

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

In the Matter of:)
)
 U Q) OAH No. 13-1634-MDS
) Agency No.
)
_____)

DECISION

I. Introduction

U Q was receiving 18.5 hours per week of personal care assistance (PCA) services. The Division of Senior and Disabilities Services (Division) notified him on October 29, 2013 that his PCA services were being reduced to 2.5 hours per week.¹ Mr. Q requested a hearing.

Mr. Q's hearing was held on January 10, 2014. Mr. Q represented himself. Anita Halterman represented the Division.

The Division's assessment of and provision for Mr. Q's PCA service needs was made based upon his needs while he was living in temporary housing after his discharge from No Name Specialty Hospital. Consequently, while correct for the most part, it understates Mr. Q's needs for assistance with toileting and locomotion through no fault of the Division. The Division's decision is therefore upheld for the most part and reversed in part as discussed more fully 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 . . ."² 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."³

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 The Division issued a corrective notice on December 19, 2013. All references made to Exhibit D are to this corrected notice.

² 7 AAC 125.010(a) [emphasis added].

³ 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.⁴ 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.⁵

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 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, light housekeeping, laundry (in-home), laundry (out-of-home), and shopping.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 See 7 AAC 125.020(a) and (b).

⁵ Ex. E, pp. 6 – 11.

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, he would receive 22.5 minutes of PCA service time each time he 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.

Mr. Q is 55 years old. He is diabetic, has peripheral neuropathy, and is legally blind – although not completely blind. He has arthritis and is wheelchair bound, having had his right leg amputated; he also had two toes on his left foot amputated. He is subject to chronic recurrent ulcerations on his left lower extremity. In the summer of 2013, Mr. Q was a patient in No Name Specialty Hospital for a month. After his discharge, Mr. Q resided temporarily in a residence hotel.¹⁵

While Mr. Q was staying in the residence hotel, Sam Cornell, RN, reassessed Mr. Q's PCA service needs on July 2, 2013. The result of that assessment, as recorded in the Consumer Assessment Tool (CAT), resulted in a reduction of Mr. Q's PCA services from 18.5 hours per week to 2.25 hours per week, which resulted from a complete elimination of the time previously provided to him for his Activities of Daily Living (ADLs) of transfers, locomotion within the home,

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; Ex. 1 (Dr. Korn letter of October 31, 2013); Mr. Q testimony.

locomotion to access medical appointments, dressing, and personal hygiene. It provided no assistance for toileting or bathing. It also provided for no assistance with light or meal preparation, and but did provide physical assistance with shopping, housework, and laundry.¹⁶ The residence hotel did not have any cooking facilities, except for a microwave oven down the hall, and it had common restroom facilities, which included bathing facilities. Mr. Q was not taking full showers at the time, merely self-assisted sponge baths because he was concerned about getting his dressing wet.¹⁷

Mr. Q moved back into his apartment not long after the assessment, but did not notify the Division of the move. It sent him the results of his assessment on October 29, 2013, where he was notified of the reduction in his PCA benefits. Mr. Q agreed that he could transfer by himself and locomote by himself in his wheelchair. He, however, disagreed with the assessment, primarily over the constraints imposed by his operating the wheelchair in his apartment, which is not fully wheelchair accessible, and with regard to his Instrumental Activities of Daily Living. His specific areas of disagreement are as follows:

A. *Toileting*

While Mr. Q is physically capable of transferring on and off the toilet, into and out of the bathtub, and completing the toileting process unaided, his bathroom is not wheelchair accessible. In order to access the toilet, he must get out of the wheelchair and crawl on the floor into the bathroom. It is not a reasonable expectation for a person with amputations (one leg and two toes), who is subject to recurrent ulcerations, and who is wheelchair bound, to crawl in and out of the bathroom. It is therefore more likely true than not true that Mr. Q requires physical assistance to toilet (locomotion to access the bathroom).¹⁸ While Mr. Q stated that he would lean on the PCA, given Mr. Q's height, weight, and the fact that he is one legged with amputated toes on the remaining foot, the PCA would end up supporting Mr. Q's weight to some degree.¹⁹ Mr. Q uses the toilet a minimum of six times per day. Accordingly, Mr. Q should be provided extensive physical assistance for toileting assistance six times daily, each for seven days per week.

¹⁶ Ex. D; Ex. E, p. 5.

¹⁷ Ex. E, pp. 4, 9,

¹⁸ The act of toileting includes, by regulation, moving to and from the toilet, *i.e.*, it includes locomotion to and from the toilet. *See* 7 AAC 125.030(b)(6)(A).

¹⁹ Mr. Q is 5'6" and weighs 275 lbs. Ex. E, p. 9.

B. Locomotion

Mr. Q disagreed with his assessment with regard to bathing and personal hygiene. However, when examined closely, Mr. Q does not claim he needs assistance to bathe or perform his personal hygiene tasks, but instead that he cannot get into the bathroom to bathe or perform his personal hygiene. His disagreement therefore falls into the area of locomotion.²⁰ As found above, Mr. Q requires extensive physical assistance to locomote into the bathroom.

With regard to bathing, Mr. Q would be entitled to two locomotions, one into the bathroom, and one out of the bathroom. With regard to personal hygiene, Mr. Q could perform tasks such as washing his face, brushing his teeth, and shaving in the kitchen. He, however, has concerns about trying to perform his personal hygiene tasks in the kitchen because he would be essentially trying to stand on one leg to perform them. It is not unreasonable for him to perform his personal hygiene tasks in the bathroom, especially given his physical condition. Providing Mr. Q with locomotion assistance for two personal hygiene tasks per day would provide him with a total of four locomotions per day.

It is therefore more likely true than not true that Mr. Q requires extensive physical assistance with locomotion six times per day to allow him to bathe and perform his physical hygiene.

C. Instrumental Activities of Daily Living

Mr. Q's assessment found that he was capable of preparing his meals, both light and main, albeit with difficulty. It further found that he was not completely dependent for someone else to entirely perform his housework, shopping or laundry, but did require physical assistance with those tasks.²¹

Mr. Q agreed that he was capable of independently preparing his meals, both light and main.²² He also did not contest the fact that he could participate to some degree with his other IADLs of housework, shopping, and laundry. He did, however, state that he could not perform a portion of the housework (vacuuming, mopping, dumping trash) and laundry (going to the laundry room).²³ However, even though there are substantial portions of the housework and laundry tasks

²⁰ Unlike toileting, bathing and personal hygiene assistance does not also include the act of moving to and from the bathing/personal hygiene location. *See* 7 AAC 125.030(b)(7) – (8).

²¹ Ex. E, p. 28.

²² Mr. Q explicitly testified he could prepare his main meals. While he described receiving assistance from his PCA, it appeared to be more along the lines of shopping and possibly some setup assistance.

²³ Mr. Q testimony.

that Mr. Q cannot physically participate it, it is more likely true than not true that he can still participate in other portions of those tasks.

Mr. Q is continent, having “accidents” only rarely.²⁴ He was provided PCA time for one load of laundry per week.²⁵ Mr. Q disagreed with the amount of time provided for these IADL tasks, stating the time allotted was insufficient.²⁶

IV. Discussion

The Division reduced Mr. Q’s PCA services from 18.5 hours per week to 2.25 hours per week in PCA services as a result of his July 2, 2013 assessment. It should be noted that the Division’s assessment was conducted while Mr. Q was temporarily residing in a residence hotel that had a different physical layout than the apartment he subsequently moved into. Mr. Q did not advise the Division he moved into a different residence, which means that the assessment did not accurately reflect, through no fault or oversight on the Division’s part, Mr. Q’s actual physical living conditions at the time the Division notified Mr. Q that his PCA benefits would be reduced. This decision, however, is required to be based upon Mr. Q’s needs as of the date of the Division’s decision, October 29, 2013, that his benefits were reduced.²⁷

The Division has the burden of proof because this is a reduction in benefits.²⁸ Mr. Q challenged the amount of PCA services he was provided with regard to toileting, locomotion necessary to perform bathing and personal hygiene, and his IADLs of housework, shopping, and laundry. As discussed above, the facts of this case show the following:

- Mr. Q requires extensive one-person physical assistance (self-performance code 3, assistance code 2) with toileting six times per day seven days per week.
- Mr. Q requires extensive one-person physical assistance (self-performance code 3, assistance code 2) with locomotion within the home six times per day, seven days per week, so that he can access the bathroom to bathe and perform personal hygiene.
- The assessment correctly found that Mr. Q did not require assistance with preparing either light meals or main meals.

²⁴

Id.

²⁵

Ex. D, p. 10.

²⁶

Mr. Q testimony.

²⁷

See 7 AAC 49.170; *In re T.C.*, OAH No. 13-0204-MDS (Commissioner of Health & Soc. Serv. 2013)

(<http://aws.state.ak.us/officeofadminhearings/Documents/MDS/HCW/MDS130204.pdf>).

²⁸

7 AAC 49.135.

- The assessment correctly found that while Mr. Q required physical assistance with shopping, light housework, and laundry, he was capable of participating in them to some degree (self-performance code 2, support code 3). The assessment also provided Mr. Q with the maximum time available for laundry for a person who was not incontinent (one load per week).²⁹

As discussed above, the assessment was correct for the most part. While the Division has not met its burden of proof with regard to all of changes it sought, the evidence shows that overall Mr. Q no longer requires extensive assistance with most of his ADLs and can participate to some degree with his IADLs. He, however, requires extensive physical assistance with toileting and locomotion with the home as described above. A point that came up during the hearing, with regard to Mr. Q's need for physical assistance with toileting and locomotion, was that while he needs the assistance, his current PCA is not physically capable of providing the requisite assistance.³⁰ This decision is limited to the question of whether Mr. Q is eligible for assistance, not whether a specific PCA is capable of providing that assistance. Mr. Q is cautioned that his PCA can only bill Medicaid for services that the PCA actually provides.

While Mr. Q may feel that the time allotted for a particular task, *e.g.*, laundry, is insufficient, the times per task are set by regulation based upon the assessment of a person's needs, such as whether they require extensive assistance or limited assistance.³¹ The Division is to recalculate Mr. Q's PCA assistance time consistent with the decision and the limits set by regulation.

V. Conclusion

The Division's determination of Mr. Q's needs for PCA assistance upheld for the most part. It is reversed with regard to PCA assistance with toileting and locomotion in the home.

DATED this 28th day of January, 2014.

Signed

Lawrence A. Pederson
Administrative Law Judge

²⁹ Ex. D, p. 6.

³⁰ Mr. Q assistance.

³¹ See Ex. B, pp. 34 – 36.

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 14th day of February, 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.]