

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

In the Matter of)
)
 M M)
_____)

OAH No. 14-0106-MDS
Agency No.

DECISION

I. Introduction

M M suffers from physical infirmities and needs assistance for many activities of daily living. In 2009, Ms. M was approved for 23.75 hours of personal care services, and she has been receiving that level of benefit since that time. The Division of Senior and Disabilities Services reassessed Ms. M on July 22, 2013. Under the new regulations and the new assessment, the Division determined that Ms. M qualified for 13.25 hours of personal care assistance services. The facts indicate, however, that Ms. M needs more extensive assistance for toileting and transfers than was scored on the 2013 assessment. She also needs more frequent assistance on these activities than was allowed, and she needs escort services to access her medical appointments. In all other respects, however, the Division’s determination is affirmed.

II. Facts

M M is a 55-year-old woman who lives with her husband in a single-level ranch home in the No Name. Ms. M suffers from depression, hypertension, diabetes, coronary atherosclerosis, urinary incontinence, and myalgia.¹ She is 5’4” tall and weighs 300 pounds.² She is physically infirm, particularly in her lower body, and spends most of her time in her wheelchair.³ She has at least one sore on her buttocks.⁴ Her range of motion in her upper body is functional, however, and she has good dexterity and strength in her hands.⁵ She is cognitively capable, and serves as the Power of Attorney for her husband, who lives with her.⁶

Because of her physical infirmities, Ms. M needs assistance to perform many activities of daily living. The state will provide Personal Care Assistance benefits to eligible recipients who

¹ Division Exhibit E at 3.

² Division Exhibit E at 9.

³ X testimony; M M testimony; Sullivan testimony.

⁴ Ms. Sullivan reported that she “[o]bserved dime size open area Stage II decub right side buttocks fold/coccyx area.” Division Exhibit E at 6; Sullivan testimony.

⁵ Division Exhibit E at 4; Sullivan testimony; M M testimony.

⁶ M M testimony.

need physical help with specific activities. Ms. M is eligible for PCA benefits, but the question in this appeal is how many hours of PCA benefits she will receive.

To determine the level of assistance a recipient needs, the Division assesses the recipient using a standardized assessment format, called the Consumer Assessment Tool (CAT). Under the CAT, the assessor will assign a numerical score for each of several activities of daily living (ADLs)—tasks like walking, eating, and so on—and for several “instrumental activities of daily living” (IADLs)—tasks like cooking, housework, and so on. Scores are divided into two categories, a “self-performance” score, and a “support” score. As a general matter, personal care assistance minutes are assigned for scores that show that the recipient needs actual hands-on assistance to accomplish the ADL or IADL. Scores that show independence or need for only supervision, set-up help, or cueing will not qualify for assistance.⁷

For the past several years, Ms. M has been authorized for 23.75 hours per week of PCA benefits. That level of benefit was based on a CAT assessment that was administered 2009. Although Ms. M has been reassessed since 2009, for reason relating to a lawsuit involving other parties, until 2013 her benefit level was never adjusted based on subsequent CATs.

On July 22, 2013, Registered Nurse Marianne Sullivan visited Ms. M and assessed her need for assistance as measured by the CAT. Based on this assessment, the Division of Senior and Disability Services determined that Ms. M was eligible for 13.25 hours per week of PCA benefits. On November 12, 2013, the Division sent a notification to Ms. M, notifying her that her PCA service level authorization was being reduced. Ms. M requested a fair hearing to

⁷ The CAT numerical coding system has two components for scoring a person’s need for assistance with ADLs. The first component is the self-performance code. These codes rate how capable a person is of performing a particular activity of daily living. The relevant possible codes for ADLs are:

- 0** the person is independent and requires no help or oversight;
- 1** the person requires supervision;
- 2** the person requires limited assistance;
- 3** the person requires extensive assistance;
- 4** the person is totally dependent.

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.

IADLs have a different scoring scheme. Mr. D’s IADL scores are not relevant to this appeal, however. For a full explanation of how the CAT is scored, and what the numerical scores mean for ADLs and IADLs, see, for example, *In re LB*, OAH No. 12-406-MDS at 7-8 (Comm’r Health and Soc. Serv. 2012) available at <http://aws.state.ak.us/officeofadminhearings/Documents/MDS/PCA/MDS120406.pdf>.

dispute the reduction, and a telephonic hearing was held on February 12, 2014. Ms. M was assisted in the presentation of case at the hearing by T X, of the No Name Agency in No Name. Angela Ybarra presented the case for the Division.

At the hearing, Ms. M did not contest all of the reductions. Some of the reductions in Ms. M's PCA benefits were due to changes in regulation. For example, for all of the IADLs other than laundry, regulations now require that PCA benefits be allotted on a household basis, and in the M household these benefits are being provided under Ms. M's husband's PCA benefit. Ms. M does not dispute the application of current regulations to her case.

Some of the reductions in benefits, however, were due to Ms. Sullivan's findings that Ms. M was capable of doing some tasks with less assistance than was noted in the 2009 assessment. Ms. M disputes the specific findings regarding her ability to perform the following activities:

- Locomotion
- Transfers⁸
- Toileting
- Laundry

Ms. M also disputes the finding that she was no longer eligible for escort services. For these five areas, the facts in the record support the following factual findings:

Locomotion. Ms. Sullivan testified that she observed Ms. M walk using a wheeled walker while the PCA was standing by. No hands-on assistance was provided.⁹ Ms. M did not deny that at times she could walk independently using her walker without hands-on assistance. She testified, however, that her PCA will almost always hold her arm to steady her.¹⁰ Her PCA, A M, affirmed that she would hold Ms. M's arm.¹¹ Ms. M reports that she has fallen when walking unassisted, which apparently occurred about 5-6 times last year.¹² A Critical Incident Report in the record indicates that on May 31, 2013, Ms. M fell when she was walking without her walker.

⁸ Ms. M made clear that her dispute regarding the Division's findings included a dispute about the assistance she needed when her "PCA helps her up." M Exhibit 1 at 2. Although Ms. M included this dispute under the heading "locomotion," she was in fact disputing the findings regarding transfers, and considerable evidence was received at the hearing regarding the extent of assistance required for her to transfer.

⁹ Sullivan testimony. *See also* Division Exhibit E at 7.

¹⁰ M M testimony. Ms. M was extremely difficult to understand on the telephone because she was very hoarse. Her agency representative, Sue X was present and repeated much of Ms. M's testimony so that it was understandable.

¹¹ A M testimony.

¹² M Exhibit 1 at 2

The factual issue is whether Ms. M is reasonably able to walk without hands-on assistance. Here, this is a very close call—it appears that A frequently does hold Ms. M’s arm even when Ms. M uses her walker. A testified that “I have to help her with her walker because she does trip over her walker a lot.” In describing her ability to walk with the walker, however, Ms. M used the word “independent.”¹³ Her falls appear to be when she is not using her walker. Ms. Sullivan observed her to walk independently using a walker. The evidence supports a factual finding that Ms. M can walk using her walker with only supervision or cueing support from her PCA. Although hands-on assistance is welcome, she does not *need* hands-on assistance to walk.

Transfers. Ms. Sullivan observed that during the assessment Ms. M was able to rise up from her wheelchair by pushing down on the arms of her wheelchair, and flexing to a standing position with her PCA holding on to her arm.¹⁴ Yet, even during the assessment, Ms. M advised Ms. Sullivan that “I need help to get up.”¹⁵ Ms. M’s PCA, A, testified that at the assessment she provided considerable assistance in Ms. M’s transfer. The most reliable evidence in the record to determine how much assistance Ms. M usually needs in order to stand came from her PCA A, who made the following statements at the hearing:

- “I was there helping her get out of the wheelchair and helping her move hands-on during the assessment.”
- “I pick her up when I get her out of a chair.” “She probably puts half her weight on me I would guess.”
- “When she’s getting out of a chair she puts all her weight on me.”
- “I grab under her arms kind of around her shoulder areas and I pull my weight back to lift her weight up off her chair.”¹⁶

In response to cross-examination by the Division, A testified that she herself weighs about 300 pounds. This evidence helps explain how A is able to provide significant weight-bearing support to assist Ms. M in transfers. The preponderance of the evidence demonstrates that Ms. M needs extensive assistance—meaning weight-bearing support—to perform the activity of transferring out of a sitting position.

¹³ M M testimony. In addition, when describing the assistance she received in toileting, it appeared from Ms. M’s testimony that she could walk to the bathroom independently if she was using her walker.

¹⁴ Sullivan testimony; Division Exhibit E at 6.

¹⁵ Division Exhibit E at 6.

¹⁶ A M testimony.

Toileting. Based on the self-report of Ms. M, Ms. Sullivan recorded in the CAT and testified that Ms. M needs assistance in toileting: “Participant reports incontinence bladder, wears pull-ups and pad, reports no control.”¹⁷ Ms. Sullivan acknowledged that Ms. M required assistance “on/off toilet.” Ms. Sullivan described other assistance as “cleansing occasionally, adjusting clothing.”¹⁸ Ms. M’s testimony described the assistance as follows: “she gets me out my chair and when I do not use my walker she holds my arm until I get to the bathroom. Then she holds me up and pulls my pants down. She has to pick me up to clean my butt. Stuff like that.”¹⁹ A testified that Ms. M has several accidents each day, which requires assistance from A.²⁰ The evidence supports a factual finding that Ms. M requires extensive assistance in toileting.

Laundry. For the IADL of laundry, additional PCA time is allowed for Ms. M’s laundry, in addition to the household laundry (for which PCA time is provided on Mr. M’s CAT), because Ms. M’s incontinence creates the need for additional laundry.²¹ The parties dispute, however, how much Ms. M can participate in laundry activities. Ms. Sullivan testified that Ms. M has good range of motion and could participate in laundry by folding.²² Both Ms. M and A dispute Ms. Sullivan’s finding on range of motion, and testified that Ms. M’s range motion is limited. Ms. M was asked whether she could fold a towel, and testified that on a good day she could fold a towel, but not very often.²³

Under cross-examination, however, Ms. M agreed that she can wash her face with a washcloth, although she does not do that every day, and she has no trouble with feeding herself. This shows she has some reasonable range of motion. On this record, the evidence supports a finding that Ms. M can participate in laundry activities. The evidence shows that she

¹⁷ Division Exhibit E at 9.

¹⁸ *Id.*

¹⁹ M M testimony. Ms. M’s testimony was difficult to hear. In repeating this testimony for clarity, Ms. X stated the following: “she’s saying that her PCA helps her to a standing position, walks with her to the bathroom and then helps her to you know kind of like stabilizes her to standing, pulls down her pants, helps with the sitting, and then helps her to stand and then wipes her clean. Stuff like that”

²⁰ A M testimony.

²¹ The parties spent considerable time at hearing disputing Ms. M’s self-report of a bacterial infection (“MRSA”). Ms. M argued that her experience with MRSA required additional laundry in order to prevent its reoccurrence and possible spread. As a public health matter, Ms. M’s concern and action is commendable. No evidentiary findings regarding MRSA will be made, however, because the minutes allowed for laundry are set in regulation and are not subject to an increased increment because of the possibility of infection.

²² Sullivan testimony. Ms. Sullivan further explained that participating in tasks like laundry is therapeutic.

²³ M M testimony. Ms. M acknowledged that she sometimes does not participate in an activity because she is depressed. PCA time, however, is allotted only when a person needs assistance on an ADL or IADL because of a physical infirmity.

undoubtedly needs assistance—she would have considerable difficulty manipulating laundry baskets or wet clothing—but no explanation was provided about why she could not participate in loading laundry or folding clothing.

Escort. The facts supporting escort services include whether the participant needs assistance in transferring and locomotion, and in communicating with the medical provider. Here, Ms. M has the cognitive capacity to communicate with her doctors or other providers. She needs assistance, however, in transferring to and from the car, and some assistance in walking on uneven surfaces such as outdoor sidewalks and walkways. She tires quickly and would not be able to negotiate entering and exiting a doctor’s office on her own.

III. Discussion

The Medicaid program authorizes PCA services for the purpose of providing “physical assistance with activities of daily living (ADLs), physical assistance with instrumental activities of daily living (IADLs), and other services based on the physical condition of the recipient.”²⁴ Under the regulations governing the Medicaid program, “[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.”²⁵

The dispute between the parties involves the support score and frequency for the ADLs of locomotion, toileting, and transfers. It also involves the support score for the IADL of laundry, and the need for escort assistance to medical appointments. These issues are analyzed as follows:

Locomotion. The evidence indicates that Ms. M wants to have her PCA take her arm when walking. Even if she prefers to have her PCA take her arm, however, if she is able to walk without hands-on assistance, or with merely a light hand that served as a cue, she would score either a “0” or “1,” and not be eligible for PCA benefits for activity of locomotion. Given that Ms. M is worried about falling, having A nearby or with a light hand on her arm is reasonable, but at most this would only score a “1,” for supervision. Because she can walk with her walker

²⁴ 7 AAC 125.010(a).

²⁵ 7 AAC 125.020(e). “Cueing” means “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.” *Id.* “Setup” means “arranging items for use or getting items ready for use so that the recipient can independently perform an ADL or IADL.” *Id.* “Supervision” means “observing and giving direction, as needed, so that the recipient can independently perform an ADL or IADL.” *Id.*

with supervision by her PCA, Ms. M is not eligible for additional PCA authorization for locomotion.

Toileting. The evidence shows that Ms. M needs extensive one-person assistance in toileting, and that her PCA provides extensive assistance.²⁶ This means the score for toileting for Ms. M should be “3/2.” In addition, both Ms. M and A testified that with Ms. M’s incontinence, she needs to use the toilet on an average of eight-to-ten times per day. The Division did not provide any evidence that supported a frequency of fewer than eight times per day. Therefore, the frequency for toileting assistance should be increased to eight times per day, or 56 times per week.

Transfers. The evidence establishes Ms. M needs extensive weight-bearing assistance from one person to move from a sitting position to a standing position. Therefore, the score for Ms. M’s transfers should be a “3/2.” Given the sores she has on her buttocks, transfers should occur reasonably frequently. Ms. M’s testimony indicated that she would transfer from her wheelchair to her walker each time she used the toilet.²⁷ Under the regulations, she receives a transfer each time she “mov[es] from a lying or sitting position to a standing position.”²⁸ She does not, however, receive a transfer when she moves or transfers from her walker (or wheelchair) to the toilet, or when she transfers off the toilet.²⁹ Given that she uses the toilet eight times per day, she receives assistance in transferring from her bed or wheelchair to her walker at least eight times per day. Therefore, her frequency of transfers should be 56 times per week.

Note that if Ms. M were to take her wheelchair to the bathroom, and transfer directly from the wheelchair to the toilet, that would not constitute a transfer because it would be included in the ADL of toileting.³⁰ There is no evidence, however, that Ms. M transfers directly from the wheelchair to the toilet—the only evidence in this record is that Ms. M transfers from a sitting position to her walker. Moreover, even if Ms. M did sometimes transfer from the wheelchair to the toilet, the evidence strongly supports a need for at least eight transfers per day.

²⁶ Although Ms. Sullivan scored Ms. M’s toileting assistance as “limited,” her description would support a finding of either limited or extensive assistance. The testimony of Ms. M and A confirm that the assistance is extensive.

²⁷ No testimony was received regarding Ms. M’s transfers from her bed, but it would be reasonable to assume that at least one of her transfers was from bed to her walker or wheelchair.

²⁸ 7 AAC 125.030(b)(2)(B).

²⁹ 7 AAC 125.030(b)(6); *In re FV*, OAH No. 13-1306 (Final Decision) at 5 (Commissioner of Health and Social Services, 2013).

³⁰ *Id.*

Ms. M testified that because of the sores on her buttocks, she needs to be moved from her wheelchair to a standing position, or possibly a different surface. This provides an alternative ground for setting the frequency for transfers at 56 times per week.³¹

Laundry. Ms. Sullivan scored Ms. M as being involved in laundry, with physical assistance provided by her PCA for a score of “2/3.” The testimony indicated that A did all the laundry, and Ms. M argued for a higher score on laundry. Yet, Ms. M is capable of participating in laundry, which means that the Division properly scored her “self performance score” as a “2”—the score for when the person was involved in the activity, but help was provided. Therefore, the Division’s scoring of “2/3” on the IADL of laundry is affirmed.

Escort. Ms. M needs extensive assistance in transferring, and a person has to transfer several times during a medical appointment. In addition, even though Ms. M can locomote with only supervisory or cueing assistance in the home, she testified that she tires quickly and needs assistance with the locomotion required to access medical appointments. In 2009, Ms. M was found eligible for escort benefits, and the Division did not present any evidence to meet its burden of proving that she is no longer eligible. The CAT indicates that Ms. M has 50 medical appointments per year each lasting one hour.³² She is eligible for escort assistance for the 50 one-hour appointments.

IV. Conclusion

1. The Division’s finding that Ms. M is independent in locomotion is amended to a finding that she needs supervisory assistance. Ms. M’s score for locomotion should be “1/2.” This amendment will not affect her PCA authorization.
2. The Division’s finding that Ms. M needs limited assistance in toileting is reversed. Ms. M’s score for toileting should be “3/2.”
3. The Division’s finding that Ms. M needs toileting assistance six times per day is reversed. Ms. M need for toileting assistance should be scored at a frequency of eight times per day or 56 times per week.
4. The Division’s finding that Ms. M needs limited assistance in transfers is reversed. Ms. M’s score for transfers should be “3/2.”

³¹ The testimony did not indicate whether Ms. M needed assistance to sit down in her wheelchair. The regulation does not support giving additional transfer time for sitting—it only allows time for assistance in moving from a sitting position to a standing position, not vice versa. 7 AAC 125.030(b)(2)(B).

³² Division Exhibit E at 5.

5. The Division's finding that Ms. M needs transfer assistance six times per day is reversed. Ms. M need for transfer assistance should be scored at a frequency of eight times per day or 56 times per week.
6. The Division's finding that Ms. M does not need escort services is reversed. Ms. M should be authorized to receive escort services to access 50 one-hour medical appointments.
7. All other findings of the Division are affirmed.

DATED this 18th of February, 2014.

By: Signed
Stephen C. Slotnick
Administrative Law Judge

Adoption

Under a delegation from the Commissioner of Health and Social Services, I adopt this Decision as the final administrative determination in this matter, under the authority of AS 44.64.060(e)(1).

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 10th day of March, 2014.

By: Signed
Signature
Stephen C. Slotnick
Name
Administrative Law Judge
Title

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