's assessment is recorded and scored on the Consumer Assessment Tool or "CAT." Mr. Ndenderoh concluded, as recorded on the CAT, that Ms. L did not require assistance with walking, transferring, toilet use, and eating (self-performance code 0, support code 0), but that she required supervision or cueing and setup help

¹ Ex. D.
² Ex. E, pp. 1, 3.
³ Ex. F, pp. 26, 31.
⁴ Ex. E.

with dressing, personal hygiene tasks, and bathing (self-performance code 1, support code 1), and that she was able to independently perform the tasks of light and main meal preparation, light and routine housework, shopping, and laundry with difficulty, requiring only set-up assistance (self-performance code 1, support code 2).⁵ The Division determined, based upon the June 2013 CAT, that Ms. L no longer qualified for continued PCA services.⁶

Ms. L is physically capable of engaging in her physical activities of daily living, such as walking, transferring, eating, toilet use, bathing, and dressing, etc., without assistance.⁷ Her need for assistance derives from the complete loss of one eye and her legal blindness in the other. She has had multiple retina detachments in the functioning eye; falls place her at risk of another. She testified she needs the following assistance:

- A sighted guide (hand on elbow) for going to medical appointments due to the risk of tripping and falling on obstacles and difficulty reading signs for office locations.
- She requires physical assistance transferring in and out of the tub due to a risk of falls (no depth perception, slippery floors).
- She cannot find or pick out her clothes.
- She cannot see well enough to perform personal hygiene tasks such as trimming nails and putting makeup on.
- Her vision has caused her to use the wrong medication (eye drops) and to poke herself in the eye with her eye drop bottle.
- She injures herself (burning, cutting) while trying to cook
- She cannot see well enough to select the proper item while shopping, to do laundry (machine settings, sorting clothes), or complete other housework tasks.

The Division presented a letter regarding Ms. L's physical abilities, which was acknowledged as true with annotations, from a nurse with one of Ms. L's health care providers, which stated, in pertinent part:

- Ms. L would come in to the office and walk unassisted.
- Ms. L was able to transfer off and on the exam table and scales unassisted.
- Ms. L was able to go to the restroom in the office by herself.

⁵ Ex. E, pp. 18 – 19, 26.

⁶ Ex. D; Ex. E, p. 31.

⁷ Peter Ndenderoh testimony; U L testimony; Ex. E; Ex. G.

- Ms. L was able to produce a urine sample without assistance.
- Ms. L received no physical assistance from her PCA when the PCA was with her.⁸

III. Discussion

A. *The PCA Program - Overview*

The Medicaid program provides personal care assistance 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”⁹ [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.”¹⁰

The Department conducts an assessment to determine eligibility for PCA services, and the amount of those services if eligible, using the Consumer Assessment Tool or "CAT."¹¹ 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).¹²

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.¹³ The IADLs coded or scored are light meal preparation, main meal preparation, light housework, routine housework, laundry, and shopping.¹⁴

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,

⁸ Ex. G.

⁹ 7 AAC 125.010(a).

¹⁰ 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.*

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

¹² *See* 7 AAC 125.010(a).

¹³ Ex. E, pp. 6 – 11.

¹⁴ Ex. E, p. 26.

then the person is eligible to receive PCA services.¹⁵ 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.¹⁶

B. Is Ms. L Eligible to Receive PCA Services Based Upon Her Need for Assistance With Either Her ADLs or Her IADLs?

The salient question is whether Mr. Ndenderoh accurately assessed Ms. L's condition to determine her eligibility for PCA services. In this case, in which the Division is seeking to end a benefit a citizen is already receiving, the Division has the burden to prove facts that show the citizen is now ineligible for the program.¹⁷

It is undisputed that Ms. L has the physical strength and agility to perform all of her care tasks. Her vision, however, undeniably imposes limitations upon her. The evidence presented at hearing shows the disputed areas are: walking (locomotion), bathing, personal hygiene, medication assistance, meal preparation, laundry, grocery shopping, and house cleaning. Each of these will be addressed in sequence.

1. Locomotion

Ms. L does not claim she requires assistance for walking in her home, but for assistance, guided support, walking outside her home to access medical appointments. It must be noted that the CAT's definition of locomotion, for PCA eligibility purposes, is for locomotion only within the home.¹⁸ The assessment therefore correctly scored her as independent in this area. However, if overall eligibility is found, than PCA services may be provided for locomotion outside the home to medical appointments.¹⁹ Ms. L is not completely blind. Her testimony establishes that she may well need supervision or cueing for her trips outside the home, but it appears to overstate her needs in this area. For example, the nurse at one of Ms. L's health providers has provided a written statement about Ms. L's capabilities; the statement provides that she can come into the office and walk unassisted, use the bathroom unassisted, and produce a urine sample without assistance.²⁰ These activities require some degree of sight. While Ms. L may be

¹⁵ Ex. E, p. 31.

¹⁶ *Id.*

¹⁷ 7 AAC 49.135.

¹⁸ Ex. E, p. 7.

¹⁹ 7 AAC 125.030(b)(3)(A)(ii).

²⁰ Ex. G.

familiar with her health care provider's office, which makes tasks easier, the ability to perform these activities without assistance demonstrates that her vision impairment is not so severe that she requires actual, physically-guided assistance with locomotion for her safe physical functioning, merely supervision or cueing.

2. Bathing

The Division's assessment found that Ms. L required supervision, cueing, or oversight and setup assistance (self-performance code 1, support code 1) with bathing. This is primarily due to a falling risk in transferring in and out of the tub. Ms. L is more than physically capable of transferring in and out of the tub. Her concerns are depth perception and slippery floors. Her testimony only establishes a need for supervision, cueing, oversight, and setup help, not a need for physically guiding her in and out of the tub. The Division's determination, as reflected on the assessment, remains unchanged.

3. Dressing.

The Division's assessment found that Ms. L required supervision, cueing, or oversight and setup assistance (self-performance code 1, support code 1) with dressing. Ms. L's testimony did not establish a need for any more help than that. The Division's determination, as reflected on the assessment, remains unchanged.

4. Personal Hygiene.

The Division's assessment found that Ms. L required supervision, cueing, or oversight and setup assistance (self-performance code 1, support code 1) with personal hygiene. A need for personal hygiene assistance does not provide eligibility for PCA assistance. If overall eligibility is present, then PCA time can be allotted for personal hygiene assistance. Ms. L testified that her impaired vision makes her unable to put on makeup or do nail care. Ms. L was credible on this point due to the degree of precision required to successfully perform these tasks. She would therefore require limited assistance²¹ from one person to perform these tasks (self-performance code 2, support code 2). The Division's determination on this activity of daily living is changed.

²¹ "Limited assistance" is not limited to physical guided assistance; it also includes non-weight bearing assistance which is provided three or more times per week. *See* Ex. E, p. 10. Nail care and/or makeup assistance totaling at least three times per week is not unrealistic.

5. Medication Assistance

The Division found that Ms. L self-administered her medications (code of 4). Ms. L argued that she needed assistance with her medications (differing eye drops and an ointment), because her vision problems had caused her to use the wrong eye drop and she had jabbed her eye. A need for assistance with medications does not provide eligibility for PCA assistance. If PCA eligibility is present, it is possible for a person who would otherwise self-administer his or her own medication to receive PCA assistance, if she or he has a personal hygiene self-performance code of 2.²² Ms. L has a multiplicity of different eye drops which she takes.²³ It is more likely than not true that she, due to her vision problems, requires assistance in selecting which eye drop to take at the appropriate time. Since she has a personal hygiene self-performance code of 2, she is eligible for Medicaid Assistance.

6. Instrumental Activities of Daily Living (Light and Main Meals, Shopping, Housework, Laundry).

Ms. L was assessed in 2012 as not requiring assistance with preparing light meals (self-performance code 0, support code 0), but while she was capable of independently preparing main meals, light housework, routine housework, shopping, and laundry, it was very difficult for her to do so, and she received physical assistance with those tasks (self-performance code 1, support code 3).²⁴ The 2013 assessment found she was able to independently perform the tasks of light and main meal preparation, light and routine housework, shopping, and laundry with difficulty, requiring only set-up assistance (self-performance code 1, support code 2).

Ms. L's disagreement on these areas is based upon her vision issues. Her testimony established that it is more likely than not true that while she is not totally incapable of performing these tasks, she cannot see well enough to perform the tasks in their entirety (housecleaning, washing dishes, shopping, laundry), or it is not safe for her to do so in their entirety (cooking).

It must be noted that the Division's assessment, as a whole, is somewhat inconsistent. In 2012, it found that Ms. L did not require any assistance with her ADLs of dressing, bathing, and personal hygiene, yet it found she required assistance with her IADLS. In 2013, it found that her needs with her ADLs had increased to the point where she required supervision/cueing/setup

²² Ex. B, p. 35.

²³ See Ex. E, p. 20 for a list of the medications.

²⁴ Ex. F, pp. 26, 31.

with her ADLs of dressing, bathing, and personal hygiene, yet she required no assistance with her IADLs other than setup. It is inconsistent with Ms. L's increased need with her ADLs to assert a decrease in her needs for IADLs.

The Division had the burden of proof on this point, and did not meet it. Ms. L should therefore have been assessed as being able to perform all of her IADLS independently with difficulty to the point that she required physical assistance (self-performance code 1, support code 3). The reason this decision does not find that she should receive a higher degree of assistance is that Ms. L (1) appeared to overstate the degree her vision impairment affects her functionality as demonstrated by her nurse's statement,²⁵ and (2) did not provide any medical evidence demonstrating the degree of her impairment.

IV. Conclusion

The Division sought to terminate Ms. L's PCA services based upon her 2013 assessment, as recorded on the CAT. The Division had the burden of proof to demonstrate that Ms. L no longer qualified for those services. As discussed above, the Division should have coded Ms. L as being able to perform her IADLS (light meal prep, main meal prep, housekeeping, laundry, and shopping) but with difficulty and needing physical assistance with them (self-performance code 1, support code 3). This coding qualifies Ms. L for continued PCA services.²⁶ The Division did not meet its burden of proof and its termination of Ms. L's PCA services is reversed. The Division should recalculate Ms. L's PCA hours consistent with this decision. If Ms. L disagrees with the recalculation of those hours, she may request a new hearing on that limited issue.

DATED this 13th day of January, 2014.

Signed _____
Lawrence A. Pederson
Administrative Law Judge

²⁵ See Ex. G.

²⁶ See Ex. E, p. 31.

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 24th day of January, 2014.

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

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

