

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

In the Matter of:)
)
 N Q) OAH No. 14-0538-MDS
) Agency No.

DECISION

I. Introduction

N Q was receiving 28 hours per week of personal care assistance (PCA) services. The Division of Senior and Disabilities Services (Division) notified her that her PCA services would be reduced to 8.5 hours per week. Ms. Q requested a hearing.

Ms. Q's hearing was held on April 30, 2014. Ms. Q attended the hearing. She was represented by M T. Victoria Cobo represented the Division.

The evidence demonstrates that Ms. Q's PCA service time should be reduced. However, the Division understated her needs for post-seizure assistance in the areas of transfers, locomotion (single-level), and toileting. The reduction of PCA services is therefore affirmed in part and reversed in part, and the Division is directed to provide Ms. Q with PCA services as specified in this decision.

II. Facts

Ms. Q is 35 years old. She has an uncontrolled seizure disorder, with seizures that occur three to four times per week, generally during the evening. She has an implanted vagus nerve stimulator, which can sometimes decrease the severity or duration of her seizures. Ms. Q has a part-time job, working 16 hours per week. Her workplace has instructions on how to activate the vagus nerve stimulator in the event of a seizure.¹

Ms. Q was receiving PCA services in the fall of 2013, consisting of extensive assistance (code of three) with transfers 28 times per week, with locomotion 35 times per week, with toileting 35 times per week, with dressing 14 times per week, and with bathing seven times per week. She also received PCA service time for shampooing her hair, medication assistance, medical escort, medical documentation, and some instrumental activities of daily living (main meal preparation, shopping, housework, and laundry).²

¹ Ex. E, pp. 3 -11; F C testimony; Marianne Sullivan testimony.
² Ex. D, p. 10.

Ms. Q was reassessed to determine her current PCA benefit needs. As part of the assessment process, a Division nurse assessor visited her home on September 13, 2013 and recorded her observations on the *Consumer Assessment Tool* (CAT). The nurse assessor concluded as follows:

- Ms. Q should receive limited assistance (code of 2) four times weekly for locomotion, toileting, and transfers. The Division provided the frequency of four times per week with each activity to allow Ms. Q assistance once after each seizure event, based upon her having seizures three to four times each week.³
- Ms. Q should receive limited assistance (code of 2) twice weekly to access medical appointments.
- Ms. Q required limited assistance (code of 2) three times weekly with bathing.
- Ms. Q was provided no assistance with shampooing, nor any time for medical documentation.
- Ms. Q was provided limited assistance (code of 2) with personal hygiene seven times weekly.
- Ms. Q was provided time for assistance with some of her instrumental activities of daily living (both light and main meal preparation and shopping).
- Ms. Q continued to receive time for assistance with medications and for medical escort.⁴

David Chadwick, a Health Program Manager employed by the Division, spoke to the nurse for Ms. Q's primary care physician. The nurse informed him that Ms. Q experienced seizures from between three to four times per week; that those seizures lasted anywhere from five minutes to ten minutes, depending upon when the vagus nerve stimulator was activated; and that the seizure effects lasted for between 45 minutes to one hour post-seizure. Mr. Chadwick was not able to speak to Ms. Q's neurologist.⁵

Ms. Q disagreed with the PCA time provided her for transfers, toileting, locomotion (both single-level and multi-level), dressing, and bathing. F C, her primary caregiver, with whom she has lived for a number of years, testified as follows:

³ The Division initially determined that Ms. Q did not require physical assistance with transfers, locomotion, or toileting. See Ex. D, p. 10; Ex. E, pp. 6- 7, 9. At hearing, the Division modified its determination to allow limited assistance (code of 2) for each of those activities four times per week. Marianne Sullivan testimony.

⁴ Ex. E, pp. 3 – 11; Marianne Sullivan testimony.

⁵ David Chadwick testimony.

- Ms. Q’s seizures occur primarily in the evenings. She has a period of incapacity after each seizure that lasts a minimum of two hours, and which can persist to eight to ten hours. The period of incapacity has lasted as long as 48 hours.
- When a seizure begins, Ms. Q is lowered to the floor. After the seizure ends, she is raised from the floor to a sitting position and onto a chair. Ms. Q has no muscle control immediately after a seizure, and Ms. C has to bear approximately 75 percent of Ms. Q’s weight. After Ms. Q has been in the chair for approximately an hour, she is transferred from the chair to a standing position. The last transfer only requires minimal assistance, where Ms. Q leans on Ms. C.
- When Ms. Q is standing up again post-seizure, Ms. C helps her to the bathroom. This locomotion is again minimal assistance. While it is hands-on support, it is primarily for stability purposes.
- Ms. Q is incontinent 80 percent of the time during a seizure. When she is incontinent, her first act of locomotion is to the bathroom, where her clothing is removed, she is cleansed, and her clothing changed. Her transfers to and from the toilet require weight-bearing assistance. When her clothing is changed, she has “noodle” legs and requires weight-bearing support.
- Ms. Q is then moved to her bedroom to lie down. She again requires assistance locomoting to her bedroom and transferring onto the bed. Her transfers to the bed require weight-bearing assistance.⁶
- Ms. Q requires assistance bathing after each seizure due to incontinence.
- Ms. Q lives in a multi-level home. She requires assistance moving between floors to her bedroom post-seizure.⁷

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”⁸

Accordingly, “[t]he department will not authorize personal care services for a recipient if the

⁶ Ms. C testimony was that on transfers, Ms. Q required weight-bearing assistance 100 percent of the time.

⁷ F C testimony.

⁸ 7 AAC 125.010(a) [emphasis added].

assessment shows that the recipient only needs assistance with supervision, cueing, and setup in order to independently perform an ADL or IADL.”⁹

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.¹⁰ 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.¹¹

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 assistance¹²); **3** (the person requires extensive assistance¹³); and **4** (the person is totally dependent¹⁴). 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).¹⁵

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

⁹ 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.*

¹⁰ See 7 AAC 125.020(a) and (b).

¹¹ Ex. E, pp. 6 – 11.

¹² 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."

¹³ 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."

¹⁴ 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."

¹⁵ Ex. E, p. 18.

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).¹⁶

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.¹⁷

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).¹⁸

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).¹⁹

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.²⁰

B. Application of the PCA Determination Process

This case involves a reduction of benefits. As a result, the Division has the burden of proof by a preponderance of the evidence.²¹ At hearing, the Division allowed assistance following each of four seizure events per week, which is consistent with the evidence that Ms. Q has seizures three to four times each week. In assessing the evidence, Ms. C appears to have

¹⁶ Ex. E, p. 18.

¹⁷ Ex. E, p. 26.

¹⁸ Ex. E, p. 26.

¹⁹ Ex. E, p. 26.

²⁰ 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.

²¹ 7 AAC 49.135.

overstated the length of time that Ms. Q experiences post-seizure effects, given the statements made by Ms. Q's primary care physician's nurse to Mr. Chadwick that Ms. Q experiences post-seizure effects for up to an hour, and the fact that Ms. Q is able to hold down a part-time job.

The disputed areas are:

1. Transfers

The Division had provided Ms. Q with extensive assistance (code of 3) 28 times per week for transfers. It then reduced that assistance to limited assistance (code of 2) four times per week, once after each seizure. Ms. C' testimony demonstrated a need for four non-toileting related transfers related to each seizure event. One, lowering Ms. Q to the floor at the onset of the seizure; two, raising Ms. Q to a sitting position immediately after the seizure and moving her to a chair; three, after resting in the chair, transferring her out of the chair preparatory to moving her either to her bedroom or the bathroom; and four, transferring her to her bed. It is therefore more likely true than not true that Ms. Q requires 16 transfers per week, consisting of four transfers associated with each seizure event.

Ms. C' testimony did not show a need for weight-bearing assistance for each transfer. However, it did demonstrate that Ms. Q required weight-bearing assistance for at least two of the four transfers associated with each seizure, being the lowering to the floor at the seizure onset and the raising up to a sitting position and to the chair immediately after the seizure. Two weight-bearing transfers occurring four times per week would result in eight weight-bearing transfers per week. Because the CAT classifies transfers as requiring extensive assistance if weight-bearing assistance with transfers is provided three or more times per week,²² Ms. Q's need for transfer assistance is, as previously allowed, classified as extensive assistance. And as discussed immediately above, she is to be provided transfer assistance 16 times per week.

2. Locomotion (Single Level)

The Division had provided Ms. Q with extensive assistance (code of 3) 35 times per week for single-level locomotion. It then reduced that assistance to limited assistance (code of 2) four times per week, once after each seizure. As Ms. C testified, Ms. Q requires locomotion to the bathroom or to the bedroom after each seizure. This is hands-on balance assistance, but not weight-bearing. Because locomotion to and from the bathroom is considered as part of

²² See Ex. E, p. 6.

toileting,²³ she cannot receiving separate assistance under the locomotion category when it involves toileting. However, because her locomotion may involve moving to her bedroom, she is allowed one event of locomotion for that act after each seizure. This is consistent with the evidence presented by the Division, and Ms. Q did not present any contradictory evidence. Accordingly, the Division has met its burden of proof on this point, and established that it is more likely true than not true that Ms. Q should receive limited assistance for locomotion four times each week.

3. Locomotion (Multi-level)

Ms. Q lives in a multi-level home. She was not previously provided any PCA assistance for locomotion between levels. Ms. C testified that Ms. Q needed hands-on assistance for stabilization purposes to move between floors to her bedroom post-seizure. However, the seizures could occur anywhere in the home. In addition, Ms. Q is provided four post-seizure single-level locomotions per week. Ms. Q has the burden of proof on this point, because she is asking for a service (multi-level locomotion), which was not previously allowed. Because the seizures can occur anywhere in the home, and she already has been provided with four locomotions per week, she has not met her burden of proof to establish that she requires the additional service.

4. Toileting

The Division had provided Ms. Q with extensive assistance (code of 3) 35 times per week for toileting. It then reduced that assistance to limited assistance (code of 2) four times per week, once after each seizure. Ms. Q did not dispute the amount of times she was provided assistance, but disagreed with the degree of assistance, maintaining that she required extensive assistance (code of 3). Ms. C testified that Ms. Q required weight-bearing assistance with transfers on and off the toilet, and with changing clothes due to incontinence. She is the most knowledgeable person about Ms. Q's care needs. In addition, Ms. Q's primary care physician's nurse confirmed to the Division that Ms. Q's post-seizure recovery time lasted up to an hour after each seizure. Post-seizure incontinence care, including transfers onto and off the toilet, dressing changes, and cleansing,²⁴ would fall well within this limited time window. Accordingly, it is more likely true

²³ Toileting includes "moving to and from the toilet, commode, bedpan, or urinal." 7 AAC 125.030(b)(6).

²⁴ Toileting includes "[h]ow person uses the toilet room (or commode, bedpan, urinal): transfers on/off toilet, cleanses, changes pad, manages ostomy or catheter, adjusts clothes." *See* Ex. E, p. 9.

than not true that Ms. Q requires extensive assistance (code of 3) four times per week for toileting assistance.

5. Dressing

The Division had provided Ms. Q with extensive assistance (code of 3) 14 times per week for dressing. It then eliminated that assistance. A review of the evidence shows the dressing assistance is related to post-seizure incontinence care. That is covered under toileting.²⁵ As a result, the Division has shown that Ms. Q should not receive PCA assistance for dressing, because that is already covered under the toileting assistance category.

6. Bathing

The Division had provided Ms. Q with extensive assistance (code of 3) seven times per week for bathing. It then reduced that assistance to limited assistance (code of 2) three times per week, because Ms. Q takes baths three times per week, and needs help to get in and out of the tub. She showers the other days of the week, where she does not require assistance.²⁶ Ms. Q disagreed, requesting bathing after each seizure. This is related to incontinence, and is covered under toileting, not under bathing.²⁷ As a result, the Division has shown that Ms. Q's PCA assistance for bathing should be reduced to limited assistance three days per week.

IV. Conclusion

The Division's reduction of Ms. Q's PCA services is upheld for the most part. It is modified with regard to transfers, single-level locomotion, and toileting. She is to be provided PCA services in an amount consistent with this decision.

DATED this 10th day of June, 2014.

Signed

Lawrence A. Pederson
Administrative Law Judge

²⁵ *Id.*

²⁶ Ex. E, p. 11.

²⁷ Toileting includes "[h]ow person uses the toilet room (or commode, bedpan, urinal): transfers on/off toilet, cleanses, changes pad, manages ostomy or catheter, adjusts clothes." *See* Ex. E, p. 9.

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 23rd day of June, 2014.

By: *Signed* _____

Name: Lawrence A. Pederson

Title/Agency: Admin. Law Judge, DOA/OAH

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