

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

In the Matter of)	
)	OAH No. 13-1731-MDS
D X)	Agency No.
_____)	

DECISION

I. Introduction

D X applied for Personal Care Assistance (PCA) services. She was assessed by Senior and Disability Services (the division) who determined that she was not eligible based on her functional abilities. Ms. X contested that decision and requested a formal hearing.

A hearing was held on December 23, 2013. Ms. X testified through a translator, and was assisted in presenting her case by her friend, D M. The division was represented by its lay advocate, Anita Halterman. Registered Nurse Peter Ndenderoh testified for the division. Based on the evidence presented, the division's determination is upheld.

II. Facts

Ms. X is 80 years old, and she lives by herself.¹ She suffered a stroke in 1999. Her impairment from the stroke was severe at the time, but she has recovered somewhat since then.² She currently has trouble with her vision, back pain, and a limp.³ It is difficult for her to shop, drive, and complete her housework.⁴ Mr. Ndenderoh met with Ms. X on September 27, 2013, and obtained information from her to be used in the Consumer Assessment Tool (CAT). Using the information available to it, including information from the CAT, the division determined that Ms. X did not meet the eligibility requirements for PCA services.⁵

III. Discussion

A. PCA program

The purpose of the PCA program

¹ Exhibit E 1.
² Testimony of Ms. X.
³ Testimony of Ms. X.
⁴ Testimony of Ms. X.
⁵ Exhibit D.

is to provide 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[.⁶]

The division uses the CAT to help it assess the level of assistance needed.⁷ The amount of time allotted for that assistance is determined by the Personal Care Assistance Service Level Computation.⁸ This document shows the amount of time allotted for each ADL or IADL depending on the level of assistance needed for each task.

The different levels of assistance are defined by regulation and in the CAT.⁹ Supervision is defined as oversight, encouragement, or cueing three or more times a week, with physical assistance no more than two times a week.¹⁰ Limited Assistance is defined as requiring direct physical help or guidance from another individual three or more times a week, with weight bearing support no more than two times a week.¹¹ Extensive Assistance is defined as requiring direct physical help with weight bearing support at least three times a week, or full assistance without any involvement from the recipient at least three times a week, but not all of the time.¹²

Where, as in this case, an applicant is seeking new or additional benefits, the applicant has the burden of proving eligibility for those benefits.¹³

B. Ms. X is not eligible for PCA services at this time

1. Ms. X is independent with her activities of daily living

To receive PCA services for ADLs, Ms. X must prove by a preponderance of the evidence that as of October 31, 2013,¹⁴ she needed at least limited physical assistance with one or more ADLs.¹⁵ The ADLs considered by the division are:

- a. Body Mobility, positioning or turning in a bed or chair;¹⁶
- b. Transferring, moving between surfaces such as to or from a bed or a chair,¹⁷

⁶ 7 AAC 125.010(a).

⁷ 7 AAC 125.020(b).

⁸ 7 AAC 125.024(1).

⁹ The July 29, 2009 version of the CAT has been adopted by reference, 7 AAC160.900(d)(6), and therefore the definitions in the CAT have the same effect as a regulation.

¹⁰ Exhibit E6.

¹¹ 7 AAC 125.020(a)(1); Exhibit E6.

¹² 7 AAC 125.020(a)(2); Exhibit E6

¹³ 7 AAC 49.135.

¹⁴ This is the date the division notified Ms. X of its assessment decision.

¹⁵ Exhibit B34, Personal Care Assistance Service Level Computation.

¹⁶ 7 AAC 125.030(b)(1)(A).

¹⁷ 7 AAC 125.030(b)(2).

- c. Locomotion, moving from one location to another within the home or to access medical appointments;¹⁸
- d. Dressing and undressing;¹⁹
- e. Eating and drinking;²⁰
- f. Toileting, including moving to and from the toilet and transfers on and off the toilet;²¹
- g. Personal hygiene;²² and
- h. Bathing.²³

Based on his interview with Ms. X, Mr. Ndeneroh concluded that she was able to perform each of these tasks without the physical assistance of another person.²⁴ Ms. X did not address each of these areas in her testimony, but based on the ones she did discuss she does not need at least limited physical assistance from another person. It may be difficult or painful for her to perform these ADLs on her own, but she is able to. At a minimum, she did not meet her burden of proving that she did need physical assistance from another person to perform these activities.

2. *Ms. X is independent with her instrumental activities of daily living.*

To be eligible for PCA services for IADLs, Ms. X must prove the need for physical assistance in completing one or more IADL.²⁵ These activities are meal preparation, light housekeeping, laundering bed linen and clothing, and shopping for groceries and medical supplies.²⁶

Although it is difficult for her to do so, Ms. X is capable of performing these tasks without the physical assistance of another person.²⁷ At a minimum, she did not meet her burden of proving that she did need physical assistance.²⁸

¹⁸ 7 AAC 125.030(b)(3)(A).

¹⁹ 7 AAC 125.030(b)(4).

²⁰ 7 AAC 125.030(b)(5).

²¹ 7 AAC 125.030(b)(6).

²² 7 AAC 125.030(b)(7).

²³ 7 AAC 125.030(b)(8).

²⁴ See Exhibit E6 – E11.

²⁵ Exhibit B 34.

²⁶ 7 AAC 125.030(c).

²⁷ Exhibit E26; testimony of Ms. X.

²⁸ Ms. X also testified that she needed escort services when she went to the hospital. See 7 AAC 125.030(d)(9). From the evidence presented, it appears that her need is for a translator, which is not a covered PCA service.

IV. Conclusion

Ms. X has not shown that she needed physical assistance with ADLs or IADLs as of October 31, 2013. Accordingly, the division's determination is upheld. Ms. X may reapply for services at any time, and provide any additional information that might assist the division in re-assessing her condition.

Dated this 2nd day of January, 2014.

Signed _____
Jeffrey A. Friedman
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 16th day of January, 2014.

By: *Signed* _____
Name: Jeffrey A. Friedman
Title: Administrative Law Judge

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