

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

In the Matter of:)
)
 Q C) OAH No. 14-0401-MDS
) HCS Case No.

DECISION

I. Introduction

The issue in this case is whether the State of Alaska Division of Senior and Disabilities Services (DSDS or Division) correctly assessed Q C's eligibility for Medicaid Personal Care Assistant (PCA) services. The Division conducted a functional assessment and concluded that Ms. C does not require limited or extensive assistance, and is not fully dependent on a caregiver, as to at least one activity of daily living (ADL), and is not independent with difficulty, does not need assistance, and is not fully dependent, as to at least one Instrumental Activity of Daily Living (IADL). Based on these findings, the Division denied Ms. C's application for PCA services.

The testimony at hearing was conflicting in many areas, and it created close factual issues as to Ms. C's ability to perform the various ADLs and IADLs. However, the preponderance of the evidence indicates that Ms. C requires limited assistance with the ADLs of transfers, locomotion, dressing, toileting, and bathing, and limited physical assistance with the IADLs of light meal preparation, main meal preparation, light housework, routine housework, and laundry. Accordingly, the Division's denial of Ms. C's application for PCA services is reversed.

II. Facts

A. Ms. C's Diagnoses and Medical Problems

Ms. C is 72 years old.¹ She is widowed and lives in an apartment with two of her adult children and three other relatives.² Ms. C does not speak English and her primary languages are Visayan and Tagalog.³ Ms. C has diagnoses of asthma, benign essential hypertension, mixed hyperlipidemia, and osteoarthritis.⁴

¹ Ex. E1.
² Ex. E1.
³ Ex. E1.
⁴ Ex. E3.

Ms. C first reported back pain and joint pain to her doctor in approximately August 2013.⁵ Ms. C is not currently taking any prescription medications for her back and joint pain.⁶ Thus far she has used herbal and topical remedies.

B. Ms. C's Functional Limitations According to Ms. C and her Daughter

Someone from Ms. C's family watches her, and is available to assist her, during waking hours.⁷ Ms. C's daughter-in-law, who has a baby and currently does not work outside the home, watches and assists Ms. C during the day. Ms. C's daughter, H C, takes over when she gets home from work in the afternoon.

Ms. C's joints are always stiff in the morning.⁸ She cannot get out of bed by herself (she sleeps on a sofa) and must call for assistance. Someone helps get her up and walks her to the bathroom. H C testified that, to transfer her mother off the couch in the morning, she grasps her from behind and pulls her up by her shoulders. When walking, Ms. C uses a cane, but is also held by the arm or around the waist. Ms. C must usually be taken to the bathroom to use the toilet three times during the day and two times each night. H C testified that she must provide hands-on assistance, for balance but not to bear weight, every time her mother uses the toilet. Ms. C sometimes experiences urinary incontinence.

After Ms. C finishes using the bathroom each morning, her daughter or son prepare her to take a shower.⁹ They encourage Ms. C to perform as many of her bathing activities as she can by herself. However, she needs someone to help wash her back and feet, help her rinse off, towel-dry her back and feet, and help her get dressed again. Ms. C needs assistance to get her arms through her shirt sleeves and her feet through her pant legs.

After dressing, Ms. C's son or daughter walks her to her dining room chair for breakfast, holding on to her as they walk.¹⁰ Ms. C's daughter prepares Ms. C's food and puts it on the table. Once a meal is placed in front of her, Ms. C is able to eat and drink without assistance. After Ms. C eats, her daughter massages her arms and legs. After this massage Ms. C's joints "are much better," and she is able to walk with less assistance than when she first wakes up. H C testified that, right after her massage, her mother can stand and move around for 20-30 minutes or so, using her cane,

⁵ All factual findings in this paragraph are based on Ex. E3.

⁶ Ms. C had insurance through her employer while she was working, but lost it when she retired circa 2011 (H C hearing testimony). She then was forced to go without insurance for about two years, until she applied and was found eligible for Medicaid sometime in 2013 (H C hearing testimony).

⁷ All factual findings in this paragraph are based on H C's hearing testimony.

⁸ All factual findings in this paragraph are based on Ex. C2 and H C's hearing testimony.

⁹ All factual findings in this paragraph are based on Ex. C2 and H C's hearing testimony.

¹⁰ All factual findings in this paragraph are based on Ex. C2 and H C's hearing testimony.

before she must sit or lie down. After that, Ms. C usually watches television until she needs a nap. Her son and daughter encourage her to walk to her bed by herself, but she still needs some degree of assistance from her son or daughter.

In the evening Ms. C's daughter helps her with pre-bedtime personal hygiene.¹¹ Ms. C has lost her teeth and does not wear dentures because they are uncomfortable; she is able to use mouthwash by herself. She can wash her face by herself, but requires assistance to brush her hair. By evening time, Ms. C's joints are getting stiff again. Her son or daughter must help her walk and transfer to the bathroom and then to bed.

Ms. C attends church on Sundays.¹² After church, Ms. C's son and daughter-in-law take her to a shopping mall for walking exercise. Ms. C tries to walk by herself, but after "a few steps" her legs give out and she needs to sit down. After resting, Ms. C begins walking again, this time supported or assisted by a person on each side. Ms. C does this "supported walking" for 20-30 minutes before she runs out of breath.

Ms. C ordered a walker in October 2013, but it did not arrive until approximately January 2014.¹³ She began using a cane a few months prior to her January 2014 assessment.

Ms. C is not able to prepare her own meals because she is not able to stand for very long before she begins having fatigue and balance problems.¹⁴ She can wash a few dishes herself, but cannot stand in front of the sink for very long, again due to fatigue and balance problems. Ms. C is not able to dust, vacuum her room or apartment, clean the bathroom, take out the trash, or make her bed. She is also unable to do her own laundry, which needs to be done twice each week due to Ms. C's partial urinary incontinence. She can shop for groceries, with assistance, using her cane.

C. Ms. C's Functional Abilities as Determined by the Division

On January 22, 2014 Ms. C was assessed for PCA eligibility by Geetha Samuel, R.N. of DSDS.¹⁵ Ms. Samuel's assessment is recorded and scored on the Division's Consumer Assessment Tool or "CAT." Ms. Samuel found that Ms. C has the following abilities and limitations with regard to her Activities of Daily Living (ADLs):¹⁶

¹¹ All factual findings in this paragraph are based on Ex. C2 and H C's hearing testimony.

¹² All factual findings in this paragraph are based on Ex. C2 and H C's hearing testimony.

¹³ All factual findings in this paragraph are based on Ex. E3.

¹⁴ All factual findings in this paragraph are based on Ex. C3 and H C's hearing testimony.

¹⁵ Ex. E.

¹⁶ Exs. E6 - E12.

Body Mobility:¹⁷ Ms. Samuel reported Ms. C told her that (1) she is not bed-bound or wheelchair-bound; (2) she prefers to sleep on the living room couch as opposed to her bed; and (3) she usually stays "in the same position" due to pain. Ms. Samuel reported that she observed Ms. C lie on the couch without any repositioning assistance (scored 0/1).

Transfers:¹⁸ Ms. Samuel reported Ms. C told her that (1) she has a cane which she had been using for a few months; and (2) although she does not have a "diagnosis of immobility," her doctor ordered her a walker, to help her transfer, due to her joint pain. Ms. Samuel reported that she observed Ms. C to have range of motion and functionality in both her upper and lower extremities, and that she was able to stand and bear her own weight (scored 1/1).

Locomotion (walking):¹⁹ Ms. Samuel reported that Ms. C told her that she has a cane which she had been using for a few months, and that her doctor had ordered her a walker. Ms. Samuel reported that she observed Ms. C (1) walk from one room to another using her cane and placing weight on it, while her PCA provided "contact guard support," and (2) walk up and down seven steps, with PCA assistance, while holding the railing with her right hand and her cane with her left hand (scored 1/1).

Dressing:²⁰ Ms. Samuel reported that Ms. C told her that she needed assistance to start dressing, but that she could thread her arms through shirt sleeves and legs through pant legs. Ms. Samuel reported that she observed (1) that Ms. C could raise her arms to her ears and bend down to touch her shins; (2) that Ms. C was wearing pants with an elastic waist; (3) that Ms. C had no prescribed garments or specialized medical equipment with which she would need help; and (4) that Ms. C's diagnoses and functionality showed a need for setup and supervision (scored 1/1).

Eating:²¹ Ms. Samuel reported that Ms. C told her that (1) she is independent with regard to eating; (2) she has no swallowing problems; (3) she is able to take her medications with water or another beverage; (4) she does not have teeth or dentures and prefers a diet of stews and pureed foods; and (4) she uses a regular spoon and drinks from a cup that has grips. Ms. Samuel reported that she observed Ms. C drink from an open cup and use a spoon (scored 0/0).

Toileting:²² Ms. Samuel reported that Ms. C told her that (1) she uses her cane to walk to the bathroom, but prefers that her PCA walk with her; and (2) she uses incontinence pads and is

¹⁷ Ex. E6.

¹⁸ Ex. E6.

¹⁹ Ex. E7.

²⁰ Ex. E8.

²¹ Ex. E9.

²² Ex. E9.

able to change them herself. Ms. Samuel reported she observed Ms. C transfer on and off a toilet with closed lid, using her cane for support, while her daughter-in-law stood close by (scored 1/1).

Personal Hygiene:²³ Ms. Samuel reported that Ms. C told her that she has no teeth or dentures to brush, is able to rinse her mouth using mouthwash, and is able to wash her own face. Ms. Samuel reported that she observed that Ms. C had sufficient grip strength and range of motion to perform her own personal hygiene tasks (scored 0/1).

Bathing:²⁴ Ms. Samuel reported that Ms. C told her that (1) she is able to sit on the floor of the tub and wash her torso, but likes to have her daughter-in-law wash her back; and (2) because the bathtub is located upstairs, she only takes a bath three times per week. Ms. Samuel did not observe Ms. C bathing (scored 1/1).

The assessment of January 22, 2014 also scored Ms. C as follows with regard to her Instrumental Activities of Daily Living (IADLs):²⁵ independent with difficulty, and requiring set-up help, with light meal preparation, main meal preparation, light housework, routine housework, grocery shopping, and laundry (all scored 1/2).

D. Relevant Procedural History

Ms. C applied for PCA services and was assessed on January 22, 2014.²⁶ The Division denied her application on February 13, 2014.²⁷ Ms. C requested a hearing on March 3, 2014.²⁸

Ms. C's hearing was held on May 9, 2014. Ms. C participated by phone and testified briefly. She was represented by her daughter, H C, who testified by phone on her mother's behalf. Visayan and Tagalog interpreters were used with Ms. C and her daughter.

Angela Ybarra participated by phone and represented the Division. Geetha Samuel, R.N. and David Teague also participated by phone and testified on behalf of the Division. The record closed at the end of the hearing.

III. Discussion

A. The PCA Program - Overview

The Medicaid program provides personal care services (PCA) to eligible persons; "[t]he purpose of personal care services is to provide to a recipient *physical assistance* with activities of daily living (ADL), *physical assistance* with instrumental activities of daily living (IADL), and

²³ Ex. E10.

²⁴ Ex. E11.

²⁵ Ex. E26.

²⁶ Ex. D1. The exact date that Ms. C's application was submitted to the Division is not in the record.

²⁷ Ex. D.

²⁸ Ex. C.

other services based on the *physical condition* of the recipient"29 [Emphasis added]. 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."30

B. Alaska's PCA Program - Use of the Consumer Assessment Tool (CAT)

The Department conducts an assessment for PCA services using the Consumer Assessment Tool or "CAT."³¹ The goal of the assessment process is to determine the level of physical assistance that an applicant or recipient requires in order to perform their activities of daily living (ADLs) and instrumental activities of daily living (IADLs).³² The CAT seeks to make the assessment process more objective by standardizing the evaluation of the applicant or recipient's functional impairments.³³

The ADLs coded or scored by the CAT are body 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.³⁴ In addition, the CAT codes or scores five other ADL-like activities which are not technically ADLs. These are medication, vital signs/glucose levels, dressings/bandages/oxygen, sterile wound care, and documentation.

The CAT numerical coding system for ADLs 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

²⁹ 7 AAC 125.010(a).

³⁰ 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.*

³¹ 7 AAC 125.020(b). The CAT has been adopted into DHSS regulations by reference. *See* 7 AAC 160.900(d)(6).

³² *See* 7 AAC 125.010(a).

³³ Ex. E.

³⁴ *See* Division of Senior and Disability Services' *Personal Care Assistance Service Level Computation* (accessed online at <http://www.hss.state.ak.us/dsds/pca/documents/PCA%20Service%20Computation.pdf>) (accessed June 10, 2014); *see also* Exs. E6 - E11.

help or oversight); **1** (the person requires supervision); **2** (the person requires limited assistance³⁵); and **3** (the person requires extensive assistance³⁶); **4** (the person is totally dependent³⁷).

The second component of the CAT scoring system for ADLs is the *support code*. These codes rate the degree of assistance that a person requires for a particular activity of daily living (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).

The CAT also codes or scores certain activities known as "instrumental activities of daily living" (IADLs).³⁸ These are light meal preparation, main meal preparation, light housekeeping, routine housekeeping, laundry, and grocery shopping. Finally, the CAT codes or scores one other IADL-like activity which is not technically an IADL (oxygen maintenance).

The CAT scores IADLs slightly differently than ADLs.³⁹ 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).

The *support codes* for IADLs are also slightly different than the support codes for ADLs.⁴⁰ 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).

If a person receives self-performance codes of 2, 3, or 4 and support codes of 2, 3, or 4 with regard to any one of the ADLs of transfers, locomotion, eating, toilet use, dressing, or bathing, then the person is eligible to receive PCA services.⁴¹ Alternatively, if a person receives self-performance codes of 1, 2, or 3 and support codes of 3 or 4 with regard to any of the IADLs of light meal

³⁵ 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."

³⁶ 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."

³⁷ 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."

³⁸ Ex. E26.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Ex. E31.

preparation, main meal preparation, light housework, routine housework, grocery shopping, or laundry, then the person is eligible to receive PCA services.⁴²

C. Does Ms. C Require Limited Assistance With an Activity of Daily Living?

As stated above, in order to qualify for PCA services, an applicant or recipient must receive a CAT score of 2/2 or better as to at least one of the six specified ADLs.⁴³ Ms. C's scores for these six ADLs are discussed below.⁴⁴

1. Transfers

For the ADL of transfers, PCA time is allowed when a person requires physical assistance to move between one surface and another (including to or from a bed, chair, or wheelchair), and/or when a person requires physical assistance to move from a lying or sitting position to a standing position.⁴⁵ The Division found that Ms. C requires only supervision and set-up help with transfers (CAT score 1/1). H C testified that her mother's joints are at their worst first thing in the morning and in the evening, but that her mother's joints "are much better" after her massage, and that after her massage, her mother can stand and move around for 20-30 minutes.

Ms. Samuel's testimony and H C's testimony both appeared to be credible. Their testimony initially appears inconsistent as to transfers. However, the assessment was conducted during working hours rather than early in the morning or late in the evening. It is likely that Ms. Samuel observed Ms. C after her massage during the daytime period when she is most mobile. Accordingly, the preponderance of the evidence indicates that, although Ms. C may be independent with transfers when at her best, she requires at least limited, non-weight bearing, one-person physical assistance with transfers in the morning and evening (CAT score 2/2).

2. Locomotion / Walking

For the ADL of locomotion, PCA time is allowed when a person requires assistance with walking (whether with the support of a walker, cane, gait belt, braces, crutches, or manual wheelchair), either between different locations in the recipient's home, or outside the home to keep a

⁴² *Id.*

⁴³ 7 AAC 125.020(a). The minimum standard applicable to ADLs, "limited assistance," is defined by 7 AAC 125.020(a)(1) as a situation in which the recipient, although "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."

⁴⁴ There are statements in the assessment, and there were statements made on behalf of the Division at hearing, asserting (1) that a medical diagnosis is necessary to qualify for PCA services, and (2) that an applicant or recipient must avail themselves of prescription pain medications, and can only qualify for PCA services if still functionally impaired in spite of taking pain killers. Neither of these assertions has any basis in the PCA regulations or the CAT.

⁴⁵ 7 AAC 125.030(b)(2).

medical or dental appointment; PCA time is also allowed when walking and simple exercises have been prescribed by a physician.⁴⁶

The Division found that Ms. C requires only supervision and set-up help with locomotion (CAT score 1/1). Ms. Samuel reported that she observed Ms. C (1) walk from one room to another using her cane and placing weight on it, while her PCA provided "contact guard support," and (2) walk up and down seven steps, with PCA assistance, while holding the railing with her right hand and her cane with her left hand (scored 1/1). H C testified that Ms. C can walk around the house for 20-30 minutes shortly after her leg massage while she is at her best, but that otherwise, even though she uses a cane, she must be held by the arm or around the waist.⁴⁷

The testimony that Ms. C's abilities vary significantly over the course of each day was credible, and, based on this testimony, Ms. Samuel's credible findings are not necessarily inconsistent with H C's testimony. Taken as a whole, the preponderance of the evidence indicates that, although Ms. C may be independent with locomotion at certain times during the day, she requires at least limited, non-weight bearing, one-person physical assistance with locomotion in the morning and evening (CAT score 2/2).

3. Dressing and Undressing

For the ADL of dressing, PCA time is allowed for the donning, fastening, unfastening, and removal of the recipient's street clothing, support hose, or prosthesis.⁴⁸ Ms. Samuel reported that Ms. C told her that she needed setup assistance with dressing, but that she could thread her arms through shirt sleeves and legs through pant legs. Based on this, Ms. Samuel found that Ms. C needs only setup help and supervision for dressing (scored 1/1). At hearing, H C testified that her mother needs assistance to get her arms through her shirt sleeves and legs into her pant legs. Although it is a close question, it is more likely than not that Ms. C requires limited, non-weight bearing, physical assistance from one person for the ADL of dressing (CAT score 2/2).

4. Eating and Drinking

For the ADL of eating and drinking, PCA time is allowed for feeding through a feeding tube, enteral feeding, and supervising the eating and drinking of a recipient who has swallowing, chewing, or aspiration difficulties.⁴⁹ Ms. Samuel reported that Ms. C told her that she is

⁴⁶ 7 AAC 125.030(b)(3).

⁴⁷ The record indicates that Ms. C received a walker shortly before the assessment. Were she able to use her walker successfully, Ms. C would probably not score higher than 1/1 for locomotion. However, the record does not indicate whether Ms. C is able to use her walker.

⁴⁸ 7 AAC 125.030(b)(4).

⁴⁹ 7 AAC 125.030(b)(5).

independent with eating and drinking and has no swallowing problems. H C testified that, once a meal is placed in front of her, her mother is able to eat and drink without assistance. Accordingly, a CAT score of 0/0 is appropriate for the ADL of eating in this case.

5. Toilet Use

For the ADL of toilet use, PCA time is, by regulation, allowed only to assist with moving to and from the toilet or urinal and transfers on and off the toilet.⁵⁰ The CAT's definition of "toilet use" is somewhat broader, encompassing post-toileting hygiene and clothing adjustments.⁵¹

Ms. Samuel reported that Ms. C told her that she uses her cane to walk to the bathroom, but prefers that her PCA walk with her; Ms. Samuel reported that she observed Ms. C transfer on and off a toilet with closed lid, using her cane for support, while her daughter-in-law stood close by. H C testified that she must provide hands-on assistance, for balance but not to bear weight, every time her mother uses the toilet. Ms. Samuel's and Ms. C's testimony initially appear to be at odds. However, considering that Ms. C's abilities vary significantly over the course of each day, Ms. Samuel's findings are not necessarily inconsistent with H C's testimony. Taken as a whole, the preponderance of the evidence indicates that, although Ms. C may be independent with toileting at times during the day, she requires at least limited, non-weight bearing, one-person physical assistance with toileting in the morning and evening (CAT score 2/2).

6. Bathing

For the ADL of bathing, PCA time is allowed for "the taking of a full-body bath, shower, or sponge bath and the required transfers in and out of the bathtub or shower."⁵² Ms. Samuel reported that Ms. C told her that she is able to sit on the floor of the tub and wash her torso, but likes to have her daughter-in-law wash her back. H C testified that her mother needs assistance to wash her back and feet, help her rinse off, and towel-dry her back and feet. Given Ms. C's use of a cane and her balance problems, H C's testimony that her mother requires limited assistance with certain aspects of bathing is credible. A CAT score of 2/2 is therefore appropriate for the ADL of bathing in this case.

⁵⁰ 7 AAC 125.030(b)(6). For reasons that do not appear in the record, the regulation does not cover assisting the recipient with necessary personal hygiene after using the toilet. The PCA regulation for personal hygiene, 7 AAC 125.030(b)(7), likewise fails to cover such necessary activities.

⁵¹ The CAT form defines toilet use as "[h]ow person uses the toilet room (or commode, bedpan, urinal); transfers on/off toilet, *cleanses* . . . manages ostomy or catheter, *adjusts clothes*" (Ex. E9, emphasis added).

⁵² 7 AAC 125.030(b)(8). The definition of bathing contained in the CAT is essentially identical (*see* Ex. E11).

D. Does Ms. C Require Assistance With Instrumental Activities of Daily Living?

An applicant or recipient can also qualify for PCA services by being independent with difficulty as to at least one Instrumental Activity of Daily Living (IADL), by needing assistance with at least one IADL, or by being dependent as to at least one IADL (*i.e.* by having self-performance scores of 2, 3, or 4), *and* by requiring physical assistance for support or being totally dependent for support (*i.e.* by having support scores of 3 or 4).⁵³ However, before examining Ms. C's IADL scores, there is a threshold issue regarding her IADLs that must be addressed.

The Division asserts that Ms. C is not eligible for PCA assistance with her IADLs, even if she demonstrates that she requires assistance with them, because she resides with two adult children and two other family members.⁵⁴ However, pursuant to 7 AAC 125.040(a)(13), personal care services are unavailable for assistance with an IADL under 7 AAC 125.030 only where (1) those services are provided by a parent or legal guardian to a minor child; (2) those services are provided by a spouse of the recipient; and (3) other recipients living in the same residence receive IADL services under 7 AAC 125.010 - 7 AAC 125.199 or under 7 AAC 130 (home and community-based waiver services). In this case, Ms. C is not a minor child, her husband is deceased, and there is no evidence in the record that anyone else in Ms. C's household receives PCA services or waiver services. Accordingly, Ms. C is entitled to receive PCA assistance with IADLs if she can demonstrate the need for assistance through appropriate CAT scores.⁵⁵

1. Light Meals

The PCA regulations define the IADL of light meal preparation as the preparation, serving, and cleanup in the recipient's home of any meal that is essential to meet the health needs of the recipient, and that is not the main meal of the day.⁵⁶ The Division found Ms. C to be independent with difficulty as to light meals, requiring setup assistance only (CAT score 1/2). However, the Division did not provide testimony on this point at hearing because of the legal position taken by

⁵³ See Ex. E-31 and 7 AAC 125.020(a). The minimum standard applicable to IADLs, "independent with difficulty," is defined by 7 AAC 125.020(a)(4) as a situation in which "the recipient can perform the activity without the help of another individual, but does so with difficulty or takes a great amount of time to perform it."

⁵⁴ Exs. D1, E1.

⁵⁵ In this and other cases, the Division has argued or inferred that 7 AAC 125.199(7), which defines "immediate family member of the recipient" as "a relative of the recipient with a duty to support the recipient under state law," expands the list of persons who must provide IADL support under 7 AAC 125.040(a)(13) to a PCA applicant's adult children. However, 7 AAC 125.040(a)(13) does not use the term "immediate family member of the recipient," so the definition contained in 7 AAC 125.199(7) does not expand the list of responsible individuals for purposes of 7 AAC 125.040(a)(13). Likewise, 42 CFR § 440.167, also cited by the Division, defines PCA services and the persons who may provide them; it does not define the persons who must provide unpaid support based on a family relationship.

⁵⁶ 7 AAC 125.030(c)(1).

the Division, discussed above. H C testified that her mother is not able to prepare her own meals because she is not able to stand for very long before she begins having fatigue and balance problems. H C's testimony on this point was credible. Accordingly, the preponderance of the evidence indicates that Ms. C requires physical assistance with light meals (CAT score 2/3).

2. Main Meals

The PCA regulations define the IADL of main meal preparation as the preparation, serving, and cleanup in the recipient's home of one main meal per day that is essential to meet the health needs of the recipient.⁵⁷ The Division found Ms. C to be "independent with difficulty" as to main meals (CAT score 1/2), requiring set-up help only. For the reasons discussed above in the context of light meals, the preponderance of the evidence indicates that Ms. C also requires physical assistance with main meals (CAT score 2/3).

3. Light Housework

The PCA regulations define the IADL of "light housekeeping" as (1) picking up, dusting, vacuuming, and floor-cleaning of the living spaces used by the recipient; (2) the cleaning of the kitchen and dishes used for preparation of the recipient's meals; (3) the cleaning of any bathroom used by recipient; (4) making the recipient's bed; (5) removing the recipient's trash; and (6) caring for the recipient's service animal.⁵⁸ The Division found Ms. C to be independent with difficulty as to light housework, requiring only setup assistance (CAT score 1/2). However, H C testified that her mother is not able to dust, vacuum her room or apartment, clean the bathroom, take out the trash, or make her bed. Because of Ms. C's balance problems and use of a cane, this testimony was credible. Accordingly, the preponderance of the evidence indicates that Ms. C requires physical assistance with light housework (CAT score 2/3).

4. Routine Housework

Although *the CAT* differentiates between "light housework" and "routine housework," *the PCA regulation* includes all the constituent activities of these two "CAT categories" within a single definition of "light housekeeping."⁵⁹ Because Ms. C has already been scored 2/3 for the IADL of "light housekeeping" (above), no separate score is awarded here.

⁵⁷ 7 AAC 125.030(c)(2).

⁵⁸ 7 AAC 125.030(c)(3).

⁵⁹ 7 AAC 125.030(c)(3).

5. Grocery Shopping

The PCA regulations define the IADL of grocery shopping as shopping in the vicinity of a recipient's residence for groceries and other household items required for the health and maintenance of the recipient, and prescribed drugs and medical supplies required by the recipient.⁶⁰ The Division found Ms. C to be independent with difficulty as to grocery shopping, requiring only setup assistance (CAT score 1/2). H C's hearing testimony was consistent with the Division's finding. Accordingly, given Ms. C's ability to use her walker or a shopping cart for balance while at the store, the preponderance of the evidence indicates that Ms. C is independent with difficulty as to grocery shopping (CAT score 1/2).

6. Laundry

The PCA regulations define the IADL of laundry as the changing of a recipient's bed linens and the in-home or out-of-home laundering of a recipient's bed linens and clothing.⁶¹ The Division found Ms. C to be independent with difficulty, and to require help with set-up, as to laundry (CAT score 1/2). However, H C testified that her mother is unable to do her own laundry. Because of the need to stand for significant periods and to use both hands to use a washer and dryer, the preponderance of the evidence indicates that Ms. C requires physical assistance with laundry (CAT score 2/3).

IV. Conclusion

Ms. C has scored a 2/2 with regard to the ADLs of transfers, locomotion, dressing, toileting, and bathing. A score of 2/2 with regard to any one of these ADLs qualifies her to receive PCA services. In addition, Ms. C has scored a 2/3 with regard to the IADLs of light meals, main meals, light housework, routine housework, and laundry. A score of 2/3 on any of these IADLs qualifies her to receive PCA services. Accordingly, Ms. C is eligible for PCA services. The Division's determination that Ms. C is not eligible for PCA services is therefore reversed.⁶²

DATED this 18th day of June, 2014.

Signed

Jay Durych

Administrative Law Judge

⁶⁰ 7 AAC 125.030(c)(5).

⁶¹ 7 AAC 125.030(c)(4).

⁶² This decision does not calculate the hours per week of PCA services which Ms. C is eligible to receive. If Ms. C disagrees with the Division's calculation of the specific number of hours of PCA services for which she is eligible, she may request a new hearing on that issue.

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 27th day of June, 2014.

By: *Signed*
Name: Jay D. Durych
Title: Administrative Law Judge, DOA/OAH

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