

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

In the Matter of:)
)
 U G) OAH No. 14-0508-MDS
) Agency No.
_____)

CORRECTED FINAL DECISION¹

I. Introduction

U G was receiving 24.5 hours per week of personal care assistance (PCA) services. The Division of Senior and Disabilities Services (Division) notified her that her PCA service time would be reduced to 3.25 hours per week. Ms. G requested a hearing.

Ms. G's hearing began on May 30, 2014. Ms. G attended the hearing. However, the Division's representative was unavailable and the hearing was rescheduled to June 2, 2014. The Division was represented by Angela Ybarra. Ms. G represented herself.

The evidence demonstrates that Ms. G's PCA service time should be reduced, although not to the extent sought by the Division. While Ms. G testified that her condition has deteriorated and that the Division's assessment does not accurately reflect her current condition, the assessment, for the most part, is an accurate reflection of her care needs as of the date of the Division's reduction decision, which was March 20, 2014. The Division's reduction of Ms. G's PCA services is therefore affirmed in part and reversed in part, as discussed below.

II. Facts

Ms. G is 61 years old. Her diagnoses include hepatitis, chronic pain disorder, kidney and ureteral disorder, sleep apnea, intercranial injury, chronic airway obstruction, and high blood pressure. She has foot lesions, which required weekly wound care as of October 2013.² She had a motor vehicle accident in 2003 and a multi-story fall in 1997, and as a result has severe damage to her feet, tibia, femur, arms, face, and head, and nerve damage in her left arm, right foot, and chronic pain.³

¹ As authorized by 2 AAC 64.350(b), the original decision in this case, which was adopted as final on July 17, 2014, is modified to correct a typographical error on page 8 of that decision. The original decision stated that Ms. G required bathing assistance 42 times per week. The original decision is corrected to reflect that she requires bathing assistance seven times weekly. The remainder of the decision is unchanged.

² Ex. E, pp. 1, 3.

³ Ex. F, p. 3.

Ms. G was receiving PCA services in the fall of 2013, consisting of limited assistance (code of two) with transfers 42 times per week, with locomotion 42 times per week, locomotion to access medical appointments twice weekly, with toileting 42 times per week, with personal hygiene seven times per week, and with bathing seven times per week. She also received PCA service time for taking vital signs, documentation, medical escort, and her Instrumental Activities of Daily Living (IADLs) of light meal preparation, main meal preparation, shopping, housework, and laundry.⁴

Ms. G was reassessed to determine her current PCA benefit needs. As part of the assessment process, a Division nurse assessor visited her home on October 8, 2013 and recorded her observations on the *Consumer Assessment Tool* (CAT). The nurse assessor's conclusions, as reflected on the CAT,⁵ were as follows:

- Ms. G should no longer receive assistance with transfers, locomotion in home, locomotion to access medical appointments, toilet use, personal hygiene, bathing, taking of vital signs, documentation, and medical escort.
- Ms. G's assistance for light meal preparation was eliminated, while her assistance for main meal preparation, shopping, housework, and laundry was reduced from dependence (self-performance code of 3) to hands-on physical assistance required (self-performance code of 2).
- The conclusions were based upon observing Ms. G's range of motion, seeing Ms. G stand up from a sitting position without assistance, and seeing Ms. G walk without assistance or the use of an assistive device. Ms. G also informed the nurse assessor that she used a walker within her apartment building and a wheelchair, which she was able to propel by herself, outside the apartment building.⁶

Ms. G was contacted for her hearing on May 30, 2014. At that time, Ms. G stated that she was in Walmart and that her PCA was sitting in the car.⁷ The hearing was continued until June 2, 2014; Ms. G testified that she had been using a motorized cart within the store.⁸

Ms. G did not disagree with the elimination of her PCA time for locomotion (both within home and to access medical appointments), personal hygiene, medical escort, taking vital signs,

⁴ Ex. D, p. 9.

⁵ The nurse-assessor did not testify.

⁶ Ex. D, p. 9; Ex. E, pp. 4, 6 – 11, 26.

⁷ See May 30, 2014 recording.

⁸ Ms. G's testimony.

documentation, or light meal preparation. She did not disagree with the reduction of the time provided her for shopping assistance, stating that she was able to do her shopping, using a motorized cart, but sometimes needed assistance retrieving items from higher shelves. She disagreed with the elimination of her PCA time for transfers, toileting, and bathing, and with the reduction of the time provided for main meal preparation, housework, and laundry. She also wanted PCA service time added for dressing.

Ms. G testified that her physical condition deteriorated after the October assessment visit. She stated that the decline started in January 2014. In the very recent past, she experienced a decline in her health, which affected her memory, and made it difficult for her to isolate time frames. However, she testified that, as of mid-March 2014, she required the following assistance:

- She needed transfer assistance, which consisted of being physically pulled up several times per day.
- She uses a wheelchair to locomote. It is a manual wheelchair and she can push herself although it is tiring for her.
- She was able to dress without assistance in January 2014. However, as of mid-March, she could not bend her knees and could not dress without assistance. She could not even put her shoes on by herself.
- She required physical weight-bearing assistance between five to six times per day transferring on and off the toilet.
- Although she has grab bars, she requires weight-bearing assistance only for transfers in and out of the tub for bathing.
- She can prepare light meals, but is unable to stand to prepare main meals. She cannot participate at all in doing either housework or laundry.

Ms. G's medical records from October 1, 2013 state that she came to her medical appointment and walked without assistance, and without using any assistive devices.⁹ She was using a wheelchair at her March 31, 2014 appointment.¹⁰

⁹ Ex. 1, pp. 14 – 16.

¹⁰ Ex. 1, p. 6.

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”¹¹ 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.”¹²

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.¹³ 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.¹⁴

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 assistance¹⁵); **3** (the person requires extensive assistance¹⁶); and **4** (the person is totally dependent¹⁷). There are

¹¹ 7 AAC 125.010(a) [emphasis added].

¹² 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.*

¹³ See 7 AAC 125.020(a) and (b).

¹⁴ Ex. E, pp. 6 – 11.

¹⁵ 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."

¹⁶ 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."

¹⁷ 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."

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).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).¹⁹

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.²⁰

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).²¹

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).²²

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

¹⁸ Ex. E, p. 18.

¹⁹ Ex. E, p. 18.

²⁰ Ex. E, p. 26.

²¹ Ex. E, p. 26.

²² Ex. E, p. 26.

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.²³

B. Application of the PCA Determination Process

This case involves a reduction of benefits. However, Ms. G's testimony demonstrates that she is not merely opposing the reduction in her benefits, but is actively requesting an increase in some areas. On the areas where a party is requesting a change, that party bears the burden of proof, by a preponderance of the evidence.²⁴ In assessing the evidence, it must be noted that the Division's nurse-assessor did not testify. However, Ms. G's testimony did not challenge the findings made on the October 2013 CAT, but instead provided that her condition declined after her October 2013 assessment visit, beginning in January 2014. This would be consistent with her medical appointment notes which showed her walking on October 1, 2013, but using a wheelchair on March 31, 2014.

Ms. G's testimony was imprecise, which might be due to her asserted decline. However, her imprecision makes it difficult to isolate the facts pertaining to her physical care needs as of the date of the Division's March 20, 2014 reduction decision. An important factor in assessing the evidence is the fact that Ms. G was in Walmart using a motorized shopping cart on May 30, 2014, while her PCA was in the car. If Ms. G's condition was as severe as she testified, she certainly would have been capable of operating the shopping cart by herself, but would more likely than not have needed her PCA in attendance to assist her. Overall, it is more likely true than not true that Ms. G overstated her care needs.

The disputed areas are:

1. Transfers

The Division had provided Ms. G with limited assistance (code of 2) 42 times per week for transfers. The Division eliminated that assistance in its entirety. Ms. G's testimony was that she required to be physically pulled up for transfers several times per day. Her testimony regarding frequency was not more specific than "several." This would be extensive assistance (code of 3). There was no evidence, other than Ms. G's testimony, to support a need for extensive assistance versus limited assistance. However, Ms. G's medical history (severe damage to her feet, tibia, femur, arms, face, head, and nerve damage) is not the type that would

²³ 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.

²⁴ 7 AAC 49.135.

tend to resolve itself easily. Compounding the issue is the fact that she was more physically mobile at the time of her October 2013 assessment but less physically mobile as of the very end of March 2014. Because physical functioning is determined as of the date of the Division's reduction decision, which was March 20, 2014, Ms. G did not show it was more likely true than not true that her need for assistance with transfers has increased from her previous level of assistance. Similarly, the Division did not show that it has decreased. The amount of transfer assistance therefore remains at limited assistance (code of 2) 42 times per week.

2. Toilet Use

The Division had provided Ms. G with extensive assistance (code of 3) 42 times per week for toileting. The Division eliminated that assistance in its entirety. Ms. G's testimony was that she required weight-bearing assistance five to six times per day. This would be extensive assistance (code of 3) six times per day, for 42 times per week. Because toileting assistance involves transfers, it is subject to the same analysis as transfers. As with transfers, neither Ms. G nor the Division have demonstrated that toileting should be changed. The PCA assistance for toileting therefore remains at limited assistance (code of 2) 42 times per week.

3. Dressing

Ms. G had not received dressing assistance in the past and the October 2014 CAT reflected that she was able to dress without assistance. She requested that she be provided dressing assistance, stating that she could not bend her knees and was not able to put her shoes on. Her testimony, however, was that she was able to dress without assistance in January 2014. As noted above, the evidence shows that Ms. G overstated her care needs. She therefore did not establish that it was more likely true than not true that she requires dressing assistance. The Division's finding that she did not require dressing assistance is upheld.

4. Bathing

The Division had provided Ms. G with limited assistance (code of 2) seven times per week for bathing. It then eliminated that assistance. Ms. G disagreed, stating that she required weight-bearing assistance for transfers in and out of the tub. As found above under transfers, neither Ms. G nor the Division demonstrated that bathing assistance should be changed. The PCA assistance for bathing remains at limited assistance (code of 2) seven times per week.

5. IADLs

The Division eliminated Ms. G's assistance for light meal preparation and reduced her assistance for main meal preparation, shopping, laundry, and housework from dependent (code of 3) to requiring assistance (code of 2). Ms. G only disputed the reduction for main meal preparation, laundry, and housework, testifying that she was unable to perform these tasks at all. However, the 2013 CAT states that she has the functional ability to participate in these tasks, but does require physical help. There is no evidence in the record, other than Ms. G's testimony, showing that Ms. G is unable to perform these tasks in their entirety. On May 30, 2014, she was able to shop unaccompanied, which requires the same functionality as prepping a meal, folding or sorting laundry, and doing light housework tasks such as dusting or tidying, some part of which can be done from a seated position. It is therefore more likely true than not true that Ms. G is capable of participating in main meal preparation, laundry, and housekeeping, and the Division's reduction in those areas is upheld.

IV. Conclusion

The Division's reduction of Ms. G's PCA services is upheld in part and reversed in part. It is reversed with regard to toileting, transfers, and bathing, and upheld for the remaining reductions.

DATED this 30th day of July, 2014.

Signed _____
Lawrence A. Pederson
Administrative Law Judge

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

NOTICE OF APPEAL RIGHTS

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.