

**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. 14-0334-MDS
) Agency No.

DECISION

I. Introduction

N D applied for personal care assistance (PCA) services. The Division of Senior and Disabilities Services (Division) denied her application. Ms. D requested a hearing.

Ms. D’s hearing was held on April 8, 2014. Ms. D represented herself. Angela Ybarra represented the Division. The record was held open after the hearing for the parties to provide additional documentation. Ms. D supplied additional information on April 17, 2014.¹ The Division did not submit any additional information.

The evidence demonstrates that Ms. D has substantial care needs, which qualify her for PCA services. In addition, the Division’s assessor coded her as requiring extensive assistance on the *Consumer Assessment Tool*, which should have resulted in approval of her application. Consequently, Division’s denial of Ms. D’s application is reversed, and the Division is directed to provide her with PCA services as specified in this decision.

II. Facts

Ms. D is 73 years old. She lives with relatives in a single-level home.² She has bilateral leg pain, lumbar disc disease with radiculopathy, lumbar discogenic pain syndrome, high blood pressure, high cholesterol, urinary incontinence, left sided hemiparesis (weakness), has had a stroke (CVA), and has ankylosis³ of both elbow joints.⁴

After Ms. D applied for PCA services, she was assessed to determine her initial eligibility and benefit level on January 29, 2014. The Division’s nurse assessor provided the following information on the assessment form:⁵

¹ Ex. 3.

² Ex. E, p. 1.

³ Ankylosis is the “immobility and consolidation of a joint due to disease, injury, or surgical procedure.” *Dorland’s Illustrated Medical Dictionary* at 94 (31st Ed., 2007).

⁴ Ex. 1, p. 8; Ex. 2, p. 2.

⁵ The assessor did not testify. The information is contained within the January 29, 2014 CAT assessment form (Ex. E).

- The assessor evaluated Ms. D’s overall physical functioning by asking her to perform some basic physical movements. The assessor found that Ms. D was unable to touch her hands over her head, unable to touch her hands behind her back, that she had a weak grip in both hands, was able to touch her feet, but that she could not place her hands across her chest and stand up.⁶
- The assessor saw Ms. D transfer to and from (get on and off) the couch by pushing off the couch with one hand and pushing down on a cane, shift her position while seated on the couch, and saw her walk “with support and using a cane.” The assessor also observed flexion in Ms. D’s elbows, and observed her using her hands and reaching them to her face.⁷
- Based upon her observations and conversation⁸ with Ms. D, the assessor found that Ms. D did not require hands-on assistance with transfers, locomotion, dressing, eating, or toilet use.⁹
- The assessor found that Ms. D required extensive hands-on assistance with bathing, but declined to provide her with any PCA assistance. The assessor’s notes on the assessment form indicate that there was a discrepancy between Ms. D’s reporting that she needed assistance with bathing (transfer/washing body) and the assessor’s observation. The assessor’s notes provide that “[n]o time given due to lack of specific [verification of diagnosis] reflecting degree of impairment(s).”¹⁰
- Ms. D did not need hands-on assistance with the household chores of preparing light and main meals, light housework, routine housework, or laundry.¹¹

Although the scoring on the Consumer Assessment Tool (CAT) shows that Ms. D is eligible for PCA assistance,¹² the Division denied her application for two separate reasons. First,

⁶ Ex. E, p. 4.

⁷ Ex. E, pp. 6 – 9.

⁸ Ms. D’s primary language is Hmong. An interpreter was provided during the assessment.

⁹ The assessor found that Ms. D required supervision and cueing (self-performance code of 1) with regard to locomotion and dressing, but otherwise found Ms. D was fully independent (self-performance code of 0) with regard to transfers, eating, and toilet use. Ex. D, pp. 1 – 2; Ex. E, pp. 6 – 10.

¹⁰ Ex. E, p. 11.

¹¹ Ms. D was coded as a “0” (independent) with shopping. She was coded as a “1/2” (independent with difficulty, requiring setup help) with light meal preparation, main meal preparation, and laundry. Ex. D, p. 2; Ex. E, p. 26.

¹² Ex. E, p. 31.

the Division stated that “[y]ou must also have a medical diagnosis that supports the need for services.”¹³ Second, the Division stated that “[a]lthough these results and the supporting documentation reference above appear to meet the eligibility requirements, the SDS review resulted in a determination that you do not qualify for PCA Services. . .” The Division then cited to 7 AAC 125.050(a)(11) in support.¹⁴

Ms. D disagreed with the assessment, testifying as follows:

- She is unable to walk. She uses a wheelchair, where she has to be pushed. She estimated that she needs this assistance nine times per day.
- She needs help, which consists of being lifted, for transfers.
- She cannot dress by herself. She needs complete assistance.
- She cannot feed herself; she cannot hold food in her hands.
- She needs assistance with toileting, which consists of being lifted on and off the toilet, cleansing assistance, and clothing assistance. She estimated that she needs toileting assistance six or seven times per day.
- She is incontinent of both bowel and bladder, and has accidents once or twice a day.
- For bathing, she has to be helped in and out of the shower, washed, and dried off.
- She cannot perform any of her household chores, such as cooking and cleaning.
- When she lived in California, she had PCA services.

The record contains the following information from Ms. D’s medical providers:

- Dr. Andrea Clark, MD, wrote, on March 13, 2014, that Ms. D “is unable to care for herself due to complete fusion of both of her elbow joints. She is not able to bend her elbows, so she cannot feed herself or dress herself in addition to many other ADLs and IADLs.”¹⁵
- Dr. Parin Seakit, DO, wrote on January 27, 2014, that Ms. D is “unable to move/bend her elbows. She has pain in her extremities making ADLs difficult. Pt. needs assistance with feeding, using bathroom, showering, moving from

¹³ Ex. D, p. 1.

¹⁴ Ex. D, p. 2.

¹⁵ Ex. 1, p. 5.

wheelchair to bed and chair. She is dependent on PCA for moving.”¹⁶ Dr. Seakit further wrote, on March 25, 2014, that Ms. D “has fused elbows bilaterally, that limits her range of motion and ability to perform ADLs. Per physical examination, patient has significant weakness in her extremities and decreased active range of motion. She has low back pain and leg pain that make moving around difficult.”¹⁷

- Dr. Seakit completed the Division’s *Verification of Diagnosis* form, which stated that Ms. D’s primary diagnosis was bilateral elbow joint ankylosis, and that she had a secondary diagnosis of lumbar disc disease with radiculopathy.¹⁸

Ms. D was evaluated by an occupational therapist on April 10, 2014 to determine her functional limitations. The occupational therapist found that Ms. D did not “demonstrate any [active range of motion] of her bilateral upper extremities (shoulder, elbow, forearm, wrist, and hand) and poor tolerance to any [passive range of motion] of her bilateral upper extremities.”¹⁹ Ms. D, however, did have some passive range of motion.²⁰ She had no grip in either her right or left hand. She was tested for sensation “over volar/dorsal surfaces of bilateral upper extremities from elbow to hand. Patient was unresponsive (6.65) at every area I tested today.”²¹ The occupational therapist found that she was dependent for dressing, as to both upper and lower extremities, and dependent for grooming, bathing, and feeding. He was unable to perform either a fall risk test or a timed sit to stand test, because Ms. D could not stand.²²

The record also contains a November 6, 2013 *PCA Prescriber Form* signed by Dr. Seakit on November 6, 2013, which prescribed physical assistance of one hour each occurrence, three days per week, for range of motion exercises, walking exercises, and foot care for Ms. D.²³

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

¹⁶ Ex. 1, p. 7.
¹⁷ Ex. 1, p. 6.
¹⁸ Ex. E, p. 8.
¹⁹ Ex. 3, p. 4.
²⁰ Ex. 3, pp. 4 – 5.
²¹ Ex. 3, p. 6.
²² Ex. 3, p. 4.
²³ Ex. 1, p. 9.

of daily living (IADL), and other services based on the *physical condition* of the recipient . . .
.”²⁴ 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.”²⁵

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.²⁶ 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.²⁷

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 assistance²⁸); **3** (the person requires extensive assistance²⁹); and **4** (the person is totally dependent³⁰). 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).³¹

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

²⁴ 7 AAC 125.010(a) [emphasis added].

²⁵ 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.*

²⁶ See 7 AAC 125.020(a) and (b).

²⁷ Ex. E, pp. 6 – 11.

²⁸ 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."

²⁹ 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."

³⁰ 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."

³¹ Ex. E, p. 18.

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).³²

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.³³

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).³⁴

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).³⁵

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 she is eligible for PCA services. Similarly, if a person is coded as requiring some degree of hands-on assistance³⁶ (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 she is eligible for PCA services.³⁷

³² Ex. E, p. 18.

³³ Ex. E, p. 26.

³⁴ Ex. E, p. 26.

³⁵ Ex. E, p. 26.

³⁶ 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.

³⁷ Ex. E, p. 26.

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 she would receive 22.5 minutes of PCA service time every day he or she was bathed.³⁸

B. Application of the PCA Determination Process

This case involves an application for benefits. As a result, Ms. D has the burden of proof by a preponderance of the evidence.³⁹

As an initial matter, Ms. D's assessment found that she required extensive assistance (self-performance code of 3) with bathing. On its face, this qualified her for PCA assistance.⁴⁰ The Division, however, declined to provide her with any PCA assistance, arguing that she did not have a medical diagnosis to support her need for services. There is no requirement in either the PCA regulations, the CAT form, or the *Personal Care Assistance Service Level Computation* chart, which requires an underlying medical diagnosis in order to find PCA eligibility.⁴¹ Regardless, Ms. D has medical diagnoses that support a finding of functional impairments, *i.e.*, ankylosis, left hemiparesis, lumbar disc disease with radiculopathy, etc. The Division also cited to regulation 7 AAC 125.040(a)(11) in support of its decision. 7 AAC 125.040(a)(11) does not allow PCA services for supervision, cueing, or monitoring, which are coded as a "1" on the CAT. However, since Ms. D was coded as a "3" for bathing, that regulation would not apply.⁴² Ms. D is therefore eligible for PCA services.

Because Ms. D is eligible for PCA services, it is necessary to determine what level of PCA services she is entitled to receive. Ms. D submitted a prehearing list of what services she was requesting.⁴³ In evaluating the evidence, the following was taken into account. First, the assessor did not testify. Second, Ms. D testified. Third, there is consistent evidence from two

³⁸ 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.

³⁹ 7 AAC 49.135.

⁴⁰ 7 AAC 125.020(a)(2); Ex. E, p. 31.

⁴¹ 7 AAC 125.020; 7 AAC 125.024; Ex. B, pp. 34 – 36 (*Personal Care Assistance Level Computation* chart, adopted by regulation 7 AAC 160.900(d)(29)); Ex. E, p. 31 (CAT, adopted by regulation 7 AAC 160.900(d)(6)).

⁴² If the assessor was of the opinion that Ms. D did not require assistance with bathing, then the assessment form should have not have been coded with a "3" (extensive assistance).

⁴³ Ex. 1, pp. 1 – 2.

physicians and one occupational therapist, which demonstrate that Ms. D's physical functioning is markedly impaired. Ms. D's disagreements⁴⁴ are addressed below.

1. Transfers

The assessment found that Ms. D did not require any assistance with transfers. Ms. D maintained that she could not transfer without assistance. However, the assessment states that Ms. D was seen transferring without assistance. In contrast, Ms. D testified that she had to be lifted to transfer. Her testimony is corroborated by Dr. Seakit's statement that Ms. D needed assistance in moving from her wheelchair to her bed and her chair, *i.e.*, transferring, and by the occupational therapy evaluation that Ms. D could not stand. Given the weight of the evidence, Ms. D met her burden of proof and demonstrated that she needed hands-on assistance with transfers. Ms. D requested that she receive total assistance (dependence - self-performance code 4), five times each day, seven days per week. Ms. D's request is consistent with the evidence. She has therefore met her burden of proof and demonstrated that it is more likely true than not true that she is totally dependent with transfers (self-performance code 4), and requires that level of assistance five times each day, seven days per week.

2. Locomotion (Single Level)

The assessment found that Ms. D required supervision/monitoring/cueing with locomotion, and did not require any hands-on assistance. The assessor based this finding on her watching Ms. D walk using a cane and with support. Ms. D, however, asserted that she could not walk, and had to be pushed in a wheelchair. She requested extensive assistance (self-performance code 3) with locomotion nine times per day, seven days per week. The medical evidence actually would support a total dependence (self-performance code of 4) finding, due to being unable to stand, and being in a manual wheelchair and not being able to push it.⁴⁵ However, Ms. D has only requested extensive assistance. Accordingly, Ms. D has met her burden of proof and demonstrated that it is more likely true than not true that she requires extensive assistance with locomotion, nine times per day, seven days per week.

⁴⁴ There are several PCA tasks which Ms. D did not request assistance with, such as personal hygiene. Those are not addressed in this decision because they were not requested.

⁴⁵ There is a slight inconsistency in the medical evidence. Ms. D must retain some limited ability to walk, given that her physician prescribed walking exercises on November 6, 2013 (Ex. 1, p. 9). However, because she is asking for extensive assistance, rather complete dependence, it is not necessary to resolve this inconsistency.

3. Dressing

The assessment found that Ms. D required supervision/monitoring/cueing with dressing and did not require any hands-on assistance. Ms. D disagreed and requested that she receive extensive assistance (self-performance code 3) with dressing twice per day, seven days per week. Given Ms. D's ankylosis, and her demonstrated lack of active range of motion in her upper extremities, she has met her burden of proof and demonstrated that it is more likely true than not true that she requires extensive assistance with dressing twice per day, seven days per week.

4. Eating

The assessment found that Ms. D did not require any assistance with eating. Ms. D disagreed and requested that she receive extensive assistance (self-performance code 3) with eating three times per day, seven days per week. Ms. D's testimony that she could not use her hands and the occupational therapy evaluation showing no active range of motion in her wrists and no grip (either right or left), would actually support a finding of complete dependence (self-performance code 4). However, Ms. D only requested extensive assistance. She has therefore met her burden of proof and demonstrated that it is more likely true than not true that she requires extensive assistance with eating three times per day, seven days per week.

5. Toileting

The assessment found that Ms. D did not require assistance with toileting. Ms. D disagreed, stating that she needed help with transfers, clothing, and cleansing. The medical evidence actually would support a total dependence (self-performance code of 4) finding, due to her ankylosis, no active range of motion, and other medically documented impairments. However, Ms. D only requested extensive assistance (self-performance code 3) six times per day, seven days per week. She has therefore met her burden of proof and demonstrated that it is more likely true than not true that she requires extensive assistance with toileting six times per day, seven days per week.

6. Bathing

The assessment found that Ms. D required extensive assistance (self-performance code 3) with bathing, but declined to provide her with any PCA time. Ms. D did not dispute the extensive assistance finding, but requested time for bathing once daily. Given her coding as requiring extensive assistance on the CAT, and her documented physical impairments, Ms. D has

met her burden of proof on this point and demonstrated that it is more likely true than not true that she requires extensive assistance with bathing once daily, seven days per week.

7. Instrumental Activities of Daily Living (IADLs)

The assessment found that Ms. D could, albeit with difficulty and with some setup help, prepare light meals and main meals, shop, perform light housework, and do laundry. The assessment did not provide her with any PCA assistance with those tasks. Ms. D testified that she could not perform any of these tasks. She requested that she be found totally dependent with regard to these tasks. The medical evidence and the occupational therapy evaluation corroborate her testimony. Ms. D requested meal assistance of 25 minutes per day, which is equivalent to only receiving main meal preparation assistance. She is therefore not requesting light meal preparation assistance. She also requested 60 minutes per week for laundry, which is consistent with her having incontinence issues. Ms. D has met her burden of proof and demonstrated that it is more likely true than not true that she is completely dependent in the areas of main meal preparation, shopping, light housework, and requires the higher level of laundry assistance due to incontinence.

8. Range of Motion, Exercise, and Foot Care

Ms. D has a physician's prescription, completed on a departmental *PCA Prescriber Form* that states she requires physical assistance of one hour each occurrence, three days per week, for range of motion exercises, walking exercises, and foot care. Because Ms. D is eligible for PCA assistance, she is to be provided PCA services for three hours per week for range of motion exercises, three hours per week for walking exercise, and three hours per week of foot care.⁴⁶

IV. Conclusion

The Division's denial of Ms. D's application for PCA services is reversed. She is to be provided PCA services in an amount consistent with this decision.

DATED this 13th day of May, 2014.

Signed

Lawrence A. Pederson
Administrative Law Judge

⁴⁶ 7 AAC 125.030(b)(3)(B); 7 AAC 125.030(d)(6); Ex. B, p. 36 (*Personal Care Assistance Service Level Computation*, p. 3).

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 28th day of May, 2014.

By: Signed _____
Name: Lawrence A. Pederson
Title: Administrative Law Judge

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