

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

In the Matter of:	)	
	)	
N D	)	OAH No. 14-0333-MDS
_____	)	Agency No.

**DECISION**

**I. Introduction**

N D was a recipient of Medicaid personal care assistance (PCA) services. The Division of Senior and Disabilities Services (Division) reassessed Mr. D to determine his continuing eligibility for PCA services, and determined that those services should be terminated. Mr. D requested a hearing.

Mr. D's hearing was held on April 18, 2014. Mr. D was represented by J D, who is his father and legal guardian. Angela Ybarra represented the Division.

The evidence demonstrates that Mr. D has substantial care needs. However, those care needs consist of cueing, monitoring, supervision and setup, which do not qualify him for PCA services. Consequently, the Division's termination of Mr. D's PCA services is upheld.

**II. Facts**

Mr. D is a severely autistic young adult. He lives with his parents. Mr. D does not have any impairments which physically limit his ability to care for himself. Mr. D was found eligible for PCA services in 2011, based upon an assessment that found he required hands-on physical assistance (limited assistance) with toileting and bathing, and that he was completely dependent with regard to all of the Instrumental Activities of Daily Living (IADLs): light and main meal preparation, shopping, housework, and laundry. At that time, his family needed to physically assist him with tasks such as dressing and bathing. He was also frequently incontinent and required assistance cleansing himself after toileting.

Mr. D was reassessed to determine his continuing eligibility for PCA services on September 10, 2013. That assessment found that Mr. D was capable of performing all of the six measured activities of daily living (ADLs), which are bed mobility, locomotion, eating, transfers,

toileting, and bathing, without requiring any hands-on physical assistance.<sup>1</sup> The assessment further found that Mr. D required assistance consisting only of supervision<sup>2</sup> for his IADLs of light and main meal preparation, light and routine housework, and grocery shopping, and that he did not participate in laundry.<sup>3</sup>

Mr. D did not dispute that he had the physical capabilities to perform his ADLs and IADLs. However, his father testified that Mr. D's cognitive impairments affected his performance as follows:

- Mr. D requires ongoing careful supervision and instruction to perform his daily tasks. For example, in the mornings, his father gets him out of bed, tells him to use the bathroom, and then has to supervise him to make sure that he does not touch the razor.
- When showering, Mr. D does not wash himself well. His father has to physically help scrub him every two to three days. He will not follow instructions on scrubbing himself and will walk out of the shower without rinsing. He can dry himself after the shower.
- Mr. D is shaved by his father. He cannot be trusted with a razor by himself. He has gotten hold of the razor before and has shaved off his eyebrows and body hair, cutting himself in the process.
- Mr. D can dress and feed himself.
- Mr. D can clean his own room.
- His family does not let Mr. D cook. While it is theoretically possible for him to cook with step by step instructions, he has never been allowed to cook because of safety concerns.
- When Mr. D goes shopping with his father, he can pick up things that he likes such as sodas and candy.
- Mr. D can fold towels when helping with laundry.

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<sup>1</sup> Mr. D was coded as independent (“0”) with regard to body mobility, transfers, and locomotion. Ex. E, pp. 6 – 7. He was coded as needing supervision (“1”) with eating, and as needing cueing (“5”) with toileting and bathing. Ex. E, pp. 9, 11.

<sup>2</sup> Self-performance code of 2; support code of 1. Ex. E, p. 27.

<sup>3</sup> Self-performance code of 8 “activity did not occur.” Ex. E, p. 27.

- Mr. D cannot be trusted with sharp objects. In addition to completely shaving himself, he has also gotten a hold of a knife and cut himself trying to clean his nails.
- Mr. D is good at following affirmative instructions. If he is told to do something, he will. If he is told not to do something, he will not follow that instruction.

Prior to the hearing, Mr. D's father provided his written statement wherein he stated that Mr. D played the piano, played computer games, could take out the garbage, and could perform basic office tasks such as labeling letters, putting letters into envelopes, and stocking.<sup>4</sup>

### III. Discussion

#### A. The PCA 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>5</sup> 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.”<sup>6</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>7</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>8</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 daily living (ADL). The possible codes are **0** (the person is independent and requires no help

<sup>4</sup> J D letter dated March 25, 2014.

<sup>5</sup> 7 AAC 125.010(a) [emphasis added].

<sup>6</sup> 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.*

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

<sup>8</sup> Ex. E, pp. 6 – 11.

or oversight); **1** (the person requires supervision); **2** (the person requires limited assistance<sup>9</sup>); **3** (the person requires extensive assistance<sup>10</sup>); and **4** (the person is totally dependent<sup>11</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>12</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); and **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>13</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>14</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>15</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**

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<sup>9</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>10</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>11</sup> 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."

<sup>12</sup> Ex. E, p. 18.

<sup>13</sup> Ex. E, p. 18.

<sup>14</sup> Ex. E, p. 26.

<sup>15</sup> Ex. E, p. 26.

(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).<sup>16</sup>

If a person is coded as requiring limited or a greater degree of physical assistance (self-performance code of 2, 3, or 4, and a support code of 2, 3, or 4) in any one of the ADLs of transfers, locomotion, eating, toilet use, dressing or bathing, then he or he is eligible for PCA services. Similarly, if a person is coded as requiring some degree of hands-on assistance<sup>17</sup> (self-performance code of 1, 2, or 3, and a support code of 3 or 4) with any one of the IADLs of light or main meal preparation, light housework, routine housework, grocery shopping or laundry, then he or he is eligible for PCA services.<sup>18</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, he or he would receive 22.5 Ntes of PCA service time every day he or he was bathed.<sup>19</sup>

#### *B. Application of the PCA Determination Process*

This case involves a termination of benefits. As a result, the Division has the burden of proof by a preponderance of the evidence<sup>20</sup> to demonstrate that Mr. D no longer qualifies for PCA services.

The evidence in this case shows that the Division has met its burden of proof. Mr. D is fully physically capable of performing any task. His functionality has improved considerably since his 2011 assessment. However, he requires extensive instruction, supervision, and cueing for all of those tasks, and cannot be trusted to act without supervision because he will either not follow through or will do things like finding a razor or a knife and potentially injure himself. The weight of the evidence shows that with careful supervision and step-by-step instruction, Mr. D can perform tasks. For instance, Mr. D assists with basic office tasks and can do chores like empty the garbage and clean his own room. Mr. D's family's reluctance to have him engage in

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<sup>16</sup> Ex. E, p. 26.

<sup>17</sup> For the purposes of this discussion, "hands-on" assistance does not include supervision/cueing or set-up assistance (support codes of 1 or 2). See Ex. E, pg. 26.

<sup>18</sup> Ex. E, p. 26.

<sup>19</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>20</sup> 7 AAC 49.135.

potentially dangerous tasks such as cooking is understandable. However, as Mr. D's father testified, it is theoretically possible for him to cook.

It is therefore more likely true than not true that Mr. D can, with supervision, monitoring, and instruction, perform all of the measured ADLs (bed mobility, transfers, locomotion, eating, toileting, and bathing) and all of the measured IADLs (light and main meal preparation, housekeeping, shopping, cooking, and laundry) without requiring hands-on physical assistance. The fact that he may perform these activities poorly, or the fact that the degree of supervision, monitoring, and instruction may actually take substantially more time than it would take for Mr. D's family members to perform the activities themselves, does not justify a need for hands-on physical assistance for the activities. Because PCA services are only available for a person who needs hands-on physical assistance and are explicitly not allowed for a person who requires only monitoring, cueing, supervision, and setup assistance, Mr. D is not eligible to continue receiving PCA services.

#### **IV. Conclusion**

The Division's decision terminating Mr. D's PCA services is upheld.

DATED this 23rd day of May, 2014.

*Signed*

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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 6<sup>th</sup> day of June, 2014.

By: *Signed*

\_\_\_\_\_  
Name: Lawrence A. Pederson

Title: Administrative Law Judge

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