

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

In the Matter of:)
)
 L M) OAH No. 14-0760-MDS
) Agency No.
_____)

DECISION

I. Introduction

L M was receiving personal care assistance (PCA) services. The Division of Senior and Disabilities Services (Division) notified her that her PCA services were terminated. Ms. M requested a hearing.

Ms. M's hearing was held on June 24, 2014. Ms. M was represented by her husband, O U, who testified on her behalf. Victoria Cobo represented the Division.

The evidence demonstrates that Ms. M's condition has not improved and that she should continue to receive PCA services. The termination of those services is reversed and the Division is directed to provide Ms. M with PCA services as specified in this decision.

II. Facts

Ms. M is a 41 year old Hmong speaker, who lives with her husband. Her diagnoses are anemia, major depressive disorder with psychotic behavior, and posttraumatic stress disorder. She also has muscle spasms and a reduced range of motion in her left arm.¹

Ms. M was receiving PCA services in the fall of 2013, consisting of extensive assistance (code of three) with transfers 28 times per week, locomotion 28 times per week, locomotion to access medical appointments once per week, toileting 42 times per week, with dressing 14 times per week, and bathing seven times per week. She also received PCA service time of limited assistance with eating 21 times per week, and personal hygiene seven times per week. She was also provided with medical escort time, range of motion, walking/simple exercise, and foot care.² She was provided those services following an assessment visit, which was conducted on June 19, 2012, by Michelle Moore, RN.³ Ms. Moore's observations during that visit, as recorded on the *Consumer Assessment Tool* (CAT), were that Ms. M was very weak and fatigued, had decreased mobility due to pain in her shoulders and back, could not hold up her arms to feed herself, and

¹ Ex. E, p. 3; Ex. F, p. 3.
² Ex. D, p. 10.
³ Ex. F.

needed assistance to walk. In addition, Ms. M’s family reported that she had experienced a cognitive decline. Ms. Moore observed Ms. M needing physical assistance from her PCA to sit up in bed, with transfers, and walking. She was “unsteady, weak, lethargic, [short of breath] and winced in pain.”⁴

Ms. M was reassessed to determine her current PCA benefit needs. Her medical diagnoses remained unchanged. As part of the assessment process, a Division assessor visited her home on October 4, 2013 and recorded his observations on the CAT. As reflected on the CAT,⁵ the assessor concluded as follows:

- Ms. M was independent (self-performance code of 0) with bed mobility, based upon his observation of her slowly scooting and repositioning herself on the couch, and upon her husband’s statement that she could slowly reposition herself in bed.⁶
- Ms. M required supervision (self-performance code of 1) with transfers, based upon his observation of her slowly moving up and down while using a cane, and her husband’s and son’s statement that she could transfer within the home.⁷
- Ms. M required supervision (self-performance code of 1) with locomotion, based upon his observation of her walking while taking slow short steps, and her husband’s and son’s statements that she was able to move “sometimes” while using a cane and leaning on furniture. She similarly required supervision with locomotion to access medical appointments.⁸
- Ms. M required only set up support for dressing (self-performance code 1) based upon her husband’s and son’s statement that she was able to dress and undress herself.⁹
- Ms. M was able to eat independently (self-performance code 0). Although she had a very weak left hand grip, she was able to use her right hand to eat. Additionally, her husband and son stated she could use her right hand to eat.¹⁰
- Ms. M was able to toilet with supervision (self-performance code 1), based upon her husband’s and son’s statement that she was able to toilet on her own.¹¹

⁴ Ex. F, pp. 3- 4, 6 – 7.

⁵ The assessor did not testify.

⁶ Ex. E, p. 6.

⁷ Ex. E, p. 6.

⁸ Ex. E, p. 7.

⁹ Ex. E, p. 8.

¹⁰ Ex. E, p. 9.

¹¹ Ex. E, p. 9.

- Ms. M was able to perform personal hygiene tasks with supervision/setup help (self-performance code 1), based upon the assessor’s observation that she was “well presented” and her husband’s and son’s statement that she was able to perform her own grooming needs with setup assistance.¹²
- Ms. M was able to bathe herself with supervision/setup help (self-performance code 1), based upon her husband’s and son’s statement to that effect.¹³
- Ms. M was capable of doing part of her instrumental activities of daily living (light and main meal preparation, shopping, housework, and laundry) but required physical hands-on assistance with them (self-performance code of 2, support code of 3).¹⁴

The CAT also provided that Ms. M had six medical and 52 counseling appointments per year, and that she did not have any prescriptions for PCA hands-on assistance with range of motion, walking exercise, or foot care.¹⁵ She did have a prescription for range of motion, walking exercise, and foot care at the time of the October 4, 2013 assessment visit. That prescription was dated March 12, 2013 and was only for one year, which meant it expired on March 11, 2014.¹⁶

The Division sent Ms. M notice on March 26, 2014 that her PCA services were terminated. That notice explained that it was based upon her October 4, 2013 assessment visit. It also stated she did not have any current prescriptions for PCA hands-on assistance with range of motion, walking exercise, or foot care. The notice also explained that she was not entitled to any assistance with her instrumental activities of daily living because she was married and living with her husband.¹⁷

Ms. M did not disagree with the assessment’s evaluation of her body mobility and eating, or its finding that she did not require PCA assistance with documentation and medical escort, nor with its finding that she was not eligible for assistance with her IADLs. She, however, disagreed with the Division’s assessment of her needs with regard to transfers, locomotion, locomotion to access medical appointments, dressing, toilet use, personal hygiene, bathing, and prescribed

¹² Ex. E, p. 10.
¹³ Ex. E, p. 11.
¹⁴ Ex. E, p. 26.
¹⁵ Ex. E, p. 5.
¹⁶ Ex. 1, p. 3.
¹⁷ Ex. D.

range of motion, walking exercise, and foot care.¹⁸ O U, who is her husband and who holds her power of attorney, was present at the October 2013 assessment visit. He disputed the information allegedly provided by him and his son to the assessor and provided the following information:

- During previous assessments, the assessor would accept Ms. M’s word that she was not able to perform an activity. The assessor who conducted the October 2013 assessment did not: he insisted that Ms. M perform an activity without assistance. This resulted in Ms. M almost falling when trying to transfer unassisted– her son had to run to her and hold her up to keep her from falling.
- Ms. M requires weight-bearing assistance (self-performance code 3) with transfers five times daily. She has to be pulled up and supported by her PCA.
- Ms. M needs weight-bearing assistance (self-performance code 3) with locomotion five times daily. She uses a cane and puts her hand on her PCA’s shoulder and her PCA’s arm is under her arm. They have to go slowly; he has to hold her up; she would fall without the support.
- Ms. M requires weight-bearing support (self-performance code 3) for toileting six times daily. She has to be lowered down onto the toilet.
- Ms. M requires assistance (self-performance code 3) with bathing once daily. She needs to be transferred in and out of the tub, transferred onto the bath chair, and dried off after bathing.
- Ms. M requires assistance (self-performance code 3) dressing. Her arms have to be threaded through the sleeves, and her legs have to be picked up and put into pants. Her feet have to be lifted and put into shoes.
- Ms. M requires assistance (self-performance code 2) with personal hygiene. Her hands are very weak. She is not able brush her teeth or wash her face.¹⁹

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

¹⁸ Ex. 1, pp. 1 – 2; O U’s testimony.

¹⁹ Ex. 1, pp. 1 – 2; O U’s testimony.

of daily living (IADL), and other services based on the *physical condition* of the recipient . . .
.”²⁰ 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.”²¹

The Division uses the Consumer Assessment Tool (CAT) to determine the level of physical assistance that an applicant or recipient requires in order to perform their ADLs and their IADLs.²² 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.²³

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 assistance²⁴); **3** (the person requires extensive assistance²⁵); and **4** (the person is totally dependent²⁶). 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).²⁷

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

²⁰ 7 AAC 125.010(a) [emphasis added].

²¹ 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.*

²² See 7 AAC 125.020(a) and (b).

²³ Ex. E, pp. 6 – 11.

²⁴ 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.”

²⁵ 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.”

²⁶ 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.”

²⁷ Ex. E, p. 18.

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).²⁸

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.²⁹

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).³⁰

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).³¹

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 assistance³² (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.³³

²⁸ Ex. E, p. 18.

²⁹ Ex. E, p. 26.

³⁰ Ex. E, p. 26.

³¹ Ex. E, p. 26.

³² 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.

³³ Ex. E, p. 31.

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.³⁴

B. Application of the PCA Determination Process

This case involves the termination of benefits. As a result, the Division has the burden of proof by a preponderance of the evidence.³⁵ However, Ms. M not only opposes the termination, she requests an increase in the number of times she receives assistance with transfers and locomotion from four times daily to five times daily. On the areas where a party is requesting a change, that party bears the burden of proof, by a preponderance of the evidence.³⁶ In assessing the evidence, the following is taken into account: first, the Division's nurse-assessor did not testify; second, Ms. M's witness, Mr. U, was present at the assessment and, because he lives with her, is aware of her day to day care needs; third, Ms. M's diagnoses did not change between her 2012 assessment and her 2013 assessment.

1. Transfers

The Division had provided Ms. M with extensive assistance (self-performance code 3) 28 times per week for transfers. It then found that Ms. M did not require either limited or extensive assistance (self-performance codes of 2 or 3) with transfers. Mr. U's testimony established that the assessor made Ms. M transfer on her own, which caused her to start to fall, and required intervention from her son to prevent falling. As a result, Mr. U's testimony showed that Ms. M's ability to transfer had not improved since her 2012 assessment. There was also no evidence rebutting Mr. U's testimony that she required transfer assistance five times daily. Accordingly, it is more likely true than not true that Ms. M continues to require extensive assistance (self-performance code 3) for transfers. The frequency, per Mr. U's testimony, is five times daily, which would result in 35 transfers per week.

2. Locomotion (Single Level)

The Division had provided Ms. M with extensive assistance (self-performance code 3) 28 times per week for single-level locomotion. It then found that Ms. M did not require either

³⁴ 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.

³⁵ 7 AAC 49.135.

³⁶ 7 AAC 49.135.

limited or extensive assistance (self-performance codes of 2 or 3) with locomotion. Mr. U's testimony established that Ms. M continues to require weight-bearing support with locomotion. As a result, Mr. U's testimony showed that Ms. M's ability to locomote has not improved since her 2012 assessment. There was also no evidence rebutting Mr. U's testimony that she required transfer assistance five times daily. Accordingly, it is more likely true than not true that Ms. M continues to require extensive assistance (self-performance code 3) for locomotion. The frequency, per Mr. U's testimony, is five times daily, which would result in 35 locomotions per week.

3. Locomotion - Medical

The Division had provided Ms. M with extensive assistance (self-performance code 3) once per week for locomotion to access medical appointments. It then found that Ms. M did not require either limited or extensive assistance (self-performance codes of 2 or 3) with locomotion to access her medical appointments. As found above, Ms. M continues to require extensive assistance (self-performance code 3) with locomotion. This would also extend to locomotion to access medical appointments. Ms. M has weekly counseling sessions and other medical appointments six times per year. She should therefore receive medical locomotion assistance of once per week.

4. Toileting

The Division had provided Ms. M with extensive assistance (self-performance code 3) 42 times per week with toileting. It then found that Ms. M did not require either limited or extensive assistance (self-performance codes of 2 or 3) with toileting. Mr. U's testimony established that Ms. M continues to require weight-bearing support with toileting. Accordingly, it is more likely true than not true that Ms. M continues to require extensive assistance (self-performance code 3) with toileting 42 times per week.

5. Bathing

The Division had provided Ms. M with extensive assistance (self-performance code 3) seven times per week for bathing. It then found that Ms. M did not require either limited or extensive assistance (self-performance codes of 2 or 3) with bathing. Mr. U's testimony established that Ms. M continues to require weight-bearing support with bathing. As a result, Mr. U's testimony showed that Ms. M's ability to bathe has not improved since her 2012

assessment. Accordingly, it is more likely true than not true that Ms. M continues to require extensive assistance (self-performance code 3) with bathing seven times per week.

6. Dressing

The Division had provided Ms. M with extensive assistance (self-performance code 3) 14 times per week with dressing. It then found that Ms. M did not require either limited or extensive assistance (self-performance codes of 2 or 3) with dressing. Mr. U's testimony established that Ms. M continues to require weight-bearing support for dressing. It is therefore more likely true than not true that Ms. M continues to require extensive assistance (self-performance code 3) with dressing 14 times weekly.

7. Personal Hygiene

The Division had provided Ms. M with limited assistance (self-performance code 2) seven times per week with personal hygiene. It then found that Ms. M did not require either limited or extensive assistance (self-performance codes of 2 or 3) with personal hygiene. Mr. U's testimony established that Ms. M continues to require limited assistance with personal hygiene. Accordingly, it is more likely true than not true that Ms. M continues to require limited assistance (self-performance code 2) with personal hygiene seven times weekly.

C. Eligibility and Benefit Level

As found above, Ms. M continues to require extensive assistance with transfers, locomotion, toileting, and bathing. In order to qualify for PCA benefits, she need only require either limited or extensive assistance with one of those. She therefore remains eligible for PCA assistance.

Ms. M, as discussed above, requires PCA assistance with the following:

Transfers:	extensive assistance (self-performance code 3) 35 times weekly
Locomotion:	extensive assistance (self-performance code 3) 35 times weekly
Locomotion – medical:	extensive assistance (self-performance code 3) once weekly
Toileting;	extensive assistance (self-performance code 3) 42 times weekly
Bathing:	extensive assistance (self-performance code 3) seven times weekly
Dressing:	extensive assistance (self-performance code 3) 14 times weekly
Personal Hygiene:	limited assistance (self-performance code 2) seven times weekly

Ms. M, however, no longer has a prescription for PCA physical assistance with range of motion, walking exercise, or foot care. Although the October 2013 CAT erroneously stated that

she did not have a prescription for those tasks, when she actually did, that prescription expired by its own terms several weeks before the Division notified Ms. M that her PCA benefits would terminate. Those tasks require a prescription.³⁷ Because she does not have a current prescription for those services, she can no longer receive them. The elimination of those services is upheld.

IV. Conclusion

The Division's termination of Ms. M's PCA services is reversed. She is to be provided PCA services in an amount consistent with this decision.

DATED this 11th day of July, 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 25th day of July, 2014.

By: *Signed*

Name: Lawrence A. Pederson
Title: Administrative Law Judge

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

³⁷ 7 AAC 125.030(d)(5) and (e)(4).