

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

In the Matter of:)
)
 K B) OAH No. 14-0799-MDS
) Agency No.
_____)

DECISION

I. Introduction

K B was receiving 28 hours weekly 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 12.75 hours weekly. Ms. B requested a hearing.

Ms. B's hearing was held on July 23, 2014. Ms. B represented herself. She was assisted by U U of No Name Agency. Angela Ybarra represented the Division.

The evidence demonstrates that Ms. B's PCA service time for locomotion should be eliminated, and her PCA service time for light meal preparation, main meal preparation, housework, and laundry should be reduced. However, her service time for transfers, toileting, dressing, and shopping should not be reduced. She should also receive PCA service time for medical escort. The Division's provision for Ms. B's PCA services is therefore affirmed in part and reversed in part, as discussed below.

II. Facts

Ms. B is 46 years old. Her diagnoses include chronic pain, rheumatoid arthritis, congestive heart failure, posttraumatic stress disorder, anxiety, debility, deconditioning, sleep apnea, and hypoventilation.¹ She has a history of pelvic instability and has repaired and stable right sacroiliac fractures. She continues to experience high levels of pelvic pain and takes high dosages of medication for her chronic pelvic and back pain.² She uses bilateral forearm crutches or a four-wheeled walker to locomote within her home. Outside her home, she uses a wheelchair for locomotion. She lives with her long-term partner, S N.³

Ms. B was receiving PCA services in the fall of 2013, consisting of extensive assistance (code of 3) with transfers 28 times weekly, limited assistance (code of 2) with locomotion within the home 28 times weekly, limited assistance with multi-level locomotion 14 times weekly,

¹ Ex. E, pp. 1, 3; Ex. 2, p. 6.

² Ex. 2, pp. 10, 12 - 13.

³ S N's testimony.

extensive assistance with locomotion to access medical appointments twice weekly, extensive assistance with dressing 14 times weekly, extensive assistance with toileting 28 times weekly, limited assistance with personal hygiene 7 times weekly, assistance with shampooing her hair, and extensive assistance with bathing 7 times weekly. She also received PCA service time for medication assistance and medical documentation. She received PCA service time, at a total dependence level (self-performance code 3), for her Instrumental Activities of Daily Living (IADLs) of light meal preparation, main meal preparation, shopping, housework, and laundry.⁴

Ms. B was reassessed to determine her current PCA benefit needs. As part of the assessment process, a Division nurse assessor visited her home on November 12, 2013 and recorded her observations on the *Consumer Assessment Tool* (CAT). That reassessment resulted in a reduction in Ms. B's benefits from 28 hours weekly to 12.75 hours weekly. Ms. B disagreed with the time provided for the following tasks: transfers, locomotion within the home, toileting, dressing, medical escort, and her IADLs of light meal preparation, main meal preparation, light housework, shopping, and laundry.

A. *Transfers*

Ms. B was receiving extensive assistance with transfers. The Division eliminated transfer assistance entirely. The nurse assessor stated in the assessment that Ms. B told her that she does not usually need assistance with transfers, but that she needed help at the time of the assessment because she was sore due to a recent fall. The nurse assessor further reported that Ms. B's domestic partner said she transferred at night without assistance. The nurse assessor witnessed Ms. B receiving contact guard assistance and assistance using her crutches.⁵

Ms. B's doctor provided a written statement, dated June 23, 2014, that she required "complete assistance [with transfers] secondary to pain and deconditioning."⁶ Ms. B testified that she has weak legs, that her PCA pulls her up from the bed when transferring, that her PCA lifts her up from a chair, and that she holds onto the PCA who sets her down in the chair. She stated that Mr. N helps her transfer when her PCA is not there.⁷ Although Ms. B testified she transferred 10 times daily, she only requested help with transfers 6 times daily, 7 days per week.⁸

⁴ Ex. D, p. 10.

⁵ Ex. E, p. 6.

⁶ Ex. 2, p. 2.

⁷ Ms. B's testimony.

⁸ Ms. B's testimony; Ex. 1, p. 1.

B. Locomotion

The Division eliminated hands-on physical locomotion assistance within the home. The nurse assessor concluded that Ms. B was able to locomote independently. This conclusion was based upon the assessor seeing Ms. B walk using bilateral forearm crutches and a walker.⁹

Ms. B's doctor provided a written statement, dated June 23, 2014, that she uses a walker and crutches due to weakness, and that she needs her PCA around at all times.¹⁰ Ms. B has a physical therapy evaluation from September 2013, which provides under the "objective" category, that she is "[a]ble to ambulate approximately 10 feet with [four wheeled walker] with excessive right trunk lean and trunk flexion followed by wheelchair."¹¹ That same evaluation stated that Ms. B had a "very low pain tolerance to activity" and that she experienced a great deal of difficulty and pain "to sit in upright position, sit to stand, and walking."¹²

Ms. B testified that she needs help walking. She is able to bear her weight, but she needs someone to hold onto her for stability purposes.¹³ Mr. N said that she falls once or twice a month.¹⁴ She requested help with locomotion 6 times daily, 7 days per week.

C. Toileting

The Division reclassified Ms. B's need for toileting assistance from extensive assistance to limited assistance. The reduction was based upon the nurse assessor's observation of Ms. B's transfer with "contact guard assist" with sitting down and "limited" physical assistance with getting up. The nurse assessor concluded that Ms. B had the necessary range of motion for cleansing.¹⁵

Ms. B's doctor provided a written statement, dated June 23, 2014, that she requires complete assistance with toileting and that she is unable to sit down or get up without help.¹⁶ Ms. B, however, testified that she can use the handicapped bars to get on and off the toilet without help. She further testified that her PCA helps clean her "bottom" after toilet use, and

⁹ Ex. E, p. 7.

¹⁰ Ex. 2, p. 2.

¹¹ Ex. 2, p. 14.

¹² Ex. 2, p. 14.

¹³ Ms. B's testimony.

¹⁴ Mr. N's testimony.

¹⁵ Ex. E, p. 9.

¹⁶ Ex. 2, p. 3.

that her PCA has to help her dress after toilet use because she cannot reach down to pull up her clothing.¹⁷ She requested help with toileting 5 times daily, 7 days per week.

D. Dressing

The Division reclassified Ms. B's need for assistance with dressing from extensive to limited. The reduction was based upon Ms. B's statement that she can take her upper clothing off, but that she needs help with pulling shirts over her head and putting pants on, and that she always required help with her shoes and socks. The nurse assessor observed Ms. B only being able to reach "just below" her knees and that she needed assistance with pants, shoes, and socks.¹⁸ Ms. B's doctor provided a written statement, dated June 23, 2014, that she was unable to dress unassisted due to being very weak, deconditioned, and experiencing a great deal of pain.¹⁹ Ms. B testified that she can dress her top half, but she cannot dress her bottom half, and her PCA has to take care of her shoes and socks.

E. Instrumental Activities of Daily Living

The Division reduced Ms. B's assistance for light meal preparation from dependent (self-performance code 3) to independent with difficulty with physical assistance (self-performance code 1, support code 3), and reduced her assistance for main meal preparation, shopping, laundry, and housework from dependent (self-performance code 3) to requiring assistance (self-performance code 2).

Ms. B disagreed with all of these reductions. She testified, that due to her pain level and her inability to stand for any length of time, she could not perform any of these tasks, and that they were done for her.²⁰

With regard to meal preparation, Ms. B testified that she was occasionally able to make a sandwich and put a bowl of soup in the microwave. With regard to shopping, she stated her pain levels make it impossible to go shopping, and that she takes so many pain medications that she could not safely operate a motorized cart. With regard to laundry, she stated that she could fold clothes a "little" if she was seated. She stated she could not perform any housework.

¹⁷ Ms. B's testimony.

¹⁸ Ex. E, p. 8.

¹⁹ Ex. 2, p. 3.

²⁰ Ms. B's testimony.

Ms. B's doctor's June 23, 2014 statement provided that she was not able to perform any of her IADLs independently due to her chronic pain, her pain medication, and her weakness and deconditioning.²¹

F. Medical Escort

Ms. B was not a previous recipient of PCA assistance time for medical escort. She was not provided those benefits after her new assessment. She has monthly medical appointments and weekly counseling appointments.²² Ms. B is taking a great deal of pain medications and is quite forgetful.²³ During the hearing, Ms. B could not remember the name of her primary care physician. Her doctor's June 23, 2014 statement provided that she was very forgetful.²⁴

Ms. B cannot drive. Ms. B is always accompanied by either her PCA or Mr. N during her medical appointments. Ms. B estimated that she spends an hour per medical appointment with her physician. Mr. N sometimes goes into her counseling appointments.²⁵ Ms. B requested that she receive medical escort assistance consisting of 45 minutes apiece for each medical appointment and each counseling appointment.²⁶

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 (ADLs), *physical assistance* with instrumental activities of daily living (IADLs), and other services based on the *physical condition* of the recipient”²⁷ 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.”²⁸

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

²¹ Ex. 2, p. 4.

²² Ex. E, p. 5.

²³ Ms. B's testimony.

²⁴ Ex. 2, p. 3.

²⁵ Ms. B's testimony.

²⁶ Ex. 1, p. 5.

²⁷ 7 AAC 125.010(a) [emphasis added].

²⁸ 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.*

their IADLs.²⁹ 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.³⁰

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 assistance³¹); **3** (the person requires extensive assistance³²); and **4** (the person is totally dependent³³). 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).³⁴

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).³⁵

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.³⁶

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

²⁹ See 7 AAC 125.020(a) and (b).

³⁰ Ex. E, pp. 6 – 11.

³¹ 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."

³² 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."

³³ 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."

³⁴ Ex. E, p. 18.

³⁵ Ex. E, p. 18.

³⁶ Ex. E, p. 26.

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).³⁷

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).³⁸

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.³⁹

B. Application of the PCA Determination Process

This case involves both a reduction of benefits by the Division and an increase request from Ms. B. The Division is seeking to eliminate assistance for transfers and locomotion, and reduce benefits for toileting, dressing, and all of her IADLs. Ms. B not only opposes the reduction/elimination of these tasks, she is requesting that she receive assistance for medical escort, a service which was not previously provided. On the areas where a party is requesting a change, that party bears the burden of proof, by a preponderance of the evidence.⁴⁰

1. Transfers

The Division had provided Ms. B with extensive assistance (code of 3) 28 times weekly for transfers. The Division eliminated that assistance in its entirety. Ms. B requested extensive assistance for transfers 42 times weekly (6 times daily). Ms. B's testimony was that she required weight-bearing assistance for transfers: her PCA pulled her up from her bed, lifted her up from a chair, and set her down on a chair. All of these acts require the PCA to bear her weight. Ms. B's doctor stated that she required complete assistance due to pain and deconditioning. The evidence

³⁷ Ex. E, p. 26.

³⁸ Ex. E, p. 26.

³⁹ 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.

⁴⁰ 7 AAC 49.135.

shows that it is more likely true than not true that Ms. B continues to require weight-bearing assistance for transfers. The Division has therefore not met its burden of proof. The frequency increase from 28 times weekly (4 times daily) to 42 times weekly (6 times daily) is not unreasonable, given Ms. B's testimony that she transfers 10 times per day. Accordingly, Ms. B is to receive extensive assistance for transfers 42 times weekly.

2. Locomotion

The Division previously provided Ms. B with limited assistance with locomotion 28 times weekly. Upon reassessment, it eliminated that assistance in its entirety. Ms. B requested that she continue to receive limited assistance, and that the frequency be increased to 42 times weekly. The evidence shows that Ms. B is able to locomote using her bilateral forearm crutches or a walker within her home. The physical therapy notes show that she is able to walk without assistance. Ms. B's doctor's statement does not, unlike the category of transfers, state she needs complete assistance or even hands-on assistance, merely that she needs her PCA around at all times. Although Ms. B is subject to falls, the weight of the evidence shows that it is more likely true than not true that Ms. B does not require hands-on physical assistance for locomotion, merely standby assistance in the event she begins to fall. Standby assistance does not qualify a person for PCA assistance with locomotion. The Division has met its burden of proof and shown that Ms. B no longer qualifies for locomotion assistance.

3. Toileting

Ms. B had received extensive assistance with toileting 28 times per week. After her reassessment, the Division concluded she required limited assistance, but increased the frequency to 35 times weekly. Ms. B disagrees; she argues that she continues to require extensive assistance. However, she does agree with the increased frequency of 35 times weekly.

Ms. B's testimony shows that Ms. B can transfer with limited assistance on and off the toilet because she has assistive devices, which include grab bars. However, she cannot completely cleanse herself or clothe herself after using the toilet. Ms. B's doctor stated that she required complete assistance, but that she did have bars on the side of the toilet. Overall, the weight of the evidence shows that Ms. B continues to require extensive assistance with toileting, due to her need for cleansing and dressing assistance post-toileting. The Division has not met its burden of proof on this point. Ms. B is to receive extensive assistance, at the frequency set out in the assessment, which is not disputed by Ms. B, of 35 times weekly.

4. Dressing

Ms. B was receiving extensive assistance with dressing 14 times weekly. After her reassessment, the Division determined she only required limited assistance 14 times weekly. The evidence shows, based upon Ms. B's testimony, her doctor's statement, and the assessment itself, that Ms. B continues to require physical hand-on assistance with her lower items of clothing, shoes, socks, underwear, and pants. This would involve lifting feet and legs, which is weight-bearing assistance. Accordingly, the Division has not met its burden of proof on this point. Ms. B continues to require extensive assistance with dressing 14 times weekly.

5. Instrumental Activities of Daily Living

The Division determined that, while it was difficult for Ms. B to prepare light meals, she could do so with some physical assistance. Ms. B disagreed, maintaining that she was completely dependent with that task. However, she testified that she could occasionally make a sandwich or put a bowl of soup in the microwave. The evidence therefore shows that it is more likely true than not true that, while she requires physical assistance to prepare a light meal, she can independently prepare the meal once that assistance is given. The Division has met its burden of proof on this reduction.

The Division also determined that Ms. B required physical assistance, but could participate, in her other household tasks: main meal preparation, shopping, housework, and laundry. Ms. B maintained that she was dependent with all of these tasks. The evidence demonstrated that, with the exception of shopping, it is more likely than not true that Ms. B can participate to some extent with these tasks. She can help prepare a meal, provided she is sitting down; she can fold clothes; she can engage in minor housework tasks like dusting and general tidying up. The Division therefore met its burden of proof and established that Ms. B required physical assistance, but was not completely dependent, with regard to the tasks of main meal preparation, housework, and laundry.

The task of shopping is a bit more complicated. Ms. B can dress her upper half. By extension, she can use her arms and hands to obtain items off of grocery store shelves. However, she cannot stand for long periods of time. While she could sit in and operate a motorized grocery cart, it is probably an unsafe activity due to the fact she takes a large amount of pain medications. Accordingly, the Division has not met its burden of proof: it is more likely true than not true that Ms. B continues to be dependent for the task of shopping.

6. Medical Escort

Ms. B was not receiving PCA service time for medical escort. She requested that it be added. She therefore has the burden of proof on this issue. The evidence shows that she cannot drive. It also shows that she is forgetful and confused. The applicable regulation authorizes PCA services for medical escort for “traveling with the recipient to and from a routine medical or dental appointment outside the recipient’s home and conferring with medical or dental staff during that appointment.”⁴¹ Ms. B has someone go to her medical appointments with her. Given the fact she cannot drive and is often forgetful and confused, she has met her burden of proof and shown that it is more likely true than not true that she qualifies for medical escort services. While she testified that she spends an hour with the doctor, that is highly unlikely. She, however, requested 45 minutes per visit. Given transportation requirements, Ms. B’s impaired mobility, and the active time spent with the doctor, 45 minutes is not an unreasonable amount of time. Ms. B should therefore receive 45 minutes of medical escort time for each of her 12 yearly doctor’s visits.

Ms. B also requested escort time for her weekly counseling visits. Those are for mental health counseling sessions. They would not fall within the category of a visit with a physician, which would require a person to attend and confer with medical staff. As such, Ms. B should not receive PCA medical escort time for her counseling sessions.

IV. Conclusion

The Division’s provision for Ms. B’s PCA services is upheld in part and reversed in part. The Division is to provide Ms. B with PCA services consistent with this decision.

DATED this 15th day of August, 2014.

Signed _____
Lawrence A. Pederson
Administrative Law Judge

⁴¹ 7 AAC 125.030(d)(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 29th day of August, 2014.

By: Signed _____
Name: Christopher Kennedy
Title: Dep. Chief Administrative Law Judge

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