

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

In the Matter of )  
 )  
D S ) OAH No. 14-0864-MDS  
 ) Agency No.

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**DECISION**

**I. Introduction** D S applied for PCA services.<sup>1</sup> The Division of Senior and Disabilities Services (“Division”) denied her application on May 21, 2014<sup>2</sup>. On May 22, 2014, Ms. S sent a letter requesting a fair hearing to appeal the Division’s denial of her request for PCA services.<sup>3</sup>

A hearing was held on August 6, 2014. At the hearing Ms. S represented herself and testified on her own behalf. Ms. T O, a personal care services representative at Facility X, testified as a witness on Ms. S’ behalf. Victoria Cobo represented the Division while Denise Kichura<sup>4</sup> and David Teague<sup>5</sup> testified on the Division’s behalf.

This decision concludes that Ms. S has met her burden of showing that she is eligible for PCA services in the areas of dressing, bathing, personal hygiene, light housekeeping, and grocery shopping.

**II. Facts**

D S currently is 54 years old.<sup>6</sup> She lives by herself in an apartment in Anchorage, Alaska. She is diabetic, suffers from obstructive sleep apnea, chronic airway obstruction and chronic pain, has hypertension, and is diagnosed with hidradentitis suppurativa<sup>7</sup> and lumbago.<sup>8</sup> She takes insulin on a daily basis,<sup>9</sup> is 5 feet 7 inches tall, and weighs 312 pounds.<sup>10</sup> Four months prior to

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<sup>1</sup> The exact date when Ms. S’ application for PCA services was submitted to the Division is not in the record.

<sup>2</sup> Ex. C, at pp. 3-4.

<sup>3</sup> Ex. C, at p. 2.

<sup>4</sup> Ms. Kichura is the nurse who evaluated Ms. S’ need for PCA services on May 5, 2014.

<sup>5</sup> Mr. Teague was the case program reviewer for the Division in this matter.

<sup>6</sup> At the time of her assessment by Ms. Kichura, Ms. S was 53 years of age

<sup>7</sup> Ex. E, at p. 3. Stedman’s Medical Dictionary (Houghton Mifflin 2002) defines “hidradentitis suppurativa” as an inflammation of the apocrine sweat glands of the perianal, axillary, and genital areas, producing chronic abscesses or sinuses.

<sup>8</sup> See Letter dated June 3, 2014 from N F, P.A.-C (Facility Y) submitted by Ms. Cobo to the Office of Administrative Hearings (OAH) by fax at the time of the hearing, which has subsequently been marked as Ex. F, at p. 5. This letter and the accompanying material submitted by Ms. Cobo on August 6, 2014 is referred to herein as Exhibit F.

<sup>9</sup> Ex. E, at p. 20.

<sup>10</sup> Ex. E, at p. 9.

the assessment, she had a meniscus tear repaired and uses a handrail and a cane for assistance when climbing stairs<sup>11</sup> and a cane when walking outside of her apartment.<sup>12</sup>

Registered nurse Denise Kichura evaluated Ms. S' need for PCA services on May 5, 2014, using the Consumer Assessment Tool (CAT).<sup>13</sup> The Division's CAT assessment gave Ms. S a score of 0/0<sup>14</sup> with regard to each activity of daily living (ADL) and each instrumental activity of daily living (IADL).<sup>15</sup>

Based on the results of Nurse Kichura's assessment, the Division concluded that Ms. S was not eligible for PCA services related to her ADLs – *i.e.*, transfer, locomotion, dressing, eating, toilet use, personal hygiene, and bathing.<sup>16</sup> The Division also found that Ms. S was not eligible for PCA serves related to the IADLS: *i.e.*, meal preparation, shopping, light housework, and laundry.<sup>17</sup>

In her appeal letter of May 22, 2014, Ms. S stated that she did “not agree on some of the scores” that she received in the assessment.<sup>18</sup> In a letter dated June 10, 2013, Ms. S further stated that she was seeking assistance with dressing, light house work, laundry, shopping, and light meal preparation. Information submitted by the Facility Y (“Facility Y”) which has provided primary care for Ms. S describes her as being unable to stand to cook, clean, or go grocery shopping.<sup>19</sup> The Facility Y has further stated that Ms. S is unable to put on her socks or compression stocking on her own, to care for her feet adequately, and to provide daily care for her boils resulting from hidradentitis suppurativa because of her obesity.<sup>20</sup>

### III. Discussion

#### A. The PCA Program

The purpose of the PCA program is:

to provide a recipient physical assistance with activities of daily living (ADL), physical assistance with instrumental activities of

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<sup>11</sup> Ex. E, at p. 4; *see also* Ex. E, at p. 7.

<sup>12</sup> Ex. E, at p. 7; *see also* Ex. F, at p. 10 (stating that “right knee cartilage problems keep her from walking much”).

<sup>13</sup> Ex. D, at p. 1; *see also* 7 AAC 125.020(b).

<sup>14</sup> Ex. D, at pp. 1-2.

<sup>15</sup> *See* Ex. D, at pp. 1-2.

<sup>16</sup> *See* Ex. D, at pp. 1-2.

<sup>17</sup> *See* Ex. D, at pp. 1-2.

<sup>18</sup> *See* Ex. C, at p. 2.

<sup>19</sup> Ex. F, at p. 5.

<sup>20</sup> Ex. F, at p. 5; *see also* Ex. F, at p. 8-9

daily living (IADL), and other services based on the physical condition of the recipient[.<sup>21</sup>]

The Division uses the CAT to help it assess the level of assistance needed.<sup>22</sup> The goal of the assessment process is to determine the level of physical assistance that an applicant requires in order to perform their ADLs and IADLs.<sup>23</sup> The CAT numerical coding system has two components: a self-performance code<sup>24</sup> and a support code.<sup>25</sup> The CAT's "self-performance" codes rate how capable a person is with regard to performing a particular ADL<sup>26</sup> or IADL.<sup>27</sup> The CAT's "support" codes rate the degree of assistance that a person requires for a particular ADL<sup>28</sup> or IADL.<sup>29</sup>

As a gateway to eligibility for PCA services, the CAT evaluates a subset of the ADLs and IADLs. If the person requires some degree of hands-on physical assistance with any *one* of the specific ADLs<sup>30</sup> of transfers, locomotion, eating, toilet use, dressing, or bathing, **or** any *one* of the specific IADLs<sup>31</sup> of meal preparation (either light or main meals), housework (either light or

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<sup>21</sup> See 7 AAC 125.010(a).

<sup>22</sup> 7 AAC 125.020(b).

<sup>23</sup> See 7 AAC 125.010(a).

<sup>24</sup> See Ex. D, at pp. 1-2.

<sup>25</sup> See Ex. D, at pp. 1-2.

<sup>26</sup> With regard to ADLs, the possible self-performance codes are: **0** (person is independent and requires no help or oversight); **1** (person requires supervision); **2** (person requires limited assistance); **3** (person requires extensive assistance); **4** (person is totally dependent); **5** (the person requires cueing), and **8** (the activity did not occur during the past seven days). See Exhibit D, at p. 2; see also Ex. E, at pp. 6-11.

<sup>27</sup> The self-performance codes for IADLs are slightly different from the ADL self-performance codes. With regard to IADLs, the self-performance codes are: **0** (independent either with or without assistive devices – no help provided); **1** (independent with difficulty; the person performed the tasks, but did so with difficulty or took a great amount of time to do the task); **2** (assistance/done with help – the person was somewhat involved in the activity, but help in the form of supervision, reminders, physical assistance was provided); **3** (dependent/done by others – the person is not involved at all with the activity and the activity is fully performed by another person); and **8** (activity did not occur within the past seven days). See Ex. D, at p. 2; see also Ex. E, at p. 26.

<sup>28</sup> The support codes for ADLs are: **0** (no setup or physical help from staff); **1** (setup help only), **2** (one-person physical assist); **3** (two+ persons physical assist), **5** (cueing, required 7 days a week), and **8** (activity did not occur during entire 7 days).

<sup>29</sup> See Ex. E, at pp. 6 & 26. The support codes for IADLs are: **0** (no support provided); **1** (supervision/cueing provided); **2** (set-up help provided); **3** (physical assistance was provided); **4** (total dependence – the person was not involved at all when the activity was performed); and **8** (activity did not occur).

<sup>30</sup> 7 AAC 125.020(a). "Limited Assistance" – the minimum hands-on physical assistance standard applicable to ADLs – is a situation in which the recipient, although "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." See 7 AAC 125.020(a)(1).

<sup>31</sup> 7 AAC 125.020(a). "Independent with Difficulty" – the minimum hands-on physical assistance standard applicable to IADLs -- is defined in AAC 125.020(a)(4) as a situation in which the "the recipient can perform the activity without the help of another individual, but does so with difficulty or takes a great amount of time to perform it." If a potential recipient's IADL self-performance score is a "1" – *i.e.*, independent with difficulty – then the support code must be a "3" or a "4" in order for the person to receive PCA services. See Ex. B, at p. 34.

routine housework), grocery shopping, or laundry, then the person is eligible for PCA services. However, if a person is independent or only requires non-hands-on assistance (oversight, supervision, cueing, or setup) with all of these specific ADLs and IADLs, then the person is not eligible for PCA services, regardless of whether he or she may require hands-on physical assistance with the ADLs or IADLs other than the specific ones used to determine eligibility.<sup>32</sup>

### **B. Ms. S' Assessment**

Ms. S appealed the Division's decision to deny her PCA Services<sup>33</sup> on the grounds that she could perform all ADLs and IADLs independently.<sup>34</sup> Although Ms. S acknowledged that she could perform some ADLs and IADLs without assistance,<sup>35</sup> she disagreed with some of the scores on the assessment and felt she needed assistance with certain ADLs and IADLs.<sup>36</sup> Specifically, Ms. S requested assistance with the ADLs of dressing, personal hygiene, and bathing and the IADLs of laundry, light housework, meal preparation and grocery shopping.<sup>37</sup>

#### **1. ADLs**

##### ***a. Transfers, Locomotion, Eating, and Toileting***

The CAT assessment gave Ms. S a 0/0 score in each of these four categories, finding that she could do each of these tasks independently,<sup>38</sup> although she needed to use a cane when engaged in locomotion outside of her home.<sup>39</sup> The evidence provided by Ms. S' health care provider likewise did not suggest that Ms. S needed assistance with these particular ADLs, although the medical records did note that Ms. S had difficulty with long periods of standing and walking.<sup>40</sup>

Ms. S, in a letter dated June 10, 2014, only requested assistance with dressing, putting on her socks, light house work, laundry, shopping, assistance with reaching her wounds (boils) to clean them and apply dressings on them, and light meal preparation.<sup>41</sup> Ms. S' testimony concerning her need for assistance in these particular ADLs and IADLs

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<sup>32</sup> See Ex. E, at p. 31 (part of the CAT, adopted by reference in 7 AAC 125.02(a)(1) and 7 AAC 160.900).

<sup>33</sup> See Ex. C, at p. 2.

<sup>34</sup> See Ex. D, at pp. 1-2.

<sup>35</sup> Testimony of Ms. S.

<sup>36</sup> Ex. C, at p. 2; see also Testimony of Ms. S.

<sup>37</sup> Testimony of Ms. S; see also Ex. F, at p. 4.

<sup>38</sup> Ex. E, at pp. 6-7, 9

<sup>39</sup> Ex. E, at p. 7.

<sup>40</sup> See Ex. F, at p. 5.

<sup>41</sup> See Ex. F, at p. 4.

was consistent with her letter<sup>42</sup> and was corroborated by a letter from her health care provider.<sup>43</sup> There was no evidence in the record suggesting that Ms. S needed assistance with transfers, locomotion, eating, or toileting. For all of these reasons, Ms. S 0/0 score in the ADLs of transfers, locomotion, eating, and toileting is appropriate.

***b. Dressing***

The Division gave Ms. S a CAT assessment score of 0/0 for the ADL of dressing. Dressing is defined as how a person puts on, fastens, and takes off all items of street clothing.<sup>44</sup> The ADL of dressing also includes donning and removing support hose, which would include compression stockings.<sup>45</sup> Ms. S testified that she was unable to put on her compression stockings<sup>46</sup> and her testimony was corroborated by medical records received from Ms. S' health care provider. Nurse Kichura testified that Ms. S could put on her compression stockings on if she cut the toes off of those stockings.<sup>47</sup> However, Ms. S' medical provider specifically told Ms. S that she should not cut off the toes of her stockings.<sup>48</sup>

Ms. S' medical records likewise indicated that she requires physical assistance with donning her compression socks.<sup>49</sup> Ms. S' testimony that her obesity prevents her from donning her support hose was credible.<sup>50</sup>

Because Ms. S requires physical assistance with donning and removing her compression stockings,<sup>51</sup> she needs limited physical assistance with dressing two times a day, seven days a week. Accordingly, a score of 2/2 is appropriate for the ADL of dressing.

***c. Bathing***

The Division concluded that Ms. S was able to perform the ADL task of bathing independently, and she received a CAT score of 0/0 with regard to this ADL.<sup>52</sup> Ms. S

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<sup>42</sup> See Testimony of Ms. S.

<sup>43</sup> See Ex. F, at p. 5.

<sup>44</sup> See Ex. E, at p. 8.

<sup>45</sup> 7 AAC 125.030(b)(4).

<sup>46</sup> Testimony of Mr. S.

<sup>47</sup> Testimony of Nurse Denise Kichura.

<sup>48</sup> Ex. F, at p. 8.

<sup>49</sup> Ex. F, at pp.5 & 7. Ms. S admitted that she could put on her regular socks with difficulty. See Testimony of Ms. S.

<sup>50</sup> Testimony of Ms. S.

<sup>51</sup> Testimony of Ms. S, see also

<sup>52</sup> See Ex. E, at p. 11.

disputed this assessment.<sup>53</sup> Specifically, Ms. S testified that due to her obesity, she was unable to fully wash certain parts of her body, including her feet.<sup>54</sup> Her testimony was credible and supported by evidence from her health care provider.<sup>55</sup> Consequently, a score of 2/2 is appropriate for the ADL of bathing, since she needs non-weight bearing limited physical assistance for this ADL.

***d. Personal Hygiene***

The ADL of personal hygiene includes a variety of tasks, including skin care.<sup>56</sup> Ms. S suffers from a condition known as hidradenitis suppurativa.<sup>57</sup> This medical condition means that Ms. S has boils that appear on various parts of her body.<sup>58</sup> Her health care provider's records noted that this is a chronic condition in her pannus and groin and that she would need PCA services for long-term care of this condition.<sup>59</sup> Ms. S testified that the boils are painful, that they may open from time to time, and that she applies Neosporin mixed with Vaseline to the ones she can reach.<sup>60</sup> Ms. S' health care provider also stated in medical records that Ms. S was unable to take care of her feet.<sup>61</sup> Although Nurse Kichura claimed that Ms. S was able to clean her boils, wash her feet, and had turned down help with her personal hygiene,<sup>62</sup> Ms. S' testimony, and the medical records of her health care provider,<sup>63</sup> were far more credible in light of Ms. S' obesity and her other medical issues in the record.

According to David Teague, one of the Division's witnesses, skin care under 7 AAC 125030(b)(7)(C) encompasses washing feet.<sup>64</sup> Covered PCA services under personal hygiene include dressings, bandages, and sterile wound care<sup>65</sup> and non-sterile bandage or dressing changes.<sup>66</sup> An application of an over-the-counter medication like Neosporin does

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<sup>53</sup> Testimony of Ms. S.

<sup>54</sup> Testimony of Ms. S.

<sup>55</sup> Ex. F, at p. 5.

<sup>56</sup> 7 AAC 125.030(b)(7)(C).

<sup>57</sup> See Ex. E, at p. 3, *see also* Ex. F, at pp. 4-5.

<sup>58</sup> Ex. F, at pp. 4-5; *see also* Testimony of Ms. S.

<sup>59</sup> Ex. F, at p. 10.

<sup>60</sup> Testimony of Ms. S.

<sup>61</sup> Ex. F, at p. 5.

<sup>62</sup> Testimony of Denise Kichura.

<sup>63</sup> *See* Testimony of Ms. S, *see also* Ex. F at pp. 4-24.

<sup>64</sup> Testimony of David Teague. Ms. S testified that she cannot reach her feet to wash them. *See* Testimony of Ms. S.

<sup>65</sup> *See* Ex. B, at p. 35

<sup>66</sup> 7 AAC 125.030(d).

not constitute a prohibited service under 7 AAC 125.040(a)(1).<sup>67</sup> Furthermore, 7 AAC 125.030(d) specifically provides that PCA services include non-sterile bandage or dressing changes, prescribed foot care, and sterile dressing changes and wound care dressings if provided by a PCA working for a consumer-directed personal care agency.<sup>68</sup> Ms. S has, therefore, met her burden of proof in showing that she needs PCA assistance with the application of Neosporin in areas where she has boils that she cannot reach and PCA assistance to wash and inspect her feet. Accordingly, she should be scored a 2/2 for the ADL of personal hygiene because she needs limited physical assistance with this ADL.

## 2. *IADLs*

### *a. Meal Preparation*

According to the CAT assessment, Ms. S needs no assistance with meal preparation.<sup>69</sup> Nurse Denise Kichura testified that Ms. S has good dexterity with her hands and a good grip so that she can manipulate a knife and cut up vegetables.<sup>70</sup> Ms. S, however, claims that she needs assistance with light meal preparation since she cannot always cook food for herself when she is experiencing pain.<sup>71</sup> Ms. S also testified that she has difficulty standing for long periods of time and tended to make meals that were easy to fix.<sup>72</sup> While Ms. S' testimony was credible and corroborated by her health care provider,<sup>73</sup> this only results in a score of 1/0 (independent with difficulty) and does not qualify Ms. S for PCA services in connection with the IADL of meal preparation.

### *b. Grocery Shopping*

The Division concluded that Ms. S was independent as to grocery shopping, giving her a CAT score of 0/0 for this IADL.<sup>74</sup> Ms. S disagreed.<sup>75</sup> Ms. S said that she uses a motorized scooter at the grocery store when she goes shopping but needs assistance to remove items from the shelves at the grocery store.<sup>76</sup> Ms. S also testified that she usually

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<sup>67</sup> See 7 AAC 125.040(a)(1).

<sup>68</sup> See AAC 125.030(d)(4) & (8).

<sup>69</sup> Ms. S received a 0/0 score on the CAT assessment with regard to the IADL of meal preparation. See Exhibit X at p. 2.

<sup>70</sup> Testimony of Denise Kichura, the nurse who performed the CAT assessment.

<sup>71</sup> Ex. F, at p. 4.

<sup>72</sup> Testimony of Ms. S.

<sup>73</sup> Ex. F, at p. 5.

<sup>74</sup> See Ex. E, at p. 26.

<sup>75</sup> See Ex. F, at pp. 4-5.

<sup>76</sup> Testimony of Ms. S.

has to leave bags of groceries in her car, other than frozen food, since she was unable to bring them up a flight of stairs to her apartment.<sup>77</sup> The CAT assessment states that Ms. S uses a cane when she is walking outside and that she uses a cane and a handrail to get in and out of her apartment,<sup>78</sup> thus lending support to Ms. S' testimony that she is unable to bring all of her groceries into the house on her own.<sup>79</sup> Based on the evidence in the record, Ms. S should be scored a 2/3 on the IADL of grocery shopping because she is not completely independent and requires some hands-on assistance with this IADL.

**c. Light Housework**

The IADL of "light housekeeping" is defined as including the tasks of dusting, vacuuming, washing dishes, cleaning the bathroom, making the bed, and removing trash.<sup>80</sup> The Division gave Ms. S a CAT score of 0/0 for this IADL, finding her to be independent as to light housework.<sup>81</sup> Moreover, Nurse Denise Kichura noted that Ms. S' apartment looked clean when she visited Ms. S for the CAT assessment.<sup>82</sup>

Ms. S testified that it takes her a half hour to make her bed and that her obesity limits her ability to bend over. She also reported that it was difficult for her to do vacuuming. While Ms. S' back problems and obesity undoubtedly make it difficult for her to do light housekeeping, she has not met her burden of demonstrating that she should receive a score higher than 1/0 (independent with difficulty) for this IADL. Thus, Ms. S is not entitled to receive PCA services for this task.

**d. Laundry**

The IADL of laundry is defined as changing the recipient's bed linens and the in-home or out-of-home laundering of a recipient's bed linens and clothing. The Division gave Ms. S a CAT score of 0/0 in connection with the IADL of laundry. Ms. S initially claimed that she is unable to get her laundry completely done due to her hirandentitis suppurativa.<sup>83</sup> She subsequently testified that she has trouble getting to the laundry which is located

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<sup>77</sup> Testimony of Ms. S.

<sup>78</sup> Ex. E, at pp. 4 & 7.

<sup>79</sup> Testimony of Ms. S.

<sup>80</sup> 7 AAC 125.030(c)(3).

<sup>81</sup> See Ex. D, at p. 2. Although the regulation applicable to this IADL refers to it as "light housekeeping", the Division has used the term "light housework" to describe this task. Compare 7 AAC 125.030(c)(3) with Ex. D, at p. 26.

<sup>82</sup> Testimony of Ms. Kichura.

<sup>83</sup> Ex. F, at p. 4.



outside of her apartment, and that she suffers from shortness of breath.<sup>84</sup> However, Ms. S' health care provider does not state that Ms. S needs assistance with her laundry. Ms. S should receive a score of 1/0 (independent with difficulty for this task). Such a score does not qualify Ms. S for PCA services in connection with the IADL of laundry.

#### **IV. Conclusion**

Ms. S has scored a 2/2 with regard to the ADLs of dressing, bathing, and personal hygiene and a score of 2/3 on the IADL of grocery shopping. These scores enable Ms. S to receive PCA services for the ADLs of dressing, bathing, and personal hygiene and for the IADL of grocery shopping. Consequently, Ms. S is eligible for PCA services due to her demonstrated need for physical assistance in the areas of dressing, bathing, personal hygiene, and grocery shopping. The Division's determination that Ms. S is not eligible for PCA services is, therefore, reversed. This matter is remanded to the Division to calculate PCA time in accordance with this decision.

DATED this 26th day of September, 2014.

*Signed*

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Kathleen A. Frederick  
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 15th day of October, 2014.

By: *Signed*

\_\_\_\_\_  
Name: Kathleen A. Frederick

\_\_\_\_\_  
Title: Administrative Law Judge

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

<sup>84</sup> \_\_\_\_\_  
Testimony of Ms. S.