

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

In the Matter of:)
)
 S M) OAH No. 14-0883-MDS
) Agency No.

DECISION

I. Introduction

S M was receiving 26 hours per week 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 13.75 hours per week. Ms. M requested a hearing.

Ms. M's hearing was held on July 25, 2014. Ms. M represented herself. The Division was represented by Victoria Cobo.

The evidence demonstrates that Ms. M's PCA service time for locomotion should be eliminated. However, she should receive PCA service time for her prescribed walking exercise, prescribed range of motion exercise, and prescribed foot care. The Division's provision for Ms. M's PCA services is therefore affirmed in part and reversed in part, as discussed below.

II. Facts

Ms. M is 71 years old. Her diagnoses include diabetes, congestive heart failure, chronic kidney disease, mononeuritis, coronary artery disease, and gouty arthropathy. She has a history of lung cancer.¹

Ms. M was receiving PCA services in the fall of 2013, consisting of limited assistance (code of 2) with locomotion within the home 14 times per week, locomotion to access medical appointments twice weekly, with dressing 7 times per week, with toileting 9 times per week, and with personal hygiene 7 times per week. She was receiving extensive assistance (code of 3) with bathing 7 times per week. She also received PCA service time for oxygen equipment maintenance, medical escort, prescribed range of motion exercises and walking exercise, and her Instrumental Activities of Daily Living (IADLs) of main meal preparation, shopping, housework, and laundry.²

¹ Ex. E, pp. 1, 3; Ex. 7, pp. 1, 3.

² Ex. D, p. 9.

Ms. M was reassessed to determine her current PCA benefit needs. As part of the assessment process, a Division nurse assessor visited her home on November 13, 2013 and recorded her observations on the *Consumer Assessment Tool* (CAT). That reassessment resulted in an overall reduction in Ms. M's benefits. At hearing, the parties partially resolved the case and reached an agreement with regard to the assistance provided Ms. M for light housework, medical escort, and oxygen equipment maintenance. This left PCA benefits for locomotion, and the prescribed tasks of range of motion exercises, walking exercise, and foot care in dispute.

A. *Locomotion*

The Division eliminated hands-on physical locomotion assistance within the home for Ms. M. The nurse assessor concluded that Ms. M needed standby assistance, but did not require hands-on assistance. This conclusion was based upon the assessor seeing Ms. M walk within her home without any assistance during her assessment, and Ms. M's statement to the assessor that she did not need help walking within her home. The nurse assessor did not recall Ms. M mentioning that she had "bad days" which would affect her functioning.³ The nurse assessor found that Ms. M could not touch her feet while in a sitting position.⁴

Ms. M has a small apartment. She stated that she leans on furniture and walls while walking and generally does not require hands-on assistance with walking in her apartment, but that she requires non-weight-bearing hands-on assistance with walking on bad days. Her legs will collapse and she will fall. She said her arthritis is worse during the winter and on rainy days, which affects her ability to walk; she estimated that she has two bad days per week, where she needs help walking nine times per day. Her PCA checks her feet for foot sores. Ms. M has prescribed foot cream for her feet when she has foot sores.⁵

Ms. M's medical records show that she was having trouble walking on a swollen right leg in early December 2013, that she broke a toe on her left foot at the end of December 2013, and that in mid-February and mid-May 2014, her podiatrist concluded that her functioning was diminished but that she was capable of walking.⁶

Ms. M has a history of fairly frequent falls.⁷

³ Margaret Rogers' testimony; Ex. E, p. 7.

⁴ Ex. E, p. 4.

⁵ S M's testimony.

⁶ Ex. 6, pp. 1, 3, 6, 8.

⁷ Ex. 1, p. 1; K T testimony.

B. Prescribed Range of Motion Exercises, Walking Exercise, and Foot Care

Ms. M was receiving PCA assistance for range of motion exercises and walking exercise prior to the Division's May 12, 2014 PCA reduction letter. She was not receiving PCA assistance for foot care.⁸ Dr. X, DO, completed a Division prescription task form on July 10, 2013, which prescribed range of motion exercises for Ms. M at 15 minutes per day, 5 days per week. That same form also prescribed her walking exercise at 30 minutes per day, 5 days per week, and for foot care at 15 minutes per day, 5 days per week. The prescriptions were for one year and stated that Ms. M required physical assistance with each of those tasks. On page 1 of that form, it states that "[p]rescriptions for foot care, walking for exercise and range-of-motion are PCA services supported by a medical prescriber prescription only. All other covered services are supported by" a Division assessment. On page 2 of that form, the signing physician attested to the medical necessity for the services.⁹

The Division denied Ms. M any PCA assistance for range of motion exercises, locomotion exercises, and foot care, stating in its reduction letter that she had a good range of motion, that she only required supervision assistance with walking, and that she did not have an underlying diagnosis to support a need for assistance with any of these three tasks.¹⁰ At hearing, the Division advanced an additional reason for denial of the foot care, being that it was unnecessary because it duplicated other services provided by Ms. M's PCA.

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"¹¹ 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."¹²

⁸ Ex. D, p. 9.

⁹ Ex. G.

¹⁰ Ex. D, pp. 3 – 4; Ms. Rogers' testimony.

¹¹ 7 AAC 125.010(a) [emphasis added].

¹² 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

The Division uses the Consumer Assessment Tool or "CAT" to determine the level of physical assistance that an applicant or recipient requires in order to perform their ADLs and their IADLs.¹³ 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.¹⁴

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 assistance¹⁵); **3** (the person requires extensive assistance¹⁶); and **4** (the person is totally dependent¹⁷). 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).¹⁸

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).¹⁹

"supervision" as "observing and giving direction, as needed, so that the recipient can independently perform an ADL or IADL." *Id.*

¹³ See 7 AAC 125.020(a) and (b).

¹⁴ Ex. E, pp. 6 – 11.

¹⁵ 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."

¹⁶ 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."

¹⁷ 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."

¹⁸ Ex. E, p. 18.

¹⁹ Ex. E, p. 18.

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.²⁰

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).²¹

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).²²

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.²³

B. Application of the PCA Determination Process

This case involves both a reduction of benefits by the Division and an increase request from Ms. M. The Division is seeking to eliminate assistance for locomotion, range of motion exercises, and walking exercises. Ms. M not only opposes the elimination of those tasks, she is requesting that she receive assistance for foot care, 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.²⁴

²⁰ Ex. E, p. 26.

²¹ Ex. E, p. 26.

²² Ex. E, p. 26.

²³ 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.

²⁴ 7 AAC 49.135.

1. Locomotion

The Division had provided Ms. M with limited assistance (code of 2) 14 times per week for locomotion. The Division eliminated that assistance in its entirety. Ms. M's testimony was that she required non-weight-bearing hands-on assistance for walking two days per week. Non-weight-bearing hands-on physical assistance is limited assistance. Ms. M's medical records, notably her podiatrist's comments in mid-February and mid-May 2014, however, state her functioning was diminished, but that she was capable of walking. Her medical records are given a great deal of weight, and the assessment is consistent with them. Accordingly, the Division has met its burden of proof and demonstrated that Ms. M does not require hands-on physical assistance for locomotion within her own home.

2. Prescribed Range of Motion Exercises, Walking Exercise, and Foot Care

Ms. M had a prescription for PCA assistance for range of motion exercises, walking exercise, and foot care. That prescription was signed on July 10, 2013, and was good for one year. The Division denied it. However, the doctor who signed it certified that it was medically necessary.

The PCA program regulations provide that PCA assistance is to be provided for prescribed tasks of walking exercise, range of motion exercises, and foot care.²⁵ The *Personal Care Assistance Service Level Computation*, which is adopted into regulation,²⁶ adds two additional requirements: that those prescribed tasks be consistent with the assessment, and meet the recipient's identified needs.²⁷ Interestingly enough, the form that the Division provides for physicians to sign appears to be at variance with the *Personal Care Assistance Service Level Computation*, because it states that these tasks are supported by prescription "only", whereas other PCA tasks are supported by the assessment. This implies that the assessment is not a factor in providing time for these prescribed tasks.

With regard to range of motion exercises, Ms. M had previously been provided PCA assistance with these. She had a prescription, which was still current as of the May 12, 2014 reduction notice, for 15 minutes per day, five days per week, for PCA physical assistance. The Division has not met its burden of proof to show that she no longer requires PCA assistance with these exercises. She has a number of diagnoses which could result in a need for assistance due to

²⁵ 7 AAC 125.030(d)(5) and (e)(4).

²⁶ 7 AAC 160.900(d)(29).

²⁷ Ex. B, p. 36.

their impact upon her strength and flexibility: diabetes, congestive heart failure, chronic kidney disease, mononeuritis, coronary artery disease, and gouty arthropathy. She has a prescription stating that the assistance is medically necessary. The Division should provide her with PCA assistance for her range of motion exercises, as prescribed by her physician.

Ms. M was previously provided with PCA assistance with walking exercise. She had a prescription for 30 minutes per day, five days per week. While the Division has shown that Ms. M is capable of locomotion within her home, it has not met its burden of proof to establish that she does not require physical assistance with walking exercise, for the following reasons. First, the time period for the exercise is 30 minutes per day. While she is capable of walking the short distances in her small apartment, there is no evidence that she can walk without assistance for a 30 minute period of time. Indeed, she is subject to relatively frequent falls. Second, as discussed above, she has a number of diagnoses that could support her need for assistance. Third, there is a physician's certification that physical assistance with this task is medically necessary. The Division should provide Ms. M with PCA assistance with walking exercise, 30 minutes per day, 5 days per week, as prescribed by her physician.

Ms. M was not previously provided foot care. She has requested that it be provided consistent with her physician's prescription. She has met her burden of proof with regard to this request. She is diabetic. Her feet have to be inspected. She needs medicated cream applied if she has sores. She cannot touch her feet, *i.e.*, she cannot do the inspection or application of medicated cream herself. It is more likely true than not true that she requires this service. The Division should provide PCA assistance for foot care as prescribed by her doctor.

IV. Conclusion

The Division's provision for Ms. M's PCA services is upheld in part and reversed in part. It is upheld with regard to locomotion, and reversed for range of motion exercises, walking exercise, and foot care.

DATED this 8th day of August, 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 3rd day of September, 2014.

By: Signed
Name: Jared C. Kosin, J.D., M.B.A.
Title: Executive Director
Agency: Office of Rate Review, DHSS

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