

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

In the Matter of: )  
 )  
 M X ) OAH No. 14-0622-MDS  
 ) Agency No. 14-FH-0347  
\_\_\_\_\_)

**DECISION**

**I. Introduction**

M X applied for Medicaid personal care assistance (PCA) services. The Division of Senior and Disabilities Services (Division) assessed Mr. X to determine his eligibility for PCA services, and denied his application. Mr. X requested a hearing.

Mr. X' hearing was held on May 27, 2014. Mr. X represented himself. Shelly Boyer-Wood represented the Division.

The evidence demonstrates that Mr. X qualifies for PCA services based upon his need for physical assistance with his Instrumental Activities of Daily Living in the categories of laundry, grocery shopping, and housekeeping. Consequently, the Division's denial of Mr. X's application for PCA services is reversed.

**II. Facts**

Mr. X is a 52 year old man who is diabetic. He has high blood pressure, high cholesterol, and degenerative disc disease, with chronic low back pain from herniated discs and spinal stenosis. He had his right hip replaced on January 20, 2014, and had some complications several days post-surgery.

Mr. X was assessed to determine his eligibility for PCA services on February 5, 2014. The Division's nurse-assessor observed Mr. X turn within bed, transfer to and from the bed, and walk using a walker. For the transfers in and out of the bed, Mr. X' niece provided standby assistance, walking behind him. Mr. X told the assessor that he could feed himself, and use the toilet without assistance. The nurse-assessor described the assistance that Mr. X was receiving as a "contact guard" or standby assistance.<sup>1</sup> Based upon her observations, the nurse-assessor found that Mr. X was capable of performing all of the six measured activities of daily living (ADLs), which are bed mobility, locomotion, eating, transfers, toileting, and bathing, without

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<sup>1</sup> Ex. E, pp. 6 – 7, 9, 11; Moli Atanoa's testimony.

requiring any hands-on physical assistance.<sup>2</sup> The assessment further found that Mr. X could, albeit with difficulty and some setup help, independently perform the Instrumental Activities of Daily Living (IADLs) of light and main meal preparation, light and routine housework, grocery shopping, and laundry.<sup>3</sup> The assessor also spoke to Mr. X' physical therapist and reviewed his physical therapy records, which would have been after the February 5, 2014 assessment visit, prior to completing the Consumer Assessment Tool.<sup>4</sup> The Division then denied Mr. X' application on March 26, 2014.<sup>5</sup>

Mr. X began physical therapy on February 17, 2014. His initial evaluation, from that date, states that he fell three times during the preceding year; that he was able to transfer to and from his bed with minimal assistance; that he was able to transfer independent to and from a chair, albeit with difficulty; and that he used a walker for ambulation, but required supervision/standby assistance.<sup>6</sup> Mr. X' March 10, 2014 physical therapy treatment notes state that he was using a cane to walk.<sup>7</sup> Mr. X came to his March 12, 2014 physical therapy appointment using a four-wheeled walker, because he had left his cane in a shopping cart at Walmart.<sup>8</sup> On March 14, 2014, he was using a cane again.<sup>9</sup> On March 17, 2014, he was using a four-wheel walker again, having fallen on the ice previously.<sup>10</sup> On March 19, 2014, he spent 10 minutes on the treadmill.<sup>11</sup> On March 26, 2014, he walked up and down a short flight of stairs (eight stairs) five times, with "minimal difficulty, using 1 handrail for support."<sup>12</sup> On March 28, 2014, he was able to walk 1060 feet in six minutes. He also did partial lunges on the floor.<sup>13</sup>

Mr. X' physical therapist testified consistent with her physical therapy notes. She stated that Mr. X was able to walk independently, using a walker, at the beginning of his therapy. At the end of his therapy, the end of March 2014, he was functionally independent, and able to also

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<sup>2</sup> Mr. X was coded as independent ("0") with regard to bed mobility and eating. Ex. E, pp. 6, 9. He was coded as needing supervision/standby assistance ("1") with transfers, locomotion, toileting and bathing. Ex. E, pp. 6, 7, 9, 11.

<sup>3</sup> Self-performance code of 1; support code of 2. Ex. E, p. 26.

<sup>4</sup> Mr. X' Consumer Assessment Tool states that the date of Mr. X' assessment visit was February 5, 2014. However, it contains references to "PT records rec'd & discussed with PT M." See Ex. E, pp. 6, 7, 9. Mr. X did not start physical therapy with Ms. M until February 17, 2014. See Ex. G, pp. 11 – 16.

<sup>5</sup> Ex. D.

<sup>6</sup> Ex. G, pp. 12 – 13.

<sup>7</sup> Ex. G, p. 23.

<sup>8</sup> Ex. G, p. 24.

<sup>9</sup> Ex. G, p. 22.

<sup>10</sup> Ex. G, p. 21.

<sup>11</sup> Ex. G, p. 20.

<sup>12</sup> Ex. G, p. 18.

<sup>13</sup> Ex. G, p. 17.

perform household tasks such as meal preparation, although he might not be able to lift items due to his herniated disc. This would affect his ability to engage in household tasks such as laundry.<sup>14</sup>

Mr. X testified as follows:

- He does not require assistance with bed mobility.
- He stays in bed most of the time. He requires weight-bearing assistance with his transfers to and from the bed, at least six times per day (three times for assistance from the bed, three times for assistance returning to bed).
- He requires assistance for toileting approximately five times per day.
- He requires non-weight-bearing assistance with locomotion, essentially just stabilizing support.
- He requires assistance with bathing and dressing.
- He is not physically capable of standing long enough to perform his IADLs. It is just too painful.

### 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 . . . .”<sup>15</sup> 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.”<sup>16</sup>

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.<sup>17</sup> The ADLs measured by the CAT are bed mobility, transfers (non-mechanical), transfers (mechanical), locomotion (in room), locomotion (between levels), locomotion (to

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<sup>14</sup> N M’s testimony.

<sup>15</sup> 7 AAC 125.010(a) [emphasis added].

<sup>16</sup> 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.*

<sup>17</sup> See 7 AAC 125.020(a) and (b).

access apartment or living quarters), dressing, eating, toilet use, personal hygiene, personal hygiene-shampooing, and bathing.<sup>18</sup>

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 assistance<sup>19</sup>); **3** (the person requires extensive assistance<sup>20</sup>); and **4** (the person is totally dependent<sup>21</sup>). 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).<sup>22</sup>

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).<sup>23</sup>

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.<sup>24</sup>

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

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<sup>18</sup> Ex. E, pp. 6 – 11.

<sup>19</sup> 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."

<sup>20</sup> 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."

<sup>21</sup> 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."

<sup>22</sup> Ex. E, p. 18.

<sup>23</sup> Ex. E, p. 18.

<sup>24</sup> Ex. E, p. 26.

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).<sup>25</sup>

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).<sup>26</sup>

If a person is coded as requiring limited or a greater degree of physical assistance (self-performance code of 2, 3, or 4, and a support code of 2, 3, or 4) in any one of the ADLs of transfers, locomotion, eating, toilet use, dressing or bathing, then he or she is eligible for PCA services. Similarly, if a person is coded as requiring some degree of hands-on assistance<sup>27</sup> (self-performance code of 1, 2, or 3, and a support code of 3 or 4) with any one of the IADLs of light or main meal preparation, light housework, routine housework, grocery shopping or laundry, then he or she is eligible for PCA services.<sup>28</sup>

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.<sup>29</sup>

#### *B. Application of the PCA Determination Process*

This case involves an application for benefits. As a result, Mr. X has the burden of proof by a preponderance of the evidence<sup>30</sup> to demonstrate that he is eligible for PCA services.

Mr. X was assessed to determine his eligibility several weeks after he had a total right hip replacement. At that time the nurse-assessor determined that he was capable of performing his ADLs without requiring hands-on physical assistance, other than supervision/standby assistance. The nurse-assessor discussed Mr. X' case with his physical therapist and reviewed at least some

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<sup>25</sup> Ex. E, p. 26.

<sup>26</sup> Ex. E, p. 26.

<sup>27</sup> For the purposes of this discussion, "hands-on" assistance does not include supervision/cueing or set-up assistance (support codes of 1 or 2). See Ex. E, pg. 26.

<sup>28</sup> Ex. E, p. 26.

<sup>29</sup> 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.

<sup>30</sup> 7 AAC 49.135.

of the physical therapy notes prior to completing the CAT. The nurse-assessor's determination is corroborated by the February 17, 2014 physical therapy notes, which show that Mr. X was transferring to and from his bed with minimal assistance and transferring independently to and from a chair, and able to locomote with standby assistance using a walker. Then, as of the end of March 2014, he was able to locomote independently, which included performing partial floor lunges.

In reviewing the evidence in this case, the physical therapist's notes and her testimony were the most persuasive evidence. Although Mr. X was a credible witness who undoubtedly experiences pain and has physical limitations, the physical therapist's observations and conclusions are given more weight due to her expertise in physical functioning and rehabilitation. The physical therapist's notes, as well as her testimony, show it is more likely true than not true that as of the date of the Division's denial, March 26, 2014, Mr. X did not require more than supervision/standby assistance with any of his scored ADLs of bed mobility, locomotion, eating, transfers, toileting, or bathing. Mr. X therefore does not qualify for PCA assistance based upon his ADLs.

The physical therapist's testimony regarding Mr. X' IADLs also showed that he was capable of performing some of his IADLs. However, the PCA's testimony also established that it is more likely true than not true that he requires physical assistance with household tasks which involve lifting, such as laundry. By logical extension, this would also apply to housekeeping and grocery shopping due to the lifting involved in those activities. This is a self-performance code of 2 ("assistance/done with help") and a support code of 3 (physical assistance provided) for the IADLs of laundry, housekeeping, and grocery shopping. The evidence does not show that Mr. X is completely unable to participate in the activity, so he would not qualify as dependent (self-performance code of 3). Because the evidence shows that it is more likely true than not true that Mr. X requires physical hands-on assistance with his IADLs of laundry, housekeeping, and shopping, he is eligible for PCA services. However, the evidence does not show a need for PCA services for his IADLs of meal preparation because the lifting involved in those activities is limited and would consist of setup help (support code 2), which would not entitle him to PCA assistance.

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#### **IV. Conclusion**

The Division's decision denying Mr. X's PCA services is reversed. He should receive PCA services for his IADLs of laundry, grocery shopping, and housework based upon a self-performance code of 2 and a support code of 3 in those activities.

DATED this 27<sup>th</sup> day of June, 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 11<sup>th</sup> day of July, 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.]