

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

In the Matter of:)	
)	
T Q)	OAH No. 14-0393-MDS
_____)	Agency No.

DECISION

I. Introduction

T Q applied for personal care assistance (PCA) services. The Division of Senior and Disabilities Services (Division) approved his application for three hours of PCA services per week. Mr. Q disagreed with the amount of PCA services he was provided and requested a hearing.

Mr. Q’s hearing was held on April 16, 2014. Mr. Q represented himself. Shelly Boyer-Wood represented the Division.

The Division’s allowance of three hours of PCA services to Mr. Q accurately reflected his care needs. Its decision is upheld.

II. Facts

Mr. Q is 94 years old. He and his wife live with their daughter and son-in-law in their two story apartment. He is an insulin-dependent diabetic, is blind in his left eye, and had a stroke between 18 and 20 years ago. He has some residual left-sided weakness as a consequence.¹

After Mr. Q applied for PCA services, he was assessed to determine his initial eligibility and benefit level on February 3, 2014. The Division’s nurse assessor provided the following information on the assessment:²

- The assessor evaluated Mr. Q’s overall physical functioning by asking him to perform some basic physical movements. She found that he was able to touch his hands over his head, touch his hands behind his back, that he had a strong grip in both hands, was able to touch his feet, but that he could not place his hands on his chest and stand up. In order to stand up, he had to push himself up using his hands.³
- The assessor saw Mr. Q transfer to and from (get on and off) the couch, shift his position while seated on the couch, and saw him walk independently. Her assessment states that Mr. Q told her that he used a cane to walk within the home,

¹ Ex. E, pp. 1, 3.

² The assessor did not testify. The information is contained within the February 3, 2014 CAT assessment form (Ex. E).

³ Ex. E, p. 4.

but used a walker outside the home. The assessment further states that Mr. Q was not able to safely go up and down the stairs in the home without assistance.⁴

- Based upon her observations and conversation⁵ with Mr. Q, the assessor found that Mr. Q did not require hands-on assistance with bed mobility, transfers, locomotion in his home (with the exception of taking the stairs), locomotion to go to medical appointments, dressing, eating, using the toilet, personal hygiene, or bathing.⁶
- Mr. Q required limited hands-on assistance four times per day going up and down the stairs between different floors in his residence.⁷
- Mr. Q did not need hands-on assistance with the household chores of preparing light and main meals, shopping, or laundry.⁸
- While Mr. Q was capable of performing light housework, he still needed hands-on assistance with it.⁹

Mr. Q did not disagree with the assessor's finding that he required limited hands-on assistance going up and down the stairs in his residence four times per day. However, he disagreed with virtually every other component of the assessment, testifying as follows:

- The assessor did not ask him to do any functional testing, such as touching his hands over his head, standing up for her, or touching his feet.
- He had a stroke approximately 20 years ago. He originally could not move his left arm, but has improved to the point where he can now move it away from his chest.
- He cannot sit up by himself in bed or move from side to side in bed. He feels dizzy when he tries to sit up. He needs to be held and physically supported to sit up or to change his position in bed.
- He cannot walk by himself. While he has a cane and a walker, he cannot use them to walk by himself. He has to have someone hold him to help him walk. When questioned, he stated that he was able to walk when the assessor was there, but that

⁴ Ex. E, pp. 6, 7.

⁵ Mr. Q's primary language is Korean; a family member interpreted for him during the assessment.

⁶ Mr. Q was coded as a "0" (no assistance needed) in these tasks, with the exception of bathing, where he was coded as a "1" (supervision/cueing needed). Ex. D, p. 11; Ex. E, pp. 6 – 11.

⁷ Mr. Q was coded as a "2" (limited assistance needed) in this task. Ex. D, p. 11; Ex. E, p. 7.

⁸ Mr. Q was coded as a "0" (independent) with shopping. He was coded as a "1/2" (independent with difficulty, requiring setup help) with light meal preparation, main meal preparation, and laundry. Ex. D, p. 11; Ex. E, p. 26.

⁹ Mr. Q was coded as a "1/3" (independent with difficulty, requiring physical assistance) with light housekeeping. Ex. D, p. 11; Ex. E, p. 26.

the situation has changed. He then changed his testimony to state that he was not able to walk without assistance when the assessor was there, and that his daughter helped him walk to the bathroom when the assessor was there. He did not recall telling the assessor that he could walk within the home using his cane, or that he could walk outside the home using his walker.

- He was sitting on the couch during the assessor's visit. He was not able to move his position on the couch. He initially stated that the assessor did not see him get up from the couch. He later stated that the assessor asked him to stand up and that his daughter had to physically assist him in getting up from the couch.
- He cannot use the bathroom by himself. He needs his daughter to assist. He is unable to cleanse himself after bowel movements. He has frequent urinary incontinence. He does not wear adult diapers, so he will need to shower/bathe afterwards. He did not tell the assessor about being incontinent because she did not ask.
- He cannot bathe by himself. He is dizzy and needs help getting in and out of the bathtub. He cannot soap and rinse by himself, and he needs some help drying off afterwards.
- He is unable to dress himself without physical assistance. He is unable to lift his arms above his head to put a shirt on, and he can also not button a shirt. He is unable to put his socks on. He does manage to put his pants on.
- He needs assistance with personal hygiene. While he can wash his face and brush his teeth, he is unable to lift his arms high enough to brush his hair, so he requires assistance with that task.
- He does not cook or clean or do laundry. He has gone shopping with his daughter once or twice, but she normally does it for him.
- He goes to the bank with his daughter once or twice a month to withdraw money. His daughter drives him, and his daughter helps him in and out of the car and into the bank.
- When asked about how many times per day he required assistance with a particular activity, he generally was unable to provide a number, stating only that it varied.

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”¹⁰

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.”¹¹

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.¹² 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.¹³

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 assistance¹⁴); **3** (the person requires extensive assistance¹⁵); and **4** (the person is totally dependent¹⁶). 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).¹⁷

¹⁰ 7 AAC 125.010(a) [emphasis added].

¹¹ 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.*

¹² See 7 AAC 125.020(a) and (b).

¹³ Ex. E, pp. 6 – 11.

¹⁴ 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."

¹⁵ 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."

¹⁶ 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."

¹⁷ Ex. E, p. 18.

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).¹⁸

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.¹⁹

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).²⁰

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** (setup 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).²¹

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.²²

¹⁸ Ex. E, p. 18.

¹⁹ Ex. E, p. 26.

²⁰ Ex. E, p. 26.

²¹ Ex. E, p. 26.

²² 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.

B. Application of the PCA Determination Process

This case involves an application for benefits. As a result, Mr. Q has the burden of proof by a preponderance of the evidence.²³

At the outset, it must be noted that Mr. Q provided inconsistent testimony on several major points. To wit, when asked about walking during the assessment without the assistance of another person, he first said he walked without assistance during the assessment, but that his condition had changed post-assessment. He then said that his daughter assisted him in walking to the bathroom during the assessment. When asked about transfers (getting up from the couch and then sitting down on the couch), he first stated that he did not transfer during the assessment, but then he stated that his daughter assisted him in transferring to and from the couch. In addition, Mr. Q stated that the assessor did not ask him to perform any functional tests, such as placing his hand over his head. It is highly unlikely that the assessor did not ask him to perform those functional tests, because they are used as a baseline for assessing a person's physical abilities.²⁴ In addition, Mr. Q appears to have exaggerated his medical conditions: he stated he was nearly blind, when he is only blind in one eye, and he appears to have overstated the degree of left-sided weakness that he has as a consequence of a stroke that occurred almost 40 years ago. Consequently, the information contained in the assessment form is more credible than Mr. Q's testimony.

Each of the disputed areas on the assessment is discussed below:

1. Bed Mobility

The assessment found that Mr. Q did not require any assistance with bed mobility. Mr. Q asserted that he could not reposition himself or sit up in bed without assistance. The assessor saw Mr. Q reposition himself on the couch. She also saw him transfer, using his hands to help push himself up. Given the credibility of the assessment, Mr. Q did not meet his burden of proof on this point. It is therefore more likely true than not true that Mr. Q does not require any PCA assistance for bed mobility.

2. Transfers

The assessment found that Mr. Q did not require any assistance with transfers. Mr. Q maintained that he could not transfer without assistance. However, the assessor saw Mr. Q transfer on and off the couch without assistance. In contrast, Mr. Q first stated that he did not transfer

²³ 7 AAC 49.135.

²⁴ Although there was no testimony establishing this point, an ALJ is not required to disregard his own knowledge and experience when making decisions. Having heard many of these cases over a number of years, this ALJ is aware that the functional testing is the most basic part of the overall assessment process.

during the assessment, but then he stated that his daughter assisted him in transferring to and from the couch. Given the inconsistency in Mr. Q's testimony and the overall credibility of the assessment, Mr. Q did not meet his burden of proof on this point. It is therefore more likely true than not true that Mr. Q does not require any PCA assistance for transfers.

3. Locomotion (Single Level).

The assessment found that Mr. Q did not require any assistance with locomotion on a single level. The assessor based this finding on her watching Mr. Q walk using his cane. Mr. Q, however, asserted that he needed assistance to walk. As discussed immediately above, his testimony on walking contradicted itself. Mr. Q has therefore not met his burden of proof on this point. It is therefore more likely true than not true that Mr. Q does not require any PCA assistance for locomotion on a single level.

4. Dressing

The assessment found that Mr. Q did not require any assistance with dressing. Mr. Q disagreed, stating that he could not lift his arms to put shirts on, could not button shirts, and could not put on socks. However, the assessor, when performing her functional tests, found that he could touch his hands over his head, which requires him lifting his arms, and that he could touch his hands behind his back. Consequently, Mr. Q has not met his burden of proof on this point. It is more likely true than not true that Mr. Q is able to dress without assistance.

5. Toilet Use

The assessment found that Mr. Q did not require assistance with toilet use. Mr. Q disagreed. However, as concluded above, Mr. Q is able to transfer by himself and dress himself. He stated that he needed help cleansing himself. However, as noted in the assessment, he is able to touch his hands over his head and behind his back, *i.e.*, he has an adequate range of motion to perform tasks like cleansing himself. Accordingly, Mr. Q has not met his burden of proof on this point. It is more likely true than not true that Mr. Q does not require assistance with toileting.

6. Personal Hygiene

The assessment found that Mr. Q needed setup help with personal hygiene but that he was able to perform the task himself. He was therefore not provided any PCA assistance with this task. Mr. Q disagreed, stating he could not comb his hair. As found above, he has an adequate range of motion and can lift his arms up. He has therefore not met his burden of proof on this point. It is more likely true than not true that Mr. Q does not require any PCA assistance with this task.

7. Bathing

The assessment found that Mr. Q required supervision but no hands-on assistance with bathing. Mr. Q disagreed, stating he needed help with transfers, washing, rinsing, and drying off. However, he can transfer and has an adequate range of motion to perform these tasks. He has not met his burden of proof on this point. It is more likely true than not true that Mr. Q does not require any PCA assistance with this task.

8. Instrumental Activities of Daily Living (IADLS)

The assessment found that Mr. Q could, albeit with difficulty and with some setup help, prepare light meals and main meals, and shop and do laundry. The assessment did not provide him with any PCA assistance with those tasks. The assessment found that Mr. Q required some hands-on assistance with housekeeping and provided him with 45 minutes of PCA time per week for that task. Mr. Q was asked about his performance of these tasks, and essentially answered that he did not engage in them, with the exception of having shopped several times with his daughter. PCA assistance is provided for a person who needs hands-on assistance for a person who cannot engage in or fully engage in tasks, not for a person who is physically capable of performing a task but does not choose to do so. As discussed above, Mr. Q is capable of transferring and walking without assistance. He has an acceptable range of motion. While he is blind in one eye and has some left-sided weakness, the evidence does not show that he requires hands-on assistance to perform most of his IADLs. As a result, he has not met his burden of proof to change the IADLs allowed by the Division. It is therefore more likely true than not true that Mr. Q does not require hands-on assistance with his IADLs, other than that previously allowed by the Division – 45 minutes per week for PCA assistance with housekeeping.

IV. Conclusion

Mr. Q, who had the burden of proof, failed to demonstrate that he was entitled to receive PCA assistance beyond the three hours the Division awarded him. As a result, the Division's decision to approve PCA services in that amount is upheld.

DATED this 7th day of May, 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 21st 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.]