

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

In the Matter of: )  
 )  
 C D ) OAH No. 13-1517-MDS  
 ) Agency No.  
 )  
\_\_\_\_\_ )

**DECISION**

**I. Introduction**

C D was receiving 19.75 hours per week of personal care assistance (PCA) services. The Division of Senior and Disabilities Services (Division) notified her on October 15, 2013 that her PCA services were reduced to 14 hours per week. Ms. D requested a hearing.

Ms. D's hearing was held on February 10, 2014. Ms. D represented herself. Shelly Boyer-Wood represented the Division.

At hearing, Ms. D not only opposed the reduction in her PCA services, but requested that her services be increased in a variety of tasks. The evidence on her care needs demonstrated that the Division was correct with regard to a portion of the reductions, and that Ms. D was also correct with regard to a portion of her requested increases. Accordingly, as discussed in detail below, the reduction is upheld in part, and reversed in part.

**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 . . . ." <sup>1</sup>

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. <sup>2</sup> 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. <sup>3</sup>

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

---

<sup>1</sup> 7 AAC 125.010(a) [emphasis added].

<sup>2</sup> See 7 AAC 125.020(a) and (b).

<sup>3</sup> Ex. E, pp. 6 – 11.

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 assistance<sup>4</sup>); **3** (the person requires extensive assistance<sup>5</sup>); **4** (the person is totally dependent<sup>6</sup>). 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).<sup>7</sup>

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).<sup>8</sup>

The CAT also codes certain activities known as "instrumental activities of daily living" (IADLs). These are light meal preparation, main meal preparation, light housekeeping, laundry (in-home), laundry (out-of-home), and shopping.<sup>9</sup>

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 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).<sup>10</sup>

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-

---

<sup>4</sup> 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."

<sup>5</sup> 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."

<sup>6</sup> 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."

<sup>7</sup> Ex. E, p. 18.

<sup>8</sup> Ex. E, p. 18.

<sup>9</sup> Ex. E, p. 26.

<sup>10</sup> Ex. E, p. 26.

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).<sup>11</sup>

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.<sup>12</sup> 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. D is 55 years old. She has a variety of impaired health conditions: Hepatitis C, asthma, end stage IV kidney disease, high blood pressure, joint pain, esophageal reflux. She had a stroke which resulted in left sided weakness and an inability to use her right hand. She is right handed. She experiences bladder incontinence.<sup>13</sup>

Ms. D was receiving 19.75 hours of PCA services per week as determined by an assessment performed on August 5, 2011.<sup>14</sup> Ms. D was reassessed to determine her PCA service needs on June 21, 2013. The results of that assessment, as recorded in the Consumer Assessment Tool (CAT), resulted in a reduction of Ms. D's PCA services from 19.75 hours per week to 14 hours per week. That reduction resulted from an elimination of PCA time previously authorized for transfers, medical escort, and documentation, a reduction in her toileting and personal hygiene assistance, and a reduction in the assistance provided for meal preparation (both light and main meal), and laundry.<sup>15</sup> Ms. D disagreed with these reductions, and also asserted that she should have received assistance with bed mobility and locomotion, and that she required increased assistance with transfers, toileting, eating, dressing, and bathing. Each of these areas of disagreement is addressed below.

In evaluating the evidence presented in this case, the following was taken into account:

---

<sup>11</sup> Ex. E, p. 26.

<sup>12</sup> 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.

<sup>13</sup> Ms. D testimony; Ex. E, pp. 3, 23; Ex. G.

<sup>14</sup> Ex. D, pp. 6 - 7; Ex. F.

<sup>15</sup> Exs. D, E.

- The assessor did not testify.
- Ms. D's PCA is a friend of Ms. D's who began providing her paid PCA services in either September or early October 2013, which was shortly before the Division made its decision to reduce Ms. D's benefits. The PCA was therefore asked to describe Ms. D's care needs as they existed prior to the Division's October 15, 2013 reduction decision.
- Ms. D was diagnosed with chronic renal insufficiency as of her prior assessment, August 5, 2011.<sup>16</sup> Her diagnosis has changed to end stage IV kidney disease as of her current assessment, and it is anticipated that her disease progression will result in a need for dialysis within the next two to five years.<sup>17</sup>

A. *Bed Mobility*

Bed mobility involves the ability of a person to reposition herself/himself or to sit up while in bed. Ms. D had not been previously provided with assistance for this task. Her new assessment continued to find that she did not require any assistance.<sup>18</sup> Ms. D disagreed, testifying that it was very hard for her to reposition herself in bed.<sup>19</sup> However, her PCA testified that when she arrives in the morning, Ms. D is usually sitting up in bed waiting for her.<sup>20</sup> Accordingly, it is more likely true than not true that Ms. D is capable of bed mobility without requiring assistance.

B. *Locomotion*

Ms. D was not previously provided locomotion assistance within her home. The new assessment continued to find that she did not require locomotion assistance, based upon the assessor's observation of Ms. D walking without assistance. That assessment, however, contains inconsistent statements regarding Ms. D's ability to locomote: in the section under locomotion, her gait was observed to be "steady and even," while in the section under bathing, her gait was described as "slow, uneven."<sup>21</sup> Additionally, during that assessment, Ms. D notified the assessor that she held onto things or people for support when walking.<sup>22</sup> Ms. D's testimony during the hearing was consistent with her statement reported on the assessment: that she leaned on people or things when walking.<sup>23</sup> Her PCA testified that Ms. D walked very slowly; Ms. D was not being

---

<sup>16</sup> Ex. F, p. 3.

<sup>17</sup> Ex. G, p. 2.

<sup>18</sup> Ex. D, p. 6.

<sup>19</sup> Ms. D testimony.

<sup>20</sup> Ms. ZC testimony.

<sup>21</sup> Ex. D, p. 6; E, pp. 7, 11.

<sup>22</sup> Ex. E, p. 7.

<sup>23</sup> Ms. D testimony.

held up by the PCA for support. Instead, she leaned upon the PCA for support.<sup>24</sup> There was no evidence presented that Ms. D required a degree of lifting or carrying while moving within her home. It is therefore more likely true than not true that Ms. D requires limited assistance (self-performance code 2, support code 2) with locomotion within her home. However, other than going to the bathroom, Ms. D seldom moves out of her bedroom, occasionally going to the living room.<sup>25</sup> At the most, this would qualify her for locomotion assistance twice per day (once to the living room, once from the living room).

### C. *Transfers*

Ms. D was previously provided with limited physical assistance (self-performance code 2, support code 2) with transfers four times per day, seven days per week. Her new assessment found that she no longer required any assistance with transfers, based upon the assessor's observation of Ms. D transferring without assistance and Ms. D's statement that she supported herself on furniture to stand.<sup>26</sup> Ms. D testified that she continued to require assistance with transfers. Her PCA testified that Ms. D required some weight-bearing support with transfers, describing that Ms. D had to be lifted up from her bed.<sup>27</sup> Ms. D has left-sided weakness and an inability to use her right hand, which is consistent with an increased need for assistance. Similar to her need for locomotion, Ms. D does not often require transfer assistance other than for toileting.<sup>28</sup> Locomoting twice per day for non-toileting purposes (once from the bedroom to the living room and a return trip from the living room to the bedroom) would require four transfers. It is therefore more likely than not true that Ms. D continues to require assistance with transfers four times per day; however, Ms. D requires weight-bearing support for those transfers, which would cause her to require extensive assistance (self-performance code 3, support code 2) with those transfers.

### D. *Toileting*

Ms. D was previously provided limited assistance with toileting (self-performance code 2, support code 2) six times per day, seven days per week.<sup>29</sup> Her new assessment did not change the degree of assistance, but found, without any explanation, that she only required toileting assistance three times per day, seven days per week.<sup>30</sup> As discussed above, Ms. D requires extensive

---

<sup>24</sup> Ms. ZC testimony.

<sup>25</sup> Ms. D and Ms. ZC testimony.

<sup>26</sup> Ex. D, p. 6; Ex. E, p. 6.

<sup>27</sup> Ms. ZC testimony.

<sup>28</sup> Ms. D and Ms. ZC testimony.

<sup>29</sup> Ex. D, p. 7.

<sup>30</sup> Ex. E, p. 9.

assistance with transfers – this factual finding would also apply to transfers on and off the commode. The PCA testified that Ms. D required toileting assistance two to three times during a four to five hour period.<sup>31</sup> This is consistent with Ms. D continuing to need toileting assistance at least six times per day. Ms. D also testified that she is required to drink large quantities of water to preserve her kidney function, which leads to needing to use the toilet frequently.<sup>32</sup> It is therefore more likely true than not true that Ms. D requires extensive assistance (self-performance code 3, support code 2) with toileting six times per day, seven days per week.

*E. Eating*

Ms. D had not been previously provided with eating assistance.<sup>33</sup> The new assessment again found that she did not require eating assistance, and that she “denied [having] any chewing or swallowing issues.”<sup>34</sup> Ms. D testified that she could eat by herself, although it was difficult because of her inability to use her right hand. She, however, testified that she occasionally chokes while eating.<sup>35</sup> Ms. D has a diagnosis of esophageal reflux disease, which could potentially result in swallowing issues.<sup>36</sup> Given Ms. D’s testimony that she occasionally chokes while eating, combined with a medical diagnosis which might have coughing/choking symptoms, it is more likely than not true that Ms. D requires supervision while eating due to choking issues.

*F. Dressing*

Ms. D was previously provided with limited physical assistance (self-performance code 2, support code 2) with dressing twice per day, seven days per week.<sup>37</sup> Her new assessment did not change that result.<sup>38</sup> Ms. D asserted that she required extensive assistance with dressing.<sup>39</sup> The evidence at hearing demonstrated that while Ms. D required assistance with dressing, but that the level of assistance did not rise to the point where she required weight bearing support for her dressing. It is therefore more likely true than not true that Ms. D continues to require limited, and not extensive, assistance with dressing.

---

<sup>31</sup> Ms. ZC testimony.

<sup>32</sup> Ms. D testimony.

<sup>33</sup> Ex. D, p. 6.

<sup>34</sup> Ex. E, p. 9.

<sup>35</sup> Ms. D testimony.

<sup>36</sup> “It could be a possibility that one could cough or choke.” Teresa Burnett testimony.

<sup>37</sup> Ex. D, p. 6.

<sup>38</sup> Ex. D, p. 6; Ex. E, p. 8.

<sup>39</sup> Ms. D testimony.

*G. Bathing*

Ms. D was previously provided with extensive physical assistance (self-performance code 3, support code 2) with bathing once per day, seven days per week.<sup>40</sup> Her new assessment did not change that result.<sup>41</sup> She, however, asserted that she was dependent (self-performance code 4, support code 2) with regard to this task. She testified that she was able to participate partially in bathing because she could wash the front of her legs.<sup>42</sup> Because Ms. D is capable of assisting with her own bathing, it is more likely true than not true that she continues to require extensive assistance, rather than being completely dependent, with bathing.

*H. Documentation*

Ms. D was previously provided with PCA time for documentation. The time for documentation was removed because she had no prescription for taking vital signs.<sup>43</sup> There is no evidence in the record showing that she has a prescription for taking her vital signs.

*J. Medical Escort*

Ms. D was previously provided with medical escort in the amount of 10 minutes per week, based upon 24 medical appointments per year at 20 minutes per appointment.<sup>44</sup> Her new assessment provided that she has 12 medical appointments per year, but disallowed escort without any explanation.<sup>45</sup> Ms. D testified that she sees her primary care doctor once a month (12 times per year), her psychiatrist every two months (six times per year), and her kidney doctor every three months (four times per year), which totals 22 appointments per year. Ms. D further testified that she has memory/thought issues resulting from her stroke and that she needs someone to attend her appointments with her.<sup>46</sup> The Division presented no evidence showing that Ms. D no longer required medical escort. It is therefore more likely true than not true that Ms. D continues to require medical escort services. However, given her testimony, she only has 22 appointments a year, a decrease from the 24 previously provided.

---

<sup>40</sup> Ex. D, p. 6.

<sup>41</sup> Ex. D, p. 6; Ex. E, p. 11.

<sup>42</sup> Ms. D testimony.

<sup>43</sup> Ex. D, p. 4.

<sup>44</sup> Ex. D, p. 7; Ex. F, p. 5.

<sup>45</sup> Ex. D, p. 7; Ex. E, p. 5.

<sup>46</sup> Ms. D testimony.

*K. Personal Hygiene*

Ms. D was previously provided with limited physical assistance (self-performance code 2, support code 2) with personal hygiene per day, seven days per week.<sup>47</sup> The new assessment found the same level of assistance was required but reduced the frequency, without any explanation, to three times per week.<sup>48</sup> Ms. D requested that she continue to receive the same level of assistance seven days per week. Because the Division was unable to articulate any justification provided for the reduction in frequency,<sup>49</sup> it is more likely true than not true that Ms. D continues to require limited assistance with personal hygiene seven days per week.

*L. Instrumental Activities of Daily Living*

1. Light Meals and Main Meals

Ms. D was previously assessed as requiring assistance (self-performance code 2, support code 4) with preparing light meals. The new assessment found that she was able to prepare light meals on her own but required some assistance (self-performance code 1, support code 3). Ms. D was previously assessed as being dependent (self-performance code 3, support code 4) with preparing main meals. The new assessment found that she was able to prepare main meals with assistance (self-performance code 2, support code 3).<sup>50</sup> As discussed above, Ms. D had a stroke that resulted in an inability to use her right hand, and she is right handed. She testified that her food preparation skills are limited to making a cup of instant noodles and that when she tries to prepare food, she cuts or burns herself.<sup>51</sup> Given her inability to use her right hand, and her uncontradicted testimony regarding her meal preparation abilities, it is more likely true than not true that she is dependent (self-performance code 3) with regard to both light meal and main meal preparation.

2. Shopping

Ms. D was previously assessed as requiring assistance (self-performance code 2, support code 3) with shopping. Her new assessment did not change that result.<sup>52</sup> Ms. D disagreed, testifying that her shopping participation was limited to riding in the motorized cart and telling her PCA what items to pick.<sup>53</sup> While Ms. D may be limited in her ability to participate, she is able to use her left hand and can therefore grasp, within her reach, with her left hand. She is therefore not

---

<sup>47</sup> Ex. D, p. 7.

<sup>48</sup> Ex. D, p. 7; Ex. E, p. 10.

<sup>49</sup> See Ms. Fey-Merritt testimony.

<sup>50</sup> Ex. D, p. 7.

<sup>51</sup> Ms. D testimony.

<sup>52</sup> Ex. D, p. 7.

<sup>53</sup> Ms. D testimony.

completely dependent with regard to this task. It is therefore more likely true than not true that she remains, as found in the assessment, to require assistance (self-performance code 2, support code 3) with shopping.

### 3. Housework

Ms. D was previously assessed as being dependent (self-performance code 3, support code 4) with housework. Her new assessment did not change that result.<sup>54</sup> This is the maximum level of assistance available for housework. Although Ms. D appeared to argue that she required more assistance, because she is already receiving the maximum assistance available for this task, she is not entitled to an increase in PCA time for this activity.

### 4. Laundry

Ms. D was previously assessed as being completely dependent (self-performance code 3, support code 4) with two loads of laundry per week. Her new assessment found that she was no longer completely dependent, but did require assistance (self-performance code 2, support code 3) with two loads of laundry per week, which is the allowance provided for persons with incontinence issues.<sup>55</sup> However, she is able to use her left hand, which means that she can participate to some degree in laundry, such as sorting and one-handed folding of clothes. It is therefore more likely true than not true that she is not dependent with laundry, but does require assistance (self-performance code 2, support code 3). Ms. D struggles with incontinence issues which results in a need for increased laundry.<sup>56</sup> However, the assessment provided her with the maximum time allowed for laundry for a person with incontinence issues.

## IV. Discussion

Ms. D has challenged the new assessment's findings with regard to its allowance of PCA services. Some of her challenges are to decreases in PCA time previously provided. Some of her challenges request an increase in PCA time. The Division has the burden of proof with regard to its proposed decreases. Ms. D has the burden of proof with regard to her proposed increases. The standard of proof is by a preponderance of the evidence, *i.e.*, more likely true than not true.<sup>57</sup>

At hearing, the Division raised a brand new issue, based upon Ms. D's testimony that her adult children help her out. The Division argued that Ms. D should not receive PCA assistance that

---

<sup>54</sup> Ex. D, p. 7.

<sup>55</sup> Ex. D, p. 7.

<sup>56</sup> Ms. D testimony.

<sup>57</sup> 7 AAC 49.135.

duplicated assistance already provided by her “natural supports.”<sup>58</sup> However, because this was not a rationale raised by the Division in its October 15, 2013 PCA letter, the Division may not assert it at this late date.<sup>59</sup> This decision will therefore not address that argument further.

As discussed above, the facts of this case show the following:

- Ms. D did not meet her burden of proof to establish that she required PCA assistance with bed mobility. The assessment’s finding that she did not require bed mobility assistance remains unchanged.
- Ms. D met her burden of proof and established that she required limited assistance with locomotion within the home, twice per day, seven days per week.
- Ms. D met her burden of proof and established that she had an increased need for assistance for transfers, rather than the decrease proposed by the Division, and required extensive assistance with transfers twice daily, seven days per week.
- Ms. D met her burden of proof and established that she had an increased need for assistance with toileting, rather than the decrease in frequency proposed by the Division, and required extensive assistance with toileting six times per day, seven days per week.
- Ms. D met her burden of proof and established that she required supervision assistance with eating due to choking and swallowing issues.
- Ms. D did not meet her burden of proof with regard to her request for an increase in dressing assistance. The assessment’s finding that she requires limited assistance with dressing twice per day, seven days per week, remains unchanged.
- Ms. D did not meet her burden of proof with regard to her request for an increase in bathing assistance. The assessment’s finding that she requires extensive assistance with bathing once daily, seven days per week, remains unchanged.
- The Division met its burden of proof and established that Ms. D has no prescription for taking vital signs, which is a prerequisite for PCA service time for this task.<sup>60</sup> Accordingly, the assessment’s finding that Ms. D is not entitled to PCA assistance for documentation remains unchanged.

---

<sup>58</sup> The PCA program does not pay for “tasks that supplant or duplicate assistance offered by an individual or organization without charge.” See 7 AAC 125.040(a)(12).

<sup>59</sup> *Allen v. State, Dept. of Health and Social Services, Division of Public Assistance*, 203 P.3d 1155, 1167 - 1168 (Alaska 2009).

<sup>60</sup> 7 AAC 125.030(d)(3).

- The Division did not meet its burden of proof and failed to establish that Ms. D no longer needed medical escort assistance. However, based upon Ms. D's testimony, that escort service is to be provided for 22 appointments per year, rather than the 24 previously allowed. The time allowed per appointment should be 20 minutes, which is identical to the time previously allowed per appointment.
- The Division did not meet its burden of proof with regard to the reduction in the number of times per week that Ms. D was to be provided personal hygiene assistance. Ms. D is therefore to continue receiving limited assistance with personal hygiene seven days per week.
- Ms. D met her burden of proof and established that she is dependent for assistance with regard to preparation of light meals. The Division did not meet its burden of proof and failed to establish that her assistance for main meals should be reduced from dependence to only requiring assistance. Ms. D is therefore to receive PCA services for both light and main meals as being dependent in those tasks.
- Ms. D did not meet her burden of proof and failed to establish that she was dependent in the task of shopping. The assessment's finding that she requires assistance, rather than being dependent, remains unchanged.
- Ms. D is not entitled to receive an increase in housework assistance, inasmuch as the assessment finds that she is completely dependent in that area - the maximum level of assistance available.
- The Division met its burden of proof and established that Ms. D was not completely dependent in the task of laundry. The assessment's finding that she requires assistance, rather than being dependent, remains unchanged.

As discussed above, neither Ms. D nor the Division established that they were entitled to all of their requested changes. Ms. D is advised that the time provided for each PCA task is set by regulation, and not by the actual time incurred for each task.<sup>61</sup> The Division is to recalculate Ms. D's PCA assistance time consistent with the decision and the limits set by regulation.

## **V. Conclusion**

The Division's assessment of Ms. D's need for PCA assistance is upheld with regard to the tasks of bed mobility, dressing, bathing, documentation, shopping, housework, and laundry. The

---

<sup>61</sup> See Ex. B, pp. 34 – 36.

Division's assessment is reversed with regard to the tasks of transfers, toileting, locomotion, supervised eating, medical escort, personal hygiene, light meal and main meal preparation.

DATED this 14<sup>th</sup> day of February, 2014.

*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 12<sup>th</sup> day of March, 2014.

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.]