

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

In the Matter of:)
)
K T-Q) OAH No. 14-0798-MDS
) Agency No.
_____)

DECISION

I. Introduction

K T-Q was receiving personal care assistance (PCA) services. The Division of Senior and Disabilities Services (Division) notified him that his PCA services were reduced. Mr. T-Q requested a hearing.

Mr. T-Q's hearing was held on June 24, 2014. Mr. T-Q represented himself. Victoria Cobo represented the Division.

The evidence demonstrates that Mr. T-Q's PCA services should be reduced, but not to the extent sought by the Division. The Division's reduction of Mr. T-Q's PCA services is therefore affirmed in part and reversed in part. The Division is directed to provide Mr. T-Q with PCA services as specified in this decision.

II. Facts

Mr. T-Q is 60 years old. His primary language is Spanish. His diagnoses include diabetes, diabetic polyneuropathy, chronic pain, cerebrovascular disease, coronary atherosclerosis, degenerative disc disease, gout, high cholesterol, prostate disease, and high blood pressure. He wears a back brace.¹

Mr. T-Q was receiving 35.75 hours of PCA services in 2013, consisting of extensive assistance (self-performance code 3) with transfers 63 times per week, dressing 14 times per week, toileting 70 times per week, and bathing 7 times per week. He was receiving limited assistance (self-performance code 2) with bed mobility 14 times per week, locomotion to access medical appointments twice weekly, and personal hygiene 9 times per week. He was also provided with time for medication assistance, taking vital signs and glucose levels, medical documentation, medical escort, and range of motion exercises. In addition, he was receiving full assistance (dependent – self-performance code 3, support code 4) for light meal preparation,

¹ Ex. E, pp. 3, 5, 8.

main meal preparation, light housework, and laundry. He was receiving partial assistance (self-performance code 2, support code 3) for shopping.²

Mr. T-Q was reassessed to determine his current PCA benefit needs. As part of the assessment process, a Division assessor visited his home on December 2, 2013 and recorded her observations on the CAT. As reflected on the CAT,³ the assessor concluded as follows:

- Mr. T-Q was independent (self-performance code 0) with bed mobility, based upon observation of him shifting his position while seated in his electric recliner lift chair.⁴
- Mr. T-Q was independent (self-performance code 0) with transfers. Although Mr. T-Q told the assessor that he used PCA help to get up from his chair, Mr. T-Q was able to get up from his chair by raising the lift chair, rocking his weight forward, and pushing down on his walker.⁵
- Mr. T-Q was independent (self-performance code 0) with locomotion, based upon her observation of him walking using his 4-wheeled walker.⁶
- Mr. T-Q required limited assistance (self-performance code 2) with dressing once per day based upon his statement that he could button and zip clothing, but that bending forward to put on pants and shoes was painful for him. However, because he could slip out of his pants and shoes, the assessor only provided dressing assistance once daily.⁷
- Mr. T-Q was able to toilet independently (self-performance code 0). Although he informed the assessor that he had to be occasionally helped off the toilet due to pain, she coded him as independent because he used the bathroom without assistance during the assessment visit.⁸
- Mr. T-Q was able to perform personal hygiene tasks with supervision/setup help (self-performance code 1) based upon the assessor's observation that he had a strong grip, was able to hold pill bottles, and could hold onto his walker with both hands. Mr. Mr.

² Ex. D, pp. 1, 10.

³ The assessor did not testify.

⁴ Ex. E, p. 6.

⁵ Ex. E, p. 6.

⁶ Ex. E, p. 7.

⁷ Ex. E, p. 8.

⁸ Ex. E, p. 9.

T-Q told the assessor that he could brush his own teeth but that someone else shaved him.⁹

- Mr. T-Q was able to bathe himself with limited assistance (self-performance code 2) because he needs help transferring in and out of the tub. He was provided bathing assistance 4 times per week based upon his report that he could wash himself, with the exception of his back, and that he showered 3 - 4 times per week.¹⁰
- Mr. T-Q did not require hands-on assistance with preparing light meals (self-performance code 1, support code 2). He required some minimal hands-on assistance with main meal preparation, shopping, and laundry (self-performance code 1, support code 3). He was dependent for assistance for housework (self-performance code 3, support code 3).¹¹

The CAT also provided that Mr. T-Q had a total of 16 medical/dental/vision appointments per year, for which he did not require any medical escort time, and that he did not have any prescriptions for PCA hands-on assistance with range of motion, walking exercise, or foot care.¹²

The Division sent Mr. T-Q notice on May 7, 2014 that his PCA services were reduced to 5.5 hours based upon his December 2, 2013 assessment visit. The notice stated he did not have any current prescriptions documentation, or for PCA hands-on assistance with range of motion, walking exercise, or foot care. His time for range of motion exercises was eliminated. He would not receive any assistance with medication or taking his vital signs and glucose levels because his new personal hygiene score was a supervision/setup help only score (self-performance code 1). He would no longer receive assistance with body mobility, transfers, locomotion to access medical appointments, personal hygiene and light meal preparation, and that his assistance for dressing, bathing, main meal preparation, shopping, and laundry would be reduced.¹³

Mr. T-Q disagreed with the Division's assessment of his needs with regard to bed mobility, transfers, toileting, bathing, locomotion to access medical appointments, medical escort, range of motion exercises, main meals, housekeeping, and laundry, as follows:

⁹ Ex. E, p. 10.
¹⁰ Ex. E, p. 11.
¹¹ Ex. E, p. 26.
¹² Ex. E, p. 5.
¹³ Ex. D.

- He continues to require assistance with bed mobility. He experiences cramps and he has to be pulled up to a sitting position 2 to 3 times nightly.
- He requires assistance with transfers, which consists of pulled up, 4 to 5 times daily, to get up from his chair or the couch. He does not need assistance with sitting down.
- He used the bathroom for bowel movements approximately 3 times daily, where he has to be pulled up from sitting on the toilet. This consists of being pulled up from the toilet. For urination, he uses a bedside urinal, which he cannot empty; it has to be emptied by someone else 4 to 5 times daily due to the smell.
- He showers 4 times weekly. He has a bathtub and needs help transferring in and out of the tub, and help sitting down on the shower chair. He can generally wash himself, but sometimes needs help washing his back and knees.
- He needs help locomoting to medical appointments and needs someone with him at appointments to translate, although the doctor will use a telephone translator.
- He continues to do range of motion exercises.
- He can prepare light meals. But he cannot stand long enough to cook to prepare a main meal. He goes shopping with the family, using his walker. He cannot help with housekeeping. He does not do laundry, but can sort dirty clothes and fold clothes. He is occasionally incontinent.

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 . . .

.”¹⁴ 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.”¹⁵

¹⁴ 7 AAC 125.010(a) [emphasis added].

¹⁵ 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.*

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.¹⁶ 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.¹⁷

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 assistance¹⁸); **3** (the person requires extensive assistance¹⁹); and **4** (the person is totally dependent²⁰). 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).²¹

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).²²

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.²³

¹⁶ See 7 AAC 125.020(a) and (b).

¹⁷ Ex. E, pp. 6 – 11.

¹⁸ 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.”

¹⁹ 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.”

²⁰ 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.”

²¹ Ex. E, p. 18.

²² Ex. E, p. 18.

²³ Ex. E, p. 26.

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).²⁴

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).²⁵

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 he would receive 22.5 minutes of PCA service time every day he or he was bathed.²⁶

B. Application of the PCA Determination Process

The Division has the burden of proof by a preponderance of the evidence on benefits it seeks to decrease; Mr. T-Q has the burden of proof on benefits he seeks to increase.²⁷ In assessing the evidence, the following is taken into account: first, the Division's assessor did not testify; second, Mr. T-Q was a credible witness. This credibility assessment is based upon his consistent testimony, which did not entirely dispute and even supported the reduction of some of his PCA services. Further, he has a number of diagnosed medical conditions that would limit his physical functioning: polyneuropathy, gout, degenerative disc disease, and chronic pain. Accordingly, his testimony is given more weight than the unsworn assertions and conclusions of the assessor, which are contained on the CAT.

²⁴ Ex. E, p. 26.

²⁵ Ex. E, p. 26.

²⁶ 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.

²⁷ 7 AAC 49.135.

1. Bed Mobility

The Division had provided Mr. T-Q with limited assistance (self-performance code 2) 14 times per week for bed mobility. It then found that Mr. T-Q did not require either limited or extensive assistance (self-performance codes of 2 or 3) with bed mobility and eliminated his PCA assistance with that task. Mr. T-Q opposes this decrease and instead testified that he has to be pulled up to a sitting position 2 to 3 times per night while in bed. This is weight-bearing assistance, which is classified as extensive assistance (self-performance code 3). Mr. T-Q is therefore requesting an increase in benefits.

Mr. T-Q consistently testified that he needed weight-bearing assistance (being pulled up) in bed mobility, transfers, and toileting. He therefore established that it is more likely true than not true that he not only continues to require bed mobility assistance twice per night, but that it is extensive assistance (self-performance code 3). However, because he can locomote by using his walker, as demonstrated by his testimony that he can go shopping using his walker, he is ambulatory. The PCA program's regulations do not allow a person who is ambulatory to receive bed mobility assistance.²⁸ The Division's determination that Mr. T-Q should no longer receive PCA assistance with this task was correct.

2. Transfers

The Division had provided Mr. T-Q with extensive assistance (self-performance code 3) 63 times per week for transfers. It then found that Mr. T-Q did not require either limited or extensive assistance (self-performance codes of 2 or 3) with transfers. Mr. T-Q's credible testimony was that he required weight-bearing assistance (being pulled up) for transfers 4 to 5 times daily, but that he did not need assistance for the sitting down portion of transfers. Accordingly, it is more likely true than not true that Mr. T-Q continues to require extensive assistance (self-performance code 3) for transfers. However, the frequency is 4 times daily, for 28 transfers per week.

3. Locomotion - Medical

The Division had provided Mr. T-Q with limited assistance (self-performance code 2) once per week for locomotion to access medical appointments. It then found that Mr. T-Q did not require either limited or extensive assistance (self-performance codes of 2 or 3) with locomotion to access his medical appointments. Mr. T-Q, however, testified that he was able to

²⁸ 7 AAC 125.030(b)(1)(A).

go shopping using his walker. Based upon that testimony, he does not require help with locomotion. It is therefore more likely true than not true that he no longer requires medical locomotion assistance of once per week.

4. Toileting

The Division had provided Mr. T-Q with extensive assistance (self-performance code 3) 70 times per week with toileting. It then found that Mr. T-Q did not require either limited or extensive assistance (self-performance codes of 2 or 3) with toileting. Mr. T-Q, however, testified that he has to use the bathroom 3 times per day for bowel movements, and has to be pulled up from the toilet. This would be extensive assistance because it is weight-bearing. Further, Mr. T-Q used a bedside urinal for urination, which someone else has to empty for him 4 to 5 times daily, due to the smell. This would increase the frequency to 7 times daily (3 for using the bathroom and 4 for emptying the urinal). Accordingly, it is more likely true than not true that Mr. T-Q continues to require extensive assistance (self-performance code 3) with toileting. The frequency would be 7 times daily, for assistance 49 times per week.

5. Bathing

The Division had provided Mr. T-Q with extensive assistance (self-performance code 3) seven times per week for bathing. It then found that Mr. T-Q required limited assistance (self-performance code 2) 4 times per week. Mr. T-Q's testimony established that he continues to require weight-bearing support with bathing because he needs help transferring in and out of the tub, and his testimony with regard to transfers and toileting that he needs help getting up from a seated position. He, however, agreed that he only showers 4 times per week. Accordingly, it is more likely true than not true that Mr. T-Q continues to require extensive assistance (self-performance code 3) with bathing; however the frequency should only be 4 times weekly.

6. Medical Escort

The Division eliminated PCA assistance for medical escort for Mr. T-Q. In order for a person to be eligible for medical escort assistance, the regulation provides that a person must require (1) someone to travel with him to and from his appointments and (2) someone to confer with the medical staff during the appointment.²⁹ While Mr. T-Q requires someone to travel with him, he does not require someone to confer with the medical staff during his appointment. He is Spanish speaking, but he testified his doctor uses a telephonic translator. The evidence shows

²⁹ 7 AAC 125.030(d)(9).

that it is more likely true than not true that he does not meet the regulatory requirements for medical escort.

7. Range of Motion Exercises

Mr. T-Q had previously received PCA assistance with range of motion exercises. The Division eliminated that assistance because he no longer had a prescription. While Mr. T-Q credibly testified that he continues to do those exercises, the PCA program only allows assistance with them if they are prescribed.³⁰ The Division established that it is more likely true than not true that Mr. T-Q no longer has a current prescription for range of motion exercises. The Division's elimination of PCA assistance for those exercises is therefore upheld.

8. Main Meal Preparation, Laundry, and Light Housework

The Division reduced the amount of assistance Mr. T-Q receives with main meal preparation and laundry from dependence (self-performance code 3, support code 4) to limited assistance (independent with difficulty - self-performance code 1, requiring physical assistance – support code 3). Mr. T-Q's testimony established that he was not independent with difficulty with regard to these tasks, but it did not establish he was unable to participate in them entirely. He can participate to some degree with main meal preparation that does not involve actual standing and cooking, such as the actual prep work that can be done while sitting, and can participate in laundry by sorting and folding clothes. However, he would need someone to perform the portion of those tasks that involve standing and lifting. Accordingly, it is more likely true than not true that he requires physical hands-on assistance with both of these tasks (self-performance code 2, support code 3). The frequency for main meal preparation is unchanged, 7 times per week. Although Mr. T-Q is occasionally incontinent, he testified that it was not a common occurrence. As a result, he should only receive assistance with laundry once weekly,

Mr. T-Q also disputed the coding he was provided on light housework (self-performance code 3, support code 3), which was a reduction from the previous coding of full dependence (self-performance code 3, support code 4). However, this factual question does not require resolution because the time allotted Mr. T-Q under either coding is 90 minutes, the maximum allowable for this activity.³¹

³⁰ 7 AAC 125.030(e)(2).

³¹ Ex. D, p. 10; *Personal Care Assistance Service Level*, Ex. B, p. 34.

C. *Benefit Level*

The Division's provision for Mr. T-Q's PCA service level should be changed, as discussed above, as follows:

| | |
|------------|--|
| Transfers: | extensive assistance (self-performance code 3) 28 times weekly |
| Toileting; | extensive assistance (self-performance code 3) 49 times weekly |
| Bathing: | extensive assistance (self-performance code 3) 4 times weekly |
| Main Meal: | self-performance code 2, support code 3 - 7 times weekly |
| Laundry: | self-performance code 2, support code 3 - once weekly |

The other service times determined by the Division remain unchanged.

IV. Conclusion

The Division's reduction of Mr. T-Q's PCA services is upheld in part and reversed in part. He is to be provided PCA services in an amount consistent with this decision.

DATED this 21st 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 30th 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.]