

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

In the Matter of:)
)
D A W) OAH No. 13-1780-MDS
) Agency No.
)
_____)

DECISION

I. Introduction

D A W was receiving 36 hours per week of personal care assistance (PCA) services. The Division of Senior and Disabilities Services (Division) notified him on November 13, 2013 that his PCA services were being reduced to 10.5 hours per week. Mr. W requested a hearing.

Mr. W's hearing was held on January 7, 2014. Mr. W attended the hearing. He was represented by his son-in-law, C M. Anita Halterman represented the Division.

The Division's assessment of and provision for Mr. W's PCA service needs understates those needs for his Activities of Daily Living. The Division's determination of Mr. W's needs for Instrumental Activities of Daily Living correctly assesses those needs. The Division's decision is therefore upheld in 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"¹ 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."²

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.³ The ADLs measured by the CAT are bed mobility, transfers (non-mechanical), transfers

¹ 7 AAC 125.010(a) [emphasis added].

² 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.*

³ See 7 AAC 125.020(a) and (b).

(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.⁴

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 assistance⁵); **3** (the person requires extensive assistance⁶); **4** (the person is totally dependent⁷). 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).⁸

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).⁹

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.¹⁰

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**

⁴ Ex. E, pp. 6 – 11.

⁵ 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."

⁶ 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."

⁷ Pursuant to 7 AAC 125.020(a)(3), dependent as to an ADL, or dependent as to an IADL, "means the recipient cannot perform any part of the activity, but must rely entirely upon another individual to perform the activity."

⁸ Ex. E, p. 18.

⁹ Ex. E, p. 18.

¹⁰ Ex. E, p. 26.

(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).¹¹

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).¹²

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.¹³ 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. W is 77 years old. He speaks no English and lives with his children.¹⁴ His medical diagnoses are malignant melanoma (skin - scalp/neck), dementia without any behavioral disturbance, and hyperlipidemia.¹⁵ He does not take any medications other than vitamins.¹⁶

Mr. W was receiving 36 hours per week of PCA services. Peter Ndenderoh, a Division employee, reassessed Mr. W's PCA service needs on July 10, 2013. The result of that assessment, as recorded in the Consumer Assessment Tool (CAT) resulted in a reduction of Mr. W's PCA services to 10.5 hours per week, which resulted from a complete elimination of the time provided to him for his Activities of Daily Living (ADLs) of body mobility, transfers, locomotion within the home, locomotion to access medical appointments, dressing, and toilet use, reduced the time provided for the ADLs of bathing and personal hygiene, and reduced the time provided for all of his Instrumental Activities of Daily Living (IADLS) of light meal preparation, main meal preparation,

¹¹ Ex. E, p. 26.

¹² Ex. E, p. 26.

¹³ 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.

¹⁴ Ex. E, p. 1.

¹⁵ Ex. E, pp. 3, 21.

¹⁶ L W testimony.

shopping, housework, and laundry. The assessment also removed time allowed for medication, and documentation. Mr. W was allowed three hours per year (six medical appointments per year) for medical escort.¹⁷

Mr. W disagreed with the results of his reassessment with regard to seven of his ADLs, specifically transfers, locomotion (both within the home and to access medical appointments), toileting, bathing, dressing, and personal hygiene, with regard to all of his IADLs, and with regard to medication assistance and documentation. Each area of disagreement is addressed below.

A. *Transfers*

Mr. W had previously been assessed as requiring extensive one-person physical assistance (self-performance code 3, assistance code 2) in transfers four times per day, seven days per week.¹⁸ The new assessment found that he was completely independent in this area (self-performance code 0, assistance code 0) which did not provide any PCA time for this ADL. The new assessment's conclusion was based upon Mr. W's statement that he could transfer by using his cane or furniture for support, and by the assessor's observation of Mr. W transferring using both a cane and furniture for support.¹⁹

Mr. W attended the hearing in person. The undersigned observed him getting up and down from his chair. Mr. W did not transfer unaided. He was not provided weight-bearing support, but instead relied upon his son for stabilization and balance. The degree of assistance provided did not appear to be excessive, nor did the need for it appear to be feigned. Because of this demonstrated need for non- weight-bearing assistance support, it is more likely true than not true that Mr. W requires limited one-person physical assistance (self-performance code 2, assistance code 2) for transfers. He requested that he receive transfer assistance eight times per day (twice for getting in and out of bed, and three round trips to the kitchen for meals).²⁰ This is a reasonable request consistent with a person's daily routine, and it is therefore more likely true than not true that he requires transfer assistance eight times per day, seven days per week.

B. *Locomotion Within Home*

Mr. W had previously been assessed as requiring extensive assistance from one person (self-performance code 3, assistance code 2) eight times per day, seven days per week, in locomotion.²¹

¹⁷ Ex. D; Ex. E, p. 5.

¹⁸ Ex. D, p. 6.

¹⁹ Ex. E, p. 7; Peter Ndenderoh testimony.

²⁰ L W testimony.

²¹ Ex. D, p. 6; Ex. E, p. 7; Peter Ndenderoh testimony.

His new assessment found that he only required supervision from one person (self-performance code 1, assistance code 1), which did not allow him any PCA time for locomotion. The reduction was based upon the assessor's observation that Mr. W could walk slowly without assistance on short trips using his cane, and by Mr. W's statement that he was able to walk using his cane.²²

As stated above, the undersigned witnessed Mr. W transfer in and out of his chair. In conjunction with each of those transfers, Mr. W walked with his son providing him with non-weight-bearing support. Again, the degree of assistance provided did not appear to be excessive, nor did the need for it appear to be feigned. Because of the demonstrated need for non-weight-bearing support, it is more likely true than not true that Mr. W requires limited one-person physical assistance (self-performance code 2, assistance code 2) for locomotion. Consistent with the amount of transfers provided, Mr. W should continue to receive assistance with locomotion eight times per day. It must be noted Mr. W wanted locomotion assistance outside the home for trips that were not to medical appointments. The PCA program does not provide that.

C. *Locomotion to Access Medical Appointments*

Mr. W had previously been assessed as requiring extensive assistance (self-performance code 3) twice per week for locomotion to access medical appointments.²³ His new assessment found that he only required supervision from one person (self-performance code 1, assistance code 1), which did not allow him any PCA time for locomotion to access medical appointments. As found above, Mr. W requires limited physical assistance with locomotion within his home. He would accordingly also require that same level of assistance for locomotion to access his medical appointments. However, because the only evidence in the record shows that he has medical appointments six times per year,²⁴ *i.e.*, every two months, it is more likely true than not true that he does not require twice weekly PCA time allotted, but only six times per year.

D. *Toileting*

Mr. W had previously been assessed as requiring extensive assistance from one person (self-performance code 3, assistance code 2) six times per day, seven days per week, in toileting.²⁵ His new assessment coded him again as requiring only supervision (self-performance code 1, assistance code 1), which provided no PCA time for this activity. That assessment was based upon Mr. W's

²² Ex. E, p. 7; Peter Ndenderoh testimony.

²³ Ex. D, p. 6.

²⁴ Ex. E, p. 5.

²⁵ Ex. D, p. 6.

statement that he only needed setup support. The assessment noted there were no grab bars near the toilet area.²⁶

As noted above, Mr. W requires limited physical assistance with transfers. Given that there are no grab bars near the toilet area, he would also require limited physical assistance with transfers on and off the toilet. It is therefore more likely true than not true that he needs limited assistance from one person (self-performance code 2, assistance code 2) for toileting. The testimony at hearing was that he uses the toilet five to six times per day.²⁷ Accordingly, he should be provided toileting assistance six times per day, seven days per week.

E. Bathing

Mr. W had previously been assessed as requiring extensive assistance from one person (self-performance code 3, assistance code 2) seven days per week for bathing.²⁸ His new assessment found that he only required limited assistance from one person (self-performance code 2, assistance code 2) seven days per week, which would be for assistance limited to transferring. However, Mr. W told the assessor that he was assisted not only with transferring but that his legs and feet were washed.²⁹ The testimony at hearing was that he needed help washing his legs and feet.³⁰ It is therefore more likely true than not true that Mr. W continues to require extensive assistance (physical assistance with both transferring and the act of bathing itself) with bathing once daily.

F. Dressing

Mr. W had previously been assessed as requiring extensive assistance from one person (self-performance code 3, assistance code 2) twice per day, seven days per week, for dressing.³¹ His new assessment found that he only required supervision from one person (self-performance code 1, assistance code 1), which did not allow him any PCA time for this activity. This was based upon his statement to the assessor that he could dress himself with setup help.³²

The testimony at hearing was that Mr. W's sons helped him to dress, that they pulled the shirt over his head and pulled his arms through, put his pants on, including buttoning and belting

²⁶ Ex. E, p. 9; Peter Ndenderoh testimony.

²⁷ L W testimony. The assessment states Mr. W uses the toilets only three times per day, without providing any basis for that number. See Ex. E, p. 9. This appears to be a very low number.

²⁸ Ex. D, p. 6.

²⁹ Ex. E, p. 11.

³⁰ L W testimony.

³¹ Ex. D, p. 6.

³² Ex. E, p. 8; Peter Ndenderoh testimony.

them, but that he was able to tie his own shoelaces.³³ This would not be weight-bearing assistance, and Mr. W was able to participate in the process. It is therefore more likely true than not true that Mr. W requires limited assistance (self-performance code 2, support code 2) for dressing twice daily, seven days per week.

G. Personal Hygiene

Mr. W was previously assessed as requiring extensive assistance from one person (self-performance code 3, assistance code 2) twice per day, seven days per week, for personal hygiene.³⁴ His new assessment found that he only required limited assistance from one person (self-performance code 2, assistance code 2) seven days per week. This finding was based upon Mr. W's statement to the assessor that his PCAs assisted him to shave, take care of his nails, and that they provided setup support for his other grooming needs.³⁵ The hearing testimony was that Mr. W could not shave himself, but that his PCAs handed him a washcloth and he could wash his face, and that they also handed him a toothbrush with toothpaste on it and he could brush his own teeth.³⁶ This testimony was consistent with the assessment's finding, and did not demonstrate a need for weight-bearing support. Accordingly, it is more likely true than not true that the assessment correctly found that Mr. W required limited assistance with personal hygiene tasks seven days per week.

H. Instrumental Activities of Daily Living

Mr. W was previously assessed as being dependent (self-performance code 3), meaning he took no part in the activity, for each of his IADLS (light meal preparation, main meal preparation, shopping, light housework, and laundry).³⁷ The new assessment found that while he needed assistance in these areas, he was capable of participating in them to some degree (self-performance code 2).³⁸

A review of Mr. W's physical functioning, as discussed above, demonstrates that he undoubtedly requires assistance with almost all of his day to day care needs. However, he is neither so frail, nor so cognitively impaired, that he cannot participate to some degree in all of the specified household chores. It is clear that he does not actually participate in household chores.³⁹ However,

³³ L W testimony.

³⁴ Ex. D, p. 6.

³⁵ Ex. E, p. 10; Peter Ndenderoh testimony.

³⁶ L W testimony.

³⁷ Ex. D, p. 6.

³⁸ Ex. E, p. 26.

³⁹ L W testimony.

there is no evidence showing that the assessor incorrectly concluded that Mr. W could participate in his IADLs to some degree. The lack of current participation appears to be by choice, and not necessity.⁴⁰ It is therefore more likely true than not true that the Division was correct when it found that Mr. W was capable of participating in all his IADLs and provided him with a self-performance code of 2 in these areas.

I. Medication and Documentation

Mr. W had previously been provided PCA time for medication assistance and for documentation.⁴¹ The time for each of these was removed because he was not taking any prescription medications, and because he had no prescription for taking vital signs.⁴² Mr. W takes vitamins; he has no prescribed medications.⁴³ There is no evidence in the record showing that he has a prescription for taking his vital signs.

IV. Discussion

The Division provided Mr. W a total of 10.5 hours per week in PCA services as a result of his July 10, 2013 assessment. Mr. W challenged the amount of PCA services he was provided with regard to seven of his ADLs, specifically transfers, locomotion (both within the home and to access medical appointments), toileting, bathing, dressing, and personal hygiene, with regard to all of his IADLs, and with regard to medication assistance and documentation. All of these challenges were fact based. As discussed above, the facts of this case show the following:

- The assessment understated Mr. W's actual need for transfer assistance. He requires limited one-person physical assistance (self-performance code 2, assistance code 2) with this task, eight times per day, seven days per week.
- The assessment understated Mr. W's actual need for locomotion assistance within the home. He requires limited one-person physical assistance (self-performance code 2, assistance code 2) with this task eight times per day, seven days per week.
- The assessment understated Mr. W's actual need for locomotion assistance to attend medical appointments. He requires limited one-person physical assistance (self-performance code 2, assistance code 2) with this task six times per year – the number of times he has regular medical appointments.

⁴⁰ Mr. W is 77 years old and lives with his family. It is understandable that his family will take care of household chores and tasks for him; however, it does not mean that he is incapable of helping with those chores and tasks.

⁴¹ Ex. D, p. 6.

⁴² Ex. D, p. 4; Ex. E, p. 20; Peter Ndenderoh testimony.

⁴³ L W testimony.

- The assessment understated Mr. W’s actual need for toileting assistance. He requires limited one-person physical assistance (self-performance code 2, assistance code 2) with this task six times per day, seven days per week.
- The assessment understated Mr. W’s actual need for bathing assistance. He requires extensive one-person physical assistance (self-performance code 3, assistance code 2) with this task once daily, seven days per week.
- The assessment understated Mr. W’s actual need for dressing assistance. He requires limited one-person physical assistance (self-performance code 2, assistance code 2) with this task twice daily, seven days per week.
- The assessment correctly found that Mr. W required limited one-person physical assistance (self-performance code 2, assistance code 2) with Personal Hygiene once daily, seven days per week.
- The assessment correctly found that Mr. W, while requiring assistance with his IADLS (light meal preparation, main meal preparation, shopping, light housework, and laundry), was capable of participating in them to some degree (self-performance code 2). The assessment also provided Mr. W with the maximum time available for laundry (two loads per week rather than just one load).⁴⁴
- With regard to medication and documentation, the evidence shows that Mr. W has no prescribed medications and has no prescription to take vital signs. Both medication assistance and documentation require a prescription before PCA time may be authorized for these tasks.⁴⁵ Mr. W is therefore not eligible for PCA times for either of these tasks.

As discussed above, the assessment was partially correct. While the Division has not met its burden of proof with regard to all of changes it sought, the evidence shows that overall Mr. W no longer requires extensive assistance with most of his ADLs and can participate to some degree with his IADLs. While Mr. W may feel that the time allotted for a particular task, *e.g.*, shopping 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.⁴⁶ The Division is to

⁴⁴ Ex. D, p. 6.

⁴⁵ 7 AAC 125.030(d)(1) and (3).

⁴⁶ See Ex. B, pp. 34 – 36.

recalculate Mr. W's PCA assistance time consistent with the decision and the limits set by regulation.

V. Conclusion

The Division's determination of Mr. W's needs for PCA assistance is reversed in part and upheld in part.

DATED this 28th day of January, 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 11th day of February, 2014.

By: *Signed* _____
Name: Lawrence A. Pederson
Title/Agency: Admin. Law Judge, DOA/OAH

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